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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Rules and Regulations

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

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

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has adopted final amendments to its Regulation A to reflect the Board's approval of a decrease in the primary credit rate at each Federal Reserve Bank. The secondary credit rate at each Reserve Bank automatically decreased by formula as a result of the Board's primary credit rate action.

DATES: The amendments to part 201 (Regulation A) are effective November 8, 2007. The rate changes for primary and secondary credit were effective on the dates specified in 12 CFR 201.51, as amended.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Johnson, Secretary of the Board (202/452–3259); for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: The Federal Reserve Banks make primary and secondary credit available to depository institutions as a backup source of funding on a short-term basis, usually overnight. The primary and secondary credit rates are the interest rates that the twelve Federal Reserve Banks charge for extensions of credit under these programs. In accordance with the Federal Reserve Act, the primary and secondary credit rates are established by the boards of directors of the Federal Reserve Banks, subject to the review and determination of the Board.

The Board approved requests by the Reserve Banks to decrease by 25 basis points the primary credit rate in effect at each of the twelve Federal Reserve Banks, thereby decreasing from 5.25 percent to 5.00 percent the rate that each Reserve Bank charges for extensions of primary credit. As a result of the Board's action on the primary credit rate, the rate that each Reserve Bank charges for extensions of secondary credit automatically decreased from 5.75 percent to 5.50 percent under the secondary credit rate formula. The final amendments to Regulation A reflect these rate changes.

The 25-basis-point decrease in the primary credit rate was associated with a similar decrease in the target for the federal funds rate (from 4.75 percent to 4.50 percent) approved by the Federal Open Market Committee (Committee) and announced at the same time. A press release announcing these actions indicated that:

> Economic growth was solid in the third quarter, and strains in financial markets have eased somewhat on balance. However, the pace of economic expansion will likely slow in the near term, partly reflecting the intensification of the housing correction. Today's action, combined with the policy action taken in September, should help forestall some of the adverse effects on the broader economy that might otherwise arise from the disruptions in financial markets and promote moderate growth over time.
>
> Readings on core inflation have improved modestly this year, but recent increases in energy and commodity prices, among other factors, may put renewed upward pressure on inflation. In this context, the Committee judges that some inflation risks remain, and it will continue to monitor inflation developments carefully.
>
> The Committee judges that, after this action, the upside risks to inflation roughly balance the downside risks to growth. The Committee will continue to assess the effects of financial and other developments on economic prospects and will act as needed to foster price stability and sustainable economic growth.

Regulatory Flexibility Act Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the new primary and secondary credit rates will not have a significantly adverse economic impact on a substantial number of small entities because the final rule does not impose any additional requirements on entities affected by the regulation.

Administrative Procedure Act

The Board did not follow the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of these amendments because the Board for good cause determined that delaying implementation of the new primary and secondary credit rates in order to allow notice and public comment would be unnecessary and contrary to the public interest in fostering price stability and sustainable economic growth. For these same reasons, the Board also has not provided 30 days prior notice of the effective date of the rule under section 553(d).

12 CFR Chapter II

List of Subjects in 12 CFR Part 201

Banks, Banking, Federal Reserve System, Reporting and recordkeeping.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR Chapter II to read as follows:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 12 U.S.C. 248(i)–(j), 343 *et seq.*, 347a, 347b, 347c, 348 *et seq.*, 357, 374, 374a, and 461.

■ 2. In § 201.51, paragraphs (a) and (b) are revised to read as follows:

§ 201.51 Interest rates applicable to credit extended by a Federal Reserve Bank.[1]

(a) *Primary credit.* The interest rates for primary credit provided to depository institutions under § 201.4(a) are:

Federal Reserve Bank	Rate	Effective
Boston	5.00	November 1, 2007.
New York	5.00	October 31, 2007.
Philadelphia	5.00	November 1, 2007.
Cleveland	5.00	November 1, 2007.
Richmond	5.00	October 31, 2007.

[1] The primary, secondary, and seasonal credit rates described in this section apply to both advances and discounts made under the primary, secondary, and seasonal credit programs, respectively.

Federal Reserve Bank	Rate	Effective
Atlanta	5.00	October 31, 2007.
Chicago	5.00	October 31, 2007.
St. Louis	5.00	November 1, 2007.
Minneapolis	5.00	November 1, 2007.
Kansas City	5.00	November 1, 2007.
Dallas	5.00	November 1, 2007.
San Francisco	5.00	October 31, 2007.

(b) *Secondary credit.* The interest rates for secondary credit provided to depository institutions under 201.4(b) are:

Federal Reserve Bank	Rate	Effective
Boston	5.50	November 1, 2007.
New York	5.50	October 31, 2007.
Philadelphia	5.50	November 1, 2007.
Cleveland	5.50	November 1, 2007.
Richmond	5.50	October 31, 2007.
Atlanta	5.50	October 31, 2007.
Chicago	5.50	October 31, 2007.
St. Louis	5.50	November 1, 2007.
Minneapolis	5.50	November 1, 2007.
Kansas City	5.50	November 1, 2007.
Dallas	5.50	November 1, 2007.
San Francisco	5.50	October 31, 2007.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 2, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–21889 Filed 11–7–07; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0158; Directorate Identifier 2007–CE–081–AD; Amendment 39–15253; AD 2007–23–07]

RIN 2120–AA64

Airworthiness Directives; EADS SOCATA Model TBM 700 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

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

This Airworthiness Directive (AD) results from one report of main landing gear wheel attaching nut partly unscrewed on a TBM 850 what has generated a loss of braking and which could lead to a wheel loss. The investigation revealed that this incident was due to a wheel axle machining issue, concerning a few production batches.

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective November 28, 2007.

On November 28, 2007, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

We must receive comments on this AD by December 10, 2007.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Discussion

The Direction générale de l'aviation civile (DGAC), which is the aviation authority for France, has issued Emergency AD No. CN UF–2007–015—EADS SOCATA—TBM 700, dated September 20, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

This Airworthiness Directive (AD) results from one report of main landing gear wheel attaching nut partly unscrewed on a TBM 850 what has generated a loss of braking and which could lead to wheel loss. The investigation revealed that this incident was due to a wheel axle machining issue, concerning a few production batches.

The MCAI requires you to inspect the main landing gear (MLG) wheel axles to determine that batch number. If the batch number is one affected by this AD, you are required to inspect the axle for conformity and replace the lockwasher if necessary.

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

Relevant Service Information

EADS SOCATA has issued TBM Aircraft Mandatory Service Bulletin Number SB 70–151, Amendment 1, dated September 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

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

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

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule, because the non-conformity of the MLG wheel axles could cause the MLG attaching nut to unscrew, which could result in loss of braking ability and/or the wheel could detach from the airplane. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0158; Directorate Identifier 2007–CE–081–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–23–07 EADS SOCATA: Amendment 39–15253; Docket No. FAA–2007–0158; Directorate Identifier 2007–CE–081–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 28, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models TBM 700 airplanes, serial numbers 205, 240, and 244 through 408, that:

(1) Are certificated in any category; and

(2) Have main landing gear (MLG) wheel axles with the following batch numbers installed: D67690 CZ49133, D67690 CZ52790, D67690 CZ58448, D67690 CZ62189, D67690 CZ64034, D67690 CZ66207, D67690 CZ68039, D67690 CZ70959, D67690 CZ72081, D67690 CZ72975, D67690 CZ77612, or D67690 CZ78218.

Subject

(d) Air Transport Association of America (ATA) Code 32: Landing Gear.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

This Airworthiness Directive (AD) results from one report of main landing gear wheel attaching nut partly unscrewed on a TBM 850 what has generated a loss of braking and which could lead to wheel loss. The investigation revealed that this incident was due to a wheel axle machining issue, concerning a few production batches.

The MCAI requires you to inspect the main landing gear (MLG) wheel axles to determine the batch number. If the batch number is one affected by this AD, you are required to inspect the axle for conformity and replace the lockwasher if necessary.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Before further flight after the effective date of this AD, inspect the MLG wheel axles to determine the batch number in accordance with the Accomplishment Instructions in EADS SOCATA TBM Aircraft Mandatory Service Bulletin Number SB 70–151, Amendment 1, dated September 2007.

(2) Before further flight after the inspection required in paragraph (f)(1) of this AD, if the MLG wheel axle shows a batch number listed in paragraph (c)(2) of this AD, inspect the axle for conformity in accordance with Messier-Dowty Technical Instruction No. CS/1020/07, Issue 1, dated September 11, 2007, as referenced in EADS SOCATA TBM Aircraft Mandatory Service Bulletin Number SB 70–151, Amendment 1, dated September 2007.

(i) No further action is required if the axle is in conformance.

(ii) Before further flight for non-conforming axles, replace the original lockwasher with a new lockwasher, part number (P/N) SKW40716–118R, and mark the axle using indelible ink with the inscription ''SB70–151–32'' in accordance with Messier-Dowty Technical Instruction No. CS/ 1020/07, Issue 1, dated September 11, 2007, as referenced in EADS SOCATA TBM Aircraft Mandatory Service Bulletin Number SB 70–151, Amendment 1, dated September 2007.

(3) As of the effective date of this AD, do not install any MLG wheel axle with a batch number specified in paragraph (c)(2) of this AD unless it is inspected in accordance with Messier-Dowty Technical Instruction No. CS/

1020/07, Issue 1, dated September 11, 2007, as referenced in EADS SOCATA TBM Aircraft Mandatory Service Bulletin Number SB 70–151, Amendment 1, dated September 2007, and a new lockwasher is installed if necessary.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

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

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

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

Related Information

(h) Refer to Direction générale de l'aviation civile (DGAC) Emergency AD No. CN UF–2007–015—EADS SOCATA—TBM 700, dated September 20, 2007; EADS SOCATA TBM Aircraft Mandatory Service Bulletin Number SB 70–151, Amendment 1, dated September 2007, for related information.

Material Incorporated by Reference

(i) You must use EADS SOCATA TBM Aircraft Mandatory Service Bulletin Number SB 70–151, Amendment 1, dated September 2007, and Messier-Dowty Technical Instruction No. CS/ 1020/07, Issue 1, dated September 11, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact EADS SOCATA, Direction des Services, 65921 Tarbes Cedex 9, France.

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

Issued in Kansas City, Missouri on October 30, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–21782 Filed 11–7–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–28776; Airspace Docket No. 07–ACE–10]

Modification of Class E Airspace; Lee's Summit, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Lee's Summit, MO.

DATES: *Effective Date:* 0901 UTC, December 20, 2007.

FOR FURTHER INFORMATION CONTACT: Grant Nichols, System Support, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; *telephone:* (816) 329–2522.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on September 7, 2007 (72 FR 51358). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 20, 2007.

Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published on Paragraph 6005 of FAA Order 7400.9R, signed August 1, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Fort Worth, Texas on October 19, 2007.

Donald R. Smith,

Manager, System Support Group, ATO Central Service Center.

[FR Doc. 07–5316 Filed 11–7–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–28773; Airspace Docket No. 07–ACE–9]

Modification of Class E Airspace; Poplar Bluff, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Poplar Bluff, MO.

DATES: *Effective Date:* 0901 UTC, December 20, 2007.

FOR FURTHER INFORMATION CONTACT: Grant Nichols, System Support, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; *telephone:* (816) 329–2522.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on September 7, 2007 (72 FR 51363). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 20, 2007.

Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9R, signed August 1, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations

listed in this document will be published subsequently in the Order.

No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Fort Worth, Texas on October 19, 2007.

Donald R. Smith,

Manager, System Support Group, ATO Central Service Center.

[FR Doc. 07–5317 Filed 11–7–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20551; Airspace Docket No. 04–AWP–8]

RIN 2120–AA66

Revision of VOR Federal Airway 363; CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises VOR Federal Airway 363 (V–363) between the Mission Bay, CA, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and the Pomona, CA, VORTAC. Specifically, the FAA is making this realignment to provide a southwestern route structure to circumnavigate the Camp Pendleton, CA, range complex.

DATES: *Effective Date:* 0901 UTC, February 14, 2008. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

Background

On March 14, 2005, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to revise VOR Federal Airway V–363 between the Mission Bay, CA, and the Pomona, CA, VORTAC (70 FR 12428). On May 25, 2005, the FAA published in the **Federal Register** a correction to the NPRM due to an incomplete description (70 FR 30036). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. Two comments were received.

The Aircraft Owners and Pilots Association stated the realignment of V–363 will provide an available route for circumnavigating the Camp Pendleton range complex by providing a more direct route that will have a positive impact on general aviation. One commentor disagreed with the revision to V–363, pointing out that the revised routing was incorrect and the proposal had not been presented to the Southern California Users Group (SCAUWG). A correction to the NPRM with revised routing was published on May 25, 2005, correcting the error in the V–363 description. The proposal had been presented to the SCAUWG and it was determined that the revised routing of V–363 would provide a more direct routing and assist general aviation pilots in the Southern California. With the exception of editorial changes, this amendment is the same as that published in the correction to the NPRM.

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9R dated August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Federal airways listed in this document will be published subsequently in the Order.

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 to revise VOR Federal Airway 363 (V–363) between the Mission Bay, CA, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and the Pomona, CA, VORTAC. Specifically, the FAA is making this realignment to provide a southwestern route structure to circumnavigate the Camp Pendleton, CA, range complex.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it revises VOR Federal Airway V–363 in California.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9R, Airspace Designations and Reporting Points, dated August 15, 2007, and effective September 15, 2007, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–363 [Revised]

From Mission Bay, CA; INT Mission Bay, CA, 341° and Santa Catalina, CA, 103° radials; to INT Santa Catalina, CA, 103° and Mission Bay, CA, 327° radials; to INT Mission Bay, CA, 327° and El Toro, CA, 172° radials; to El Toro, CA; to INT El Toro, CA, 339° and Pomona, CA, 179° radials; to Pomona, CA.

* * * * *

Issued in Washington, DC, October 31, 2007.

Paul Gallant,

Acting Manager, Airspace and Rules Group.

[FR Doc. E7–21825 Filed 11–7–07; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

RIN 3038–AC45

Termination of Associated Persons and Principals of Futures Commission Merchants, Introducing Brokers, Commodity Trading Advisors, Commodity Pool Operators and Leverage Transaction Merchants

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') has amended Commission Regulations 3.12 and 3.31 to extend the period during which a registered futures commission merchant (''FCM''), introducing broker (''IB''), commodity trading advisor (''CTA''), commodity pool operator (''CPO'') or leverage transaction merchant (''LTM'') must file a notice with the National Futures Association (''NFA'') to report the termination of any associated person (''AP'') or principal of the registered intermediary. The amendments modify existing requirements and specify that such intermediaries must file termination notices within 30 days, rather than 20 days, after the termination of the association with any AP or principal.

DATES: *Effective Date:* January 1, 2008.

FOR FURTHER INFORMATION CONTACT: Helene D. Schroeder, Special Counsel, Compliance and Registration Section, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, telephone number: (202) 418–5450; facsimile number: (202) 418–5528; and electronic mail: *hschroeder@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 4k of the Commodity Exchange Act (''Act'') [1] makes it unlawful for persons to be associated in certain specified capacities with an FCM, IB, CPO or CTA unless the person is registered as an AP thereof under the Act.[2] Section 19 of the Act grants the Commission plenary authority over leverage transactions, and this authority includes the registration of APs of an LTM.[3]

Commission Regulation 3.12(a) makes it unlawful for any person to be associated with an FCM, IB, CTA, CPO or LTM in the capacity of an AP unless the person has registered under the Act as an AP of that sponsoring intermediary.[4] Pursuant to Commission Regulation 3.12(c), application for registration as an AP must be on a Form 8–R and accompanied by the applicant's fingerprints, as well as a sponsor certification that meets the requirements set forth in that Regulation.

Commission Regulations 3.12(b) and 3.31(c)(1) provide for the termination of an AP's registration. Specifically, Section 3.31(c)(1) requires the sponsoring FCM, IB, CPO, CTA or LTM to file a Form 8–T notice [5] with NFA within 20 days of either of the following events: (1) The person fails to become associated with the sponsoring FCM, IB, CTA, CPO or LTM; or (2) the association with the sponsoring firm is otherwise terminated. Commission Regulation 3.31(c)(2) provides for the termination of any principal of an FCM, IB, CPO, CTA or LTM, and it also requires the filing of a Form 8–T within 20 days after the termination of the principal's affiliation.

NFA Registration Rule 214(a) likewise specifies that such termination notices must be filed within 20 days after the termination of the affiliation of the AP or principal, and it imposes a $100 fee upon sponsoring firms that fail to file termination notices on a timely basis. By contrast, Article V, Section 3(a) of the Bylaws of the National Association of Securities Dealers, Inc. (''NASD'') [6] specifies that members must file termination notices with respect to registered persons, including varied securities representatives and principals thereof, within 30, rather than 20, days.[7]

Following a review of its rules and a survey of its members, NFA filed a petition (''Petition'') with the Commission seeking to amend Regulation 3.31(c)(1) to increase the number of days in which a firm must file a termination notice from 20 to 30 days. The Petition was based upon concerns raised by NFA members that were dually registered as FCMs or IBs and securities broker-dealers (''BDs''). The dual registrants asserted that it is an undue regulatory burden for them to file within the 20-day period for some APs, while for the majority of their APs, securities industry requirements permit them to file within 30 days. They further asserted that the 20-day period is difficult to comply with when a termination notice contains disclosure information that must be reviewed at the branch office level, by the legal and/or registration departments of a firm, and possibly by an attorney representing the terminated AP.

II. The Proposal

In light of the Petition, the disparate regulatory requirements applicable to firms that are dual registrants, the burden that complying with the 20-day period presented, and in an effort to streamline regulatory requirements and harmonize them with the filing deadlines applicable to BDs, the Commission published in the **Federal Register** a proposal (''Proposal'') to extend the period of time in which a registered FCM, IB, CPO, CTA or LTM must file a termination notice in line with NFA's proposal. The Proposal included proposed amendments to Regulations 3.12(b) and 3.31(c)(1) and (2) that would allow termination notices to be filed within 30, rather than 20, days after the association with the AP or principal is terminated.

III. Comments Regarding the Proposal

The Commission received three comments addressing its Proposal. The first comment was from a committee (''Committee'') of a Bar Association, the second comment was from an association of broker/dealer and investor advisor firms and the third comment was from an industry trade association. All three commenters expressed support for the Proposal and, in particular, applauded the Commission's efforts to harmonize, align and ease requirements applicable to firms that are subject to conflicting

[1] 7 U.S.C. 1 *et seq.* (2000). The Act can be accessed at *http://www.access.gpo.gov/uscode/title7/chapter1_.html.*

[2] 7 U.S.C. 6k(1)–(3).

[3] 7 U.S.C. 23.

[4] 17 CFR 3.12(a). The Commission's regulations can be accessed at *http://www.access.gpo.gov/nara/cfr/waisidx_06/17cfrv1_06.html.*

[5] Commission Regulation 3.31(c)(3) permits the filing of a Uniform Termination Notice for Securities Industry Registration (Form U–5) in lieu of a Form 8–T to report the termination of any AP or principal of the sponsoring intermediary.

[6] In July, 2007, NASD was succeeded by the Financial Industry Regulatory Authority Inc.

[7] The termination notice filed for securities industry registration is the Form U–5.

securities and futures regulatory requirements. The Committee additionally noted that the Proposal would provide additional time for the review of the content of termination notices by multiple parties, and it encouraged the Commission to promptly adopt the Proposal.

In light of the comments received, the Commission has decided to adopt the amendments to Regulations 3.12(b) and 3.31(a)(1) and (2) as set forth in the Proposal.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'')[8] requires that agencies, in proposing regulations, consider the impact of those regulations on small businesses. The amendments will affect persons that are registered as FCMs, IBs, CPOs, CTAs and LTMs. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its regulations on such entities in accordance with the RFA.[9] The Commission previously determined that registered FCMs, CPOs and LTMs are not small entities for the purpose of the RFA.[10] With respect to the remaining persons, CTAs and IBs, the Commission stated in its Proposal that it did not believe that the proposed amendments to its regulations would place any additional burdens upon such persons inasmuch as these registrants already are subject to the requirement to file termination notices. The Commission also stated its belief that the proposed amendments actually would lessen the relevant regulatory burdens on CTAs and IBs inasmuch as they would provide these intermediaries with additional time in which to file termination notices. Accordingly, and based on Section 3(a) of the RFA,[11] the Acting Chairman, on behalf of the Commission, certified that the proposed amendments would not have a significant economic impact on a substantial number of small entities. The Commission invited the public to comment regarding its analysis, and no commenter specifically addressed the small business issue.

B. Cost-Benefit Analysis

Section 15(a) of the Act[12] requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, Section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission, in its discretion, may choose to give greater weight to any one of the five enumerated areas and determine that, notwithstanding its costs, a particular regulation is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The amendments concern the filing of termination notices by registered intermediaries, in particular, FCMs, IBs, CPOs, CTAs and LTMs. Specifically, the amendments will extend the period during which these registered intermediaries must file a notice with NFA to report the termination of any AP or principal of the sponsoring intermediary.

The amendments will have no effect on the protection of market participants and the public because they will not alter or modify the type or nature of information that must be filed with the Commission. Rather, they will provide registrants with additional time in which to file information that is already required to be filed and will conform the futures industry requirements to the securities industry's time allowance for filing termination notices. The amendments will enhance the efficiencies experienced by intermediaries because they will lessen burdens that make it difficult for intermediaries to comply with the time allowance provided for futures firms filing termination notices. Further, the amendments will have no effect on the following three enumerated areas: (1) Competitiveness or the financial integrity of futures markets; (2) price discovery; and (3) sound risk management practices. The Commission invited public comment on its cost-benefit analysis, but did not receive any comments addressing the issue.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'') imposes certain obligations on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA.[13] In its Proposal, the Commission noted that the proposed amendments to the regulations would not require a new collection of information on the part of any entities subject to them. Specifically, the Commission stated that the proposed amendments would modify existing regulatory requirements by extending the period during which registered intermediaries are required to file notices with NFA to report the termination of APs and principals of the registered intermediary and that, therefore, the estimated burden associated with the collection is not expected to increase or decrease as a result. Accordingly, for purposes of the PRA, the Commission certified that the proposed amendments would not impact the total annual reporting or recordkeeping burden associated with the above-referenced collection of information, which was previously approved by OMB. The Commission did not receive any comments regarding its analysis relative to the PRA.

List of Subjects in 17 CFR Part 3

Administrative practice and procedure, Brokers, Commodity futures, Reporting and recordkeeping requirements.

■ For the reasons discussed in the preamble, the Commission amends 17 CFR part 3 as follows:

PART 3—REGISTRATION

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

Authority: 5 U.S.C. 522, 522b; 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23.

■ 2. Section 3.12 is amended by revising paragraph (b) to read as follows:

§ 3.12 Registration of associated persons of futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators and leverage transaction merchants.

* * * * *

(b) *Duration of registration.* A person registered in accordance with paragraphs (c), (d), (f), (i), or (j) of this section and whose registration has not been revoked will continue to be so registered until the revocation or withdrawal of the registration of each of the registrant's sponsors, or until the cessation of the association of the registrant with each of his sponsors.

[8] 5 U.S.C. 601 *et seq.*

[9] 47 FR 18618 (Apr. 30, 1982).

[10] 47 FR 18618, 18619.

[11] 5 U.S.C. 605(b).

[12] 7 U.S.C. 19(a).

[13] 44 U.S.C. 3501 *et seq.*

Such person will be prohibited from engaging in activities requiring registration under the Act or from representing himself to be a registrant under the Act or the representative or agent of any registrant during the pendency of any suspension of his or his sponsor's registration. In accordance with § 3.31(c), each of the registrant's sponsors must file a notice with the National Futures Association on Form 8–T or on a Uniform Termination Notice for Securities Industry Registration reporting the termination of the association of the associated person within thirty days thereafter.

* * * * *

■ 3. Section 3.31 is amended by revising paragraphs (c)(1) introductory text and (c)(2) to read as follows:

§ 3.31 Deficiencies, inaccuracies, and changes, to be reported.

* * * * *

(c)(1) After the filing of a Form 8–R or a Form 3–R by or on behalf of any person for the purpose of permitting that person to be an associated person of a futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker, or a leverage transaction merchant, that futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker or leverage transaction merchant must, within thirty days after the occurrence of either of the following, file a notice thereof with the National Futures Association indicating:

* * * * *

(2) Each person registered as, or applying for registration as, a futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker or leverage transaction merchant must, within thirty days after the termination of the affiliation of a principal with the registrant or applicant, file a notice thereof with the National Futures Association.

* * * * *

Issued in Washington, DC, on November 1, 2007, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E7–21953 Filed 11–7–07; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 2

Implementing Procedures for Mandatory Declassification Review and Access to Classified Information by Historical Researchers, Former Treasury Presidential and Vice Presidential Appointees, and Former Presidents and Vice Presidents

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: Section 5.4 of Executive Order 13292 requires the Department of the Treasury to promulgate implementing regulations with respect to classified national security information and to publish such regulations to the extent that they affect members of the public. These regulations relate to the processing of mandatory declassification review requests by the public and providing access to classified information, consistent with the interest of the national security, to historical researchers, former Treasury Presidential and Vice Presidential appointees, and former Presidents and Vice Presidents. The Department of the Treasury is revising its implementing regulations relating to classified national security information in 31 CFR part 2 to address only these two matters relating to the public. All other Treasury regulations pertaining to internal procedures governing classified national security information under Executive Order 13292 have been transferred to the Treasury Security Manual.

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

FOR FURTHER INFORMATION CONTACT: Robert A. McMenamin, Assistant Director (Information Security), Department of the Treasury, Office of Security Programs, Room 3180 Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, telephone (202) 622–1055 (not a toll-free number).

SUPPLEMENTARY INFORMATION: These regulations restate in pertinent part without substantive changes, existing processes for mandatory declassification review and access to classified information by historical researchers, former Treasury Presidential and Vice Presidential appointees, and former Presidents and Vice Presidents; updates the fee schedule for processing declassification review; and removes provisions in the current regulations from 31 CFR part 2 that apply to Treasury personnel and which have been transferred to the Treasury Security Manual. Accordingly, pursuant to 5 U.S.C. 553(b)(B) and (d)(3), the Department of the Treasury finds good cause that prior notice and public procedures with respect to this rule are unnecessary and contrary to the public interest, and that good cause exists for making this rule effective upon the date of publication in the **Federal Register**.

Pursuant to Executive Order 12866, it has been determined that this final rule is not a significant regulatory action, and therefore a regulatory impact analysis is not required. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. Ch 6, do not apply.

List of Subjects in 31 CFR Part 2

Archives and records, Classified information, Security measures.

■ For the reasons stated in the preamble, 31 CFR part 2 is revised to read as follows:

PART 2—NATIONAL SECURITY INFORMATION

Sec.
2.1 Processing of mandatory declassification review requests.
2.2 Access to classified information by historical researchers, former Treasury Presidential and Vice Presidential appointees, and former Presidents and Vice Presidents.

Authority: 31 U.S.C. 321, E.O. 12958, 60 FR 19825, E.O. 13292, 68 FR 15315.

§ 2.1 Processing of mandatory declassification review requests.

(a) Except as provided by section 3.4(b) of Executive Order 13292, Further Amendment to Executive Order 12958, as amended, *Classified National Security Information,* all information classified by the Department of the Treasury under these Orders or any predecessor Executive Order shall be subject to mandatory declassification review by the Department, if:

(1) The request for a mandatory declassification review describes the document or material containing the information with sufficient specificity to enable Treasury personnel to locate it with a reasonable amount of effort;

(2) The information is not exempt from search and review under sections 105C, 105D, or 701 of the National Security Act of 1947 (50 U.S.C. 431, 432 and 432a); and

(3) The information has not been reviewed for declassification within the past 2 years or the information is not the subject of pending litigation.

(b) Requests for classified records originated by the Department of the Treasury shall be directed to the Office of Security Programs, Attention:

Assistant Director (Information Security), 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Upon receipt of each request for mandatory declassification review, pursuant to section 3.5 of Executive Order 13292, the following procedures will apply:

(1) The Office of Security Programs will acknowledge receipt of the request.

(2)(i) A mandatory declassification review request need not identify the requested information by date or title of the responsive records, but must be of sufficient specificity to allow Treasury personnel to locate records containing the information sought with a reasonable amount of effort. Whenever a request does not reasonably describe the information sought, the requester will be notified by the Office of Security Programs that unless additional information is provided or the scope of the request is narrowed, no further action will be undertaken with respect to the request.

(ii) If Treasury has reviewed the information within the past 2 years and determined that all or part thereof remains classified, or the information is the subject of pending litigation, the requester shall be so informed and advised of the requester's appeal rights.

(3) The Office of Security Programs will determine the appropriate Treasury offices or bureaus to conduct the mandatory declassification review. The Office of Security Programs will also advise Treasury and/or bureau reviewing officials concerning the mandatory declassification review process. Classified information relating to intelligence activities (including special activities), intelligence sources or methods, or cryptology will also be coordinated with the Office of the Assistant Secretary (Intelligence and Analysis). As appropriate, the Office of Security Programs will refer requests to other Federal departments and agencies having a direct interest in the requested documents.

(4)(i) Treasury personnel undertaking a mandatory declassification review shall make reasonable efforts to determine if particular information may be declassified. Reviewing officials may rely on applicable exemption criteria under the Freedom of Information Act, the Privacy Act, and any other applicable law that authorizes the withholding of information. Reviewing officials shall also identify the amount of search and review time required to process each request. Barring extenuating circumstances, mandatory declassification reviews for reasonably small volumes of records should be completed in a timely fashion. A final determination regarding large volumes of records should ordinarily be made within one year of Treasury's receipt of any mandatory declassification review request.

(ii) If the Director, Office of Security Programs determines that a Treasury office or bureau responsible for conducting a mandatory declassification review is not making reasonable efforts to review classified information subject to a mandatory declassification request, the Director may authorize Treasury- and/or bureau-originated information to be declassified in consultation with the Department's Senior Agency Official.

(iii) If information cannot be declassified in its entirety, reasonable efforts, consistent with applicable law, will be made to release those declassified portions of the requested information that constitute a coherent segment. Upon the denial or partial denial of a declassification request, the requester will be so informed by the Office of Security Programs and advised of the requester's appeal rights.

(5)(i) If Treasury receives a mandatory declassification review request for information in its possession that were originated by another Federal department or agency, the Office of Security Programs will forward the request to that department or agency for a declassification determination, together with a copy of the requested records, a recommendation concerning a declassification determination, and a request to be advised of that department's or agency's declassification determination. The Office of Security Programs may, after consultation with the originating department or agency, inform any requester of the referral unless such association is itself classified under Executive Order 13292 or prior orders.

(ii) Mandatory declassification review requests concerning classified information originated by a Treasury office or bureau that has been transferred to another Federal department or agency will be forwarded to the appropriate successor department or agency for a declassification determination.

(6) If another Federal department or agency forwards a mandatory declassification review request to Treasury for information in its custody that was classified by Treasury, the Office of Security Programs will:

(i) Advise the referring department or agency as to whether it may notify the requester of the referral; and

(ii) Respond to the Federal department, agency, or requester, as applicable, in accordance with the requirements of this section.

(7)(i) Upon the denial, in whole or in part, of a request for the mandatory declassification review of information, the Office of Security Programs will so notify the requester in writing and will inform the requester of the right to appeal the classification determination within 60 calendar days of the receipt of the classification determination. The notice will also advise the requester of the name and address of the Treasury official who will be responsible for deciding an appeal (the Deciding Official). The Office of Security Programs will coordinate appeals with the appropriate Treasury offices and bureaus.

(ii) The Deciding Official should make a determination on an appeal within 30 working days following the receipt of the appeal, or within 60 working days following receipt if the Deciding Official determines that additional time is required to make a determination and so notifies the requester. The Deciding Official should notify the requester in writing of Treasury's determination on appeal and, if applicable, the reasons for any whole or partial denial of the appeal. The Office of Security Programs will also notify the requester of their right of a final appeal to the Interagency Security Classification Appeals Panel, as appropriate, under 32 CFR 2001.33.

(8)(i) Treasury may charge fees for search, review, and duplicating costs in connection with a mandatory declassification review request.

(A) The fee for services of Treasury personnel involved in locating and/or reviewing records will be charged at the rate of a GS–11, Step 1 employee, in the Washington-Baltimore Federal pay area, in effect when the mandatory declassification review request is received by the Office of Security Programs for searches that take more than two hours or for review times that are greater than two hours. Fees may be waived, in writing, by a bureau head or the equivalent Treasury official at the Assistant Secretary level.

(B) There is no fee for duplicating the first 100 pages of fully or partially releasable documents. The cost of additional pages is 20 cents per page. No charges shall be levied for search and/or review time requiring less than 2 hours.

(ii) If it is estimated that the fees associated with a mandatory declassification review will exceed $100, the Office of Security Programs will notify the requester in writing of the estimated costs and shall obtain satisfactory written assurance of full payment or require the requester to make an advance payment of the entire estimated fee before proceeding to

process the request. Treasury may request pre-payment where the fee is likely to exceed $500. After 60 calendar days without receiving the requester's written assurance of full payment or agreement to make pre-payment of estimated fees (or to amend the mandatory declassification review request in a manner as to result in fees acceptable to the requester), Treasury may administratively terminate the mandatory declassification review request. Failure of a requester to pay fees after billing will result in future requests not being honored. Nothing in this paragraph will preclude Treasury from taking any other lawful action to recover payment for costs incurred in processing a mandatory declassification review request.

(iii) Payment of fees shall be made by check or money order to the Treasurer of the United States. Fees charged by Treasury for mandatory declassification review are separate and distinct from any other fees that may be imposed by a Presidential Library, the National Archives and Records Administration, or another Federal department or agency.

§ 2.2 Access to classified information by historical researchers and former Treasury Presidential and Vice Presidential appointees, former Presidents and Vice Presidents.

(a) Access to classified information may be granted only to individuals who have a need-to-know the information. This requirement may be waived, however, for individuals who:

(1) Are engaged in historical research projects;

(2) Previously occupied a position in the Treasury to which they were appointed by the President under 3 U.S.C. 105(a)(2)(A), or the Vice President under 3 U.S.C. 106(a)(1)(A); or

(3) Served as President or Vice President.

(b) Access to classified information may be granted to individuals described in paragraph (a) of this section upon:

(1) A written determination by Treasury's Senior Agency Official, under Section 5.4(d) of Executive Order 13292, that access is consistent with the interest of the national security; and

(2) Receipt of the individual's written agreement to safeguard classified information, including taking all appropriate steps to protect classified information from unauthorized disclosure or compromise. This written agreement must also include the individual's consent to have any and all notes (including those prepared or stored in electronic media, whether written or oral) reviewed by authorized Treasury personnel to ensure that no classified information is contained therein and, if so, that the classified information is not published.

(c)(i)(A) A historical researcher is not authorized to have access to foreign government information or information classified by another Federal department or agency.

(B) A former Treasury Presidential or Vice Presidential appointee is only authorized access to classified information that the former official originated, reviewed, signed or received while serving as such an appointee.

(C) A former President or Vice President is only authorized access to classified information that was prepared by Treasury while that individual was serving as President or Vice President.

(ii) Granting access to classified information pursuant to this section does not constitute the granting of a security clearance for access to classified information.

(d) Treasury personnel will coordinate access to classified information by individuals described in paragraph (a) of this section with the Director, Office of Security Programs, who will ensure that the written agreement described in paragraph (b)(2) of this section is signed as a condition of being granted access to classified information.

(e) Any review of classified information by an individual described in paragraph (a) of this section shall take place in a location designated by the Director, Office of Security Programs. Such persons must be accompanied at all times by appropriately authorized Treasury personnel authorized to have access to the classified information being reviewed. All notes (including those prepared or stored in electronic media, whether written or oral) made by an individual described in paragraph (a) of this section shall remain in the custody of the Office of Security Programs pending a determination by appropriately cleared subject matter experts that no classified information is contained therein.

(f) An individual described in paragraph (a) of this section is subject to search, as are all packages or carrying cases prior to entering or leaving Treasury. Access to Treasury-originated classified information at another Federal department or agency, as may be authorized by the Director, Office of Security Programs shall be governed by security protocols in effect at the other Federal department or agency.

(g) Treasury personnel must perform a physical verification and an accounting of all classified information each time such information is viewed by an individual described in paragraph (a) of this section. Physical verification and an accounting of all classified information shall be made both prior to and after viewing. Any discrepancy must be immediately reported to the Director, Office of Security Programs.

(h) An individual described in paragraph (a) of this section may be charged reasonable fees for services rendered by Treasury in connection with the review of classified information under this section. To the extent such services involve searching, reviewing, and copying material, the provisions of § 2.1(b)(8) shall apply.

Dated: October 30, 2007.

Wade C. Straw,

Director, Office of Security Programs.

[FR Doc. E7–21951 Filed 11–7–07; 8:45 am]

BILLING CODE 4811–42–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 101, 105 and 106

Transportation Security Administration

49 CFR Part 1572

[Docket Nos. TSA–2006–24191; USCG–2006–24196]

RIN 1652–AA41

Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License

AGENCY: Transportation Security Administration (TSA), United States Coast Guard, Department of Homeland Security (DHS).

ACTION: Notice of Public Meeting.

SUMMARY: The Transportation Security Administration (TSA) and the Coast Guard invite interested members of the smart card technology community, vendors of biometric card readers, and the general public to meet in Washington, DC to discuss the Transportation Worker Identification Credential (TWIC) Reader Hardware and Card Application Specification. The meeting will be open to the public and will also be available by teleconference.

DATES: This meeting will be held on November 19, 2007 from 1 p.m. to 4 p.m. EST. This meeting may close early if all business is finished.

ADDRESSES: The meeting will be held in room 2415, U.S. Coast Guard

Headquarters, 2100 Second Street SW., Washington, DC. If you would like to submit questions in advance or written material for distribution, contact LT Brooke Grant, at 2100 2nd St., SW., Washington, DC 20593, *brooke.e.grant@uscg.mil*. Any written material that vendors or the public wish to provide should reach the Coast Guard on or before November 15, 2007. This notice is available in our online dockets, TSA–2006–24191; USCG–2006–24196, at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: LT Brooke Grant; at 202–372–1136 and *brooke.e.grant@uscg.mil*.

SUPPLEMENTARY INFORMATION: On November 19, 2007, TSA and the Coast Guard invite vendors and the public to discuss the Transportation Worker Identification Credential Reader Hardware and Card Application Specification published in the **Federal Register** on September 28, 2007. (72 FR 55043.) The reader specification is also available on the docket at TSA–2006–24191 and on the TSA Web site *http://www.tsa.gov/what_we_do/layers/twic/index.shtm*. After an overview of the TWIC Reader Hardware and Card Application Specification and TWIC pilot test plans, TSA and Coast Guard representatives will be available to answer questions concerning the specification and pilot. Vendors and members of the public are encouraged to submit any questions in advance to the Coast Guard at the number listed in **FOR FURTHER INFORMATION CONTACT** above. These questions will be addressed during the Overview.

Agenda of Meeting

The agenda for this November 19, 2007 public meeting is as follows:

(1) Opening Remarks.

(2) TWIC Reader Hardware and Card Application Specification Overview.

(3) TWIC Pilot Overview.

(4) Questions from vendors and the public.

(5) Closing Remarks.

Procedure

This meeting is open to the public.

You may participate or monitor the meeting by teleconference. Note that the number of teleconference lines is limited and only available on a first come, first served basis. For the telephone number and password to attend by teleconference, contact the Coast Guard at the number listed in **FOR FURTHER INFORMATION CONTACT** above by November 15, 2007.

You may also attend the meeting in person at the location listed in **ADDRESSES** above. Security requires members of the public who wish to attend the meeting in person at Coast Guard Headquarters to provide their name no later than 4 p.m. EST, November 15, 2007 to the Coast Guard at the number listed in **FOR FURTHER INFORMATION CONTACT** above. Photo identification is required for entry into Coast Guard Headquarters.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Coast Guard at the number listed in the **FOR FURTHER INFORMATION CONTACT** section above as soon as possible.

Dated: October 31 2007.

M.L. Blair,

Captain, U.S. Coast Guard, Acting Director, Commercial Regulations and Standards.

[FR Doc. 07–5594 Filed 11–5–07; 4:01 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–07–107]

Drawbridge Operation Regulations; Tar River, Washington, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the US17–264 Bridge, at mile 37.2, across Tar River at Washington, NC. This deviation allows the drawbridge to remain closed to navigation to facilitate sandblasting and painting operations.

DATES: This deviation is effective from 7 a.m. on November 15, 2007 to 7 a.m. on May 15, 2008.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6222. Commander (dpb), Fifth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Bill H. Brazier, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6422.

SUPPLEMENTARY INFORMATION: The US17–264 Bridge, a swing-type bridge, has a vertical clearance in the closed position to vessels of six feet, above mean high water.

The contractor, on behalf of the North Carolina Department of Transportation (the bridge owner), has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.831 to close the swing bridge to navigation to facilitate sandblasting, cleaning and painting of the bridge.

To facilitate this operation, the US17–264 Bridge will be maintained in the closed-to-navigation position beginning at 7 a.m. on November 15, 2007, until and including 7 a.m. on May 15, 2008. In addition, the work requires installation of a platform the full length of the swing span portion of bridge reducing the available vertical clearance by approximately two feet.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

We have analyzed this temporary deviation under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The environmental impact that this temporary deviation will have is minimal because of the drawbridge being closed to vessels to perform routine repair and maintenance will not result in a change in functional use, or an impact on a historically significant element or setting.

Dated: October 25, 2007.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. E7–21883 Filed 11–7–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2005–CA–0013, FRL–8489–7]

Revisions to the California State Implementation Plan, Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing full approval of revisions to the Kern County Air Pollution Control District (KCAPCD) portion of the California State Implementation Plan (SIP). EPA is also finalizing full disapproval of a revision to the KCAPCD portion of the California SIP. These actions were proposed in the **Federal Register** on December 19, 2006 and concern permitting requirements. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action directs California to replace the SIP rules with the approved rules and to retain in the SIP the present SIP version of the disapproved rule.

DATES: *Effective Date:* This rule is effective on December 10, 2007.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2005–CA–0013 for this action. The index to the docket is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Manny Aquitania, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, (415) 972–3977, *aquitania.manny@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

I. Proposed Action

On December 19, 2006 (71 FR 75916), EPA proposed to approve the rules in Table 1 that were submitted for incorporation into the California SIP. We proposed to approve these rules, because they met all requirements.

TABLE 1.—SUBMITTED RULES PROPOSED FOR FULL APPROVAL

Local agency	Rule No.	Rule title	Amended	Submitted
KCAPCD	201	Permits Required	05/02/96	07/23/96
KCAPCD	202.1	Experimental Research Operations	05/02/96	07/23/96
KCAPCD	209.1	Permit Conditions	05/02/96	07/23/96
KCAPCD	210.2	Standards for Permits to Operate	05/02/96	07/23/96
KCAPCD	210.5	Visibility Protection	05/02/96	07/23/96

On December 19, 2006 (71 FR 75916), EPA proposed to disapprove the following rule in Table 2 that was submitted for incorporation into the California SIP.

TABLE 2.—SUBMITTED RULE PROPOSED FOR FULL DISAPPROVAL

Local agency	Rule No.	Rule title	Amended	Submitted
KCAPCD	203	Transfer	05/02/96	07/23/96

We proposed to disapprove this rule because a rule provision conflicts with section 110 and part D of the Act. This provision is as follows:

- The revision to Rule 203 that allows the transfer of a permit from one location to another is prohibited, because permitting requirements may be different at different locations. A New Source Review must be performed upon changing location. See 40 CFR part 51, sections 165–166.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittal.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we did not receive any comments.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the CAA, EPA is finalizing a full approval of submitted KCAPCD Rules 201, 202.1, 209.1, 210.2, and 210.5.

We are also finalizing a full disapproval of submitted KCAPCD Rule 203. This action will retain the present SIP-approved rule in the SIP. Sanctions will not be imposed as described in CAA section 179 and 40 CFR 52.30–52.32, because the present SIP-approved rule fulfills CAA requirements.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due

to the nature of the Federal-State relationship, under the Clean Air Act preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 10(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

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

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 5, 2007.

Laura Yoshii,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(239)(i)(C)(*3*) and (*4*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(239) * * *

(i) * * *

(C) * * *

(*3*) Rule 201, adopted on April 18, 1972 and amended on May 2, 1996.

(*4*) Rules 202.1, 209.1, 210.2, and 210.5, adopted on December 15, 1980, April 5, 1982, December 28, 1976, and November 18, 1985, respectively, and amended on May 2, 1996.

* * * * *

■ 3. Section 52.242 is amended by adding paragraph (a)(5) to read as follows:

§ 52.242 Disapproved rules and regulations.

(a) * * *

* * * * *

(5) Kern County Air Pollution Control District.

(i) Rule 203, Transfer, submitted on July 23, 1996 and amended on May 2, 1996. Rule 203, submitted on June 30, 1972, is retained.

[FR Doc. E7–21815 Filed 11–7–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7999]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you want to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office.

FOR FURTHER INFORMATION CONTACT: David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

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

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

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

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

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

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Region III				
Pennsylvania:				
Adams, Township of, Snyder County.	422031	August 20, 1975, Emerg; January 3, 1986, Reg; November 16, 2007, Susp.	11/16/2007	11/16/2007
Beaver, Township of, Snyder County.	422032	January 19, 1979, Emerg; October 15, 1985, Reg; November 16, 2007, Susp.	do*	do.
Center, Township of, Snyder County.	422591	October 16, 1974, Emerg; March 16, 1988, Reg; November 16, 2007, Susp.	do	do.
Franklin, Township of, Snyder County.	422035	January 10, 1975, Emerg; August 2, 1982, Reg; November 16, 2007, Susp.	do	do.
Jackson, Township of, Snyder County.	422036	April 7, 1975, Emerg; January 20, 1982, Reg; November 16, 2007, Susp.	do	do.
McClure, Borough of, Snyder County.	420806	February 10, 1976, Emerg; October 15, 1985, Reg; November 16, 2007, Susp.	do	do.
Middleburg, Borough of, Snyder County.	420807	December 8, 1972, Emerg; August 2, 1982, Reg; November 16, 2007, Susp.	do	do.
Middlecreek, Township of, Snyder County.	422037	October 21, 1974, Emerg; January 6, 1982, Reg; November 16, 2007, Susp.	do	do.
Monroe, Township of, Snyder County.	421020	September 26, 1973, Emerg; February 2, 1977, Reg; November 16, 2007, Susp.	do	do.
Penn, Township of, Snyder County	421024	January 12, 1973, Emerg; September 16, 1982, Reg; November 16, 2007, Susp.	do	do.
Perry, Township of, Snyder County	422038	May 17, 1979, Emerg; March 16, 1988, Reg; November 16, 2007, Susp.	do	do.
Shamokin Dam, Borough of, Snyder County.	420809	August 22, 1973, Emerg; March 1, 1977, Reg; November 16, 2007, Susp.	do	do.
Spring, Township of, Snyder County.	422039	February 9, 1976, Emerg; March 16, 1988, Reg; November 16, 2007, Susp.	do	do.
Union, Township of, Snyder County	422040	February 10, 1976, Emerg; November 17, 1982, Reg; November 16, 2007, Susp.	do	do.
Washington, Township of, Snyder County.	422041	March 11, 1976, Emerg; May 15, 1986, Reg; November 16, 2007, Susp.	do	do.
West Beaver, Township of, Snyder County.	422507	July 6, 1979, Emerg; September 24, 1984, Reg; November 16, 2007, Susp.	do	do.
West Perry, Township of, Snyder County.	422042	February 9, 1976, Emerg; December 3, 1987, Reg; November 16, 2007, Susp.	do	do.
Region VII				
Oklahoma:				
Blanchard, City of, McClain County	400101	February 17, 1976, Emerg; January 3, 1986, Reg; November 16, 2007, Susp.	do	do.
Newcastle, City of, McClain County	400103	July 18, 1975, Emerg; December 15, 1983, Reg; November 16, 2007, Susp.	do	do.
Iowa: Knoxville, City of, Marion County.	190603	August 10, 1976, Emerg; December 16, 1977, Reg; November 16, 2007, Susp.	do	do.

* do. = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: October 29, 2007.

David I. Maurstad,

Assistant Administrator Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–21930 Filed 11–7–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7997]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you want to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office.

FOR FURTHER INFORMATION CONTACT: David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

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

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

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

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

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

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Region IV				
Tennessee: Arlington, Township of, Shelby County.	470262	September 10, 1981, Emerg; September 10, 1981, Reg; September 28, 2007, Susp.	09/28/2007	09/28/2007
Region V				
Illinois:				
Clinton, City of, DeWitt County	170193	February 17, 1976, Emerg; August 15, 1983, Reg; November 2, 2007, Susp.	11/02/2007	11/02/2007
DeWitt County, Unincorporated Areas..	170192	July 28, 1975, Emerg; September 29, 1989, Reg; November 2, 2007, Susp.	.....do*	do.
Region VI				
Texas:				
Cibolo, City of, Guadalupe County	480267	November 2, 1974, Emerg; May 19, 1981, Reg; November 2, 2007, Susp.	.....do	do.
Marion, City of, Guadalupe County	480268	June 6, 1977, Emerg; January 3, 1986, Reg; November 2, 2007, Susp.	.....do	do.
New Berlin, City of, Guadalupe County.	481625	December 1, 2004, Emerg; December 1, 2004, Reg; November 2, 2007, Susp.	.....do	do.
New Braunfels, City of, Guadalupe County.	485493	December 4, 1970, Emerg; December 1, 1972, Reg; November 2, 2007, Susp.	.....do	do.
Schertz, City of, Guadalupe County	480269	November 2, 1973, Emerg; September 15, 1977, Reg; November 2, 2007, Susp.	.....do	do.
Seguin, City of, Guadalupe County	485508	October 9, 1970, Emerg; June 18, 1971, Reg; November 2, 2007, Susp.	.....do	do.
Selma, City of, Guadalupe County	480046	October 1, 1975, Emerg; July 2, 1980, Reg; November 2, 2007, Susp.	.....do	do.
St. Hedwig, City of, Guadalupe County.	481132	February 5, 1997, Emerg; February 5, 1997, Reg; November 2, 2007, Susp.	.....do	do.
Region VII				
Kansas:				
Blue Mound, City of, Linn County	200195	February 18, 1976, Emerg; July 6, 1984, Reg; November 2, 2007, Susp.	.....do	do.
Linn County, Unincorporated Areas.	200194	July 3, 1996, Emerg; —, Reg; November 2, 2007, Susp.	.....do	do.
Mound City, City of, Linn County	200197	July 17, 2002, Emerg; —, Reg; November 2, 2007, Susp.	.....do	do.

*do. = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: October 31, 2007.

David I. Maurstad,

Assistant Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–21961 Filed 11–7–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 202, 212, and 225

RIN 0750–AF74

Defense Federal Acquisition Regulation Supplement; Waiver of Specialty Metals Restriction for Acquisition of Commercially Available Off-the-Shelf Items (DFARS Case 2007–D013)

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

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to waive application of 10 U.S.C. 2533b for acquisitions of commercially available off-the-shelf (COTS) items. 10 U.S.C. 2533b, established by Section 842 of the National Defense Authorization Act for Fiscal Year 2007, places restrictions on the acquisition of specialty metals not melted or produced in the United States.

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

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L)DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0328; facsimile 703–602–7887. Please cite DFARS Case 2007–D013.

SUPPLEMENTARY INFORMATION:

A. Background

Section 842(a) of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364) establishes a new specialty metals domestic source restriction, which is codified at 10 U.S.C. 2533b. DoD published a proposed rule, at 72 FR 35960 on July 2, 2007, that would allow the Department to exercise a statutory exception to the requirements of 10 U.S.C. 2533b for COTS items, as provided for under Section 35 of the Office of Federal Procurement Policy Act (OFPP Act), 41 U.S.C. 431. If a law is covered by Section 35, it must be included on a list of laws published in the Federal Acquisition Regulation (FAR) (or agency supplements for agency-specific laws) that are inapplicable to COTS acquisitions unless the Administrator of the Office of Federal Procurement Policy (OFPP) makes a written determination that it would not be in the best interest of the United States to exempt such contracts from the applicability of that provision of law.

DoD consulted with the OFPP Administrator both before publication of the proposed rule and again before proceeding with the publication of this final rule. OFPP concluded that 10 U.S.C. 2533b is a covered law. OFPP did not make a written determination under Section 35 finding it not to be in the best interest of the United States to exempt COTS contracts from the applicability of 10 U.S.C. 2533b.

The comment period on the proposed rule ended on August 1, 2007. DoD received comments from 41 respondents. Of these respondents, 34 support the rule and 7 oppose it. A discussion of the comments is provided below.

1. Timing of Implementation

Comments: A number of respondents requested clarification regarding the effective date of the rule, including its application to existing contracts.

DoD Response: The final rule is effective upon publication. However, FAR 1.108(d) permits contracting officers, at their discretion, to include FAR/DFARS changes in any existing contract with appropriate consideration.

2. Legal Basis

a. General

Comments: Several respondents state that the statute is already inapplicable to COTS items and that this rule is really just a clarification. One respondent states that it is ''self-evident'' that 10 U.S.C. 2533b is a covered law, because it imposes ''quintessential 'government-unique' requirements'' and none of the exceptions contained in Section 35 of the OFPP Act (41 U.S.C. 431) are applicable, as discussed in the **Federal Register** preamble to the proposed rule.

DoD Response: DoD concurs that 10 U.S.C. 2533b is a ''covered law'' but that further action is required before it is inapplicable to COTS procurements. Section 35(b) of the OFPP Act requires the Administrator of OFPP to ''determine'' that a law is covered. Covered laws are inapplicable only after being listed in the FAR (DFARS is part of the FAR system). Section 35(a)(2) states that ''A provision of law that, pursuant to paragraph (3), is properly included on a list referred to in paragraph (1) may not be construed as being applicable to contracts'' for the procurement of COTS items. In addition it states ''nothing in this section shall be construed to render inapplicable to such contracts any provision of law that is not included on such list.''

b. Impact of Reference to Section 34 of the OFPP Act

Comments: Three respondents conclude that, as a subset of commercial items, COTS items must comply with 10 U.S.C. 2533b, because Section (h) of 2533b makes the statute applicable to procurements of commercial items, notwithstanding Section 34 of the OFPP Act (41 U.S.C. 430).

Another respondent reaches the opposite conclusion, stating that Congress created a COTS-specific process under a separate section of the OFPP Act, i.e., Section 35, pursuant to which Congress could direct the application of a law to COTS. According to the respondent, it is a fundamental principle of statutory construction that each provision of a statute be given meaning and effect. The Congressional decision to treat COTS items separately from commercial items, notwithstanding that COTS is a subset of commercial items, must be honored.

DoD Response: DoD concurs with the respondents who conclude that the application of 10 U.S.C. 2533b to commercial items under Section 34 does not make the provision automatically applicable to COTS. Section 35 of the OFPP Act, which expressly addresses the handling of COTS and is the operative provision for this rulemaking, has a separate basis than Section 34 for determining the inapplicability of laws. As a result, some laws that are applicable to procurements of commercial items under Section 34 may be inapplicable to procurements of COTS items under Section 35. With respect to 10 U.S.C. 2533b, Congress could have directed its application to COTS acquisitions by referring to Section 35 in the law and stating that it is applicable to procurements for COTS. However, Congress chose not to make 10 U.S.C. 2533b automatically applicable to COTS, meaning the law must be waived if it is a covered law under Section 35 absent a determination by the OFPP Administrator that it would not be in the best interest of the United States to waive its applicability.

c. OFPP Authority

Comments: Four respondents are concerned that DoD is pre-empting OFPP authority by issuing this rule. One respondent states that DoD's proposed rule distorts and misuses the authority provided to the Administrator of OFPP. Other respondents state that DoD does not have the authority to propose exemptions for COTS items. A respondent states that this authority is vested by law in the Administrator of OFPP. These respondents state that only the Administrator of OFPP can amend the FAR list of inapplicable provisions as necessary.

DoD Response: Rulemaking was undertaken to comply with the provision in Section 35 requiring the identification in regulation of laws that are made inapplicable to COTS contracts. The rulemaking was not intended to circumvent the OFPP Administrator's authority under Section 35. DoD consulted with the Administrator of OFPP before publication of the proposed rule, and consulted a second time with OFPP before proceeding with the publication of this final rule. OFPP reviewed the rulemaking and concluded that 10 U.S.C. 2533b is a covered law. OFPP did not make a written determination under Section 35 that 10 U.S.C. 2533b should be applied to COTS, i.e., that it would not be in the best interest of the United States to exempt COTS contracts from the applicability of 10 U.S.C. 2533b.

d. Applicability of COTS Waiver to Subcontracts

i. *Subcontracts not mentioned in Section 35 of the OFPP Act.*

Comments: Five respondents state that Section 35 of the OFPP Act does not authorize waiving applicability of statutes to subcontracts for the acquisition of COTS items, because Section 35 does not specifically mention subcontracts. By contrast, Section 34 has separate subsections on prime contracts and subcontracts. One respondent states that ''where Congress addressed subcontracts in Section 34 of the OFPP Act, but failed to address subcontracts in the following section, it

is presumed that the omission of subcontracts from Section 35 was intentional, and accordingly, no exemption for COTS items applies to subcontractors.'' Another respondent cites Rodriquez v. United States: ''Where Congress includes particular language in one section of a statute but omits it in another section in the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.''

DoD Response: DoD does not agree that Section 35 only provides for waiver of laws at the prime contract level; nor does the Department agree that the reference to subcontracts in Section 34 compels a different conclusion. Clearly, Section 34 and 35 are structured disparately. DoD contends that the reason for the specific mention of subcontracts in Section 34 is because the standards for inapplicability of prime contracts are different than the standards for subcontracts. Thus, under Section 34, some laws can *only* be waived at the subcontract level, not at the prime contract level. However, Section 35 makes no such distinction between the standards for prime contracts and subcontracts; therefore, a separate subsection was unnecessary. The standards are as follows:

Section 34 of the OFPP Act

Prime Contracts:

○ When Congress passed the Federal Acquisition Streamlining Act of 1994 (FASA), it reviewed existing procurement laws, and identified those laws that would be inapplicable to contracts for the acquisition of commercial items. These laws were amended in FASA to state that they are not applicable to procurements of commercial items. Those laws are listed in the FAR in accordance with 41 U.S.C. 430(a)(1).

○ There is no authority to list other laws that were in existence at the time of enactment of FASA.

○ 41 U.S.C. 430(a)(2) authorizes the listing of covered laws enacted *after* the enactment of FASA.

Subcontracts:

○ Under 41 U.S.C. 430(b), there is no limitation on listing laws that were in existence on the date of FASA enactment.

Section 35 of the OFPP Act

○ Under 41 U.S.C. 431(a), there is no limitation on listing laws that were in existence on the date of enactment. Covered laws, as determined by the Administrator of OFPP, shall be listed as inapplicable to contracts for the acquisition of COTS items, unless the Administrator of OFPP makes a written determination that it would not be in the best interest of the United States to exempt such contracts from the applicability of that provision of law. Section 35 does not need a separate subsection on subcontracts, because the standard is the same—if a law is covered and is made inapplicable to prime contracts, it is also inapplicable to subcontracts. COTS items contained in an item provided to the Government are provided under the prime contract whether they were produced directly by the contractor or by a subcontractor. Thus, a separate list for subcontracts is not necessary.

ii. *Definition of COTS.*

Comments: Five respondents state that a subcontract item that is to be incorporated into an end product cannot be a COTS item because it is not ''offered to the Government.'' Further, the respondents present the argument that ''modification'' necessarily occurs to parts and materials as they are incorporated into end items, prior to Government acceptance, and are not, therefore, COTS items as that term is defined at 41 U.S.C. 431.

DoD Response: DoD does not agree that the definition of COTS items precludes application to components. A component can be offered to the Government, without modification, as part of an end item purchased by the Government. However, DoD does agree that commercial items purchased at one tier that are then modified prior to incorporation in the end item (e.g., as in the case of raw materials) are not COTS items as defined in the statute. Items purchased by the contractor or subcontractor that would have been COTS items if they had been delivered to the Government without modification are not COTS items if their form is modified for incorporation into the end item. Specialty metals purchased for incorporation into higher-tier items cannot be considered COTS items if the specialty metal undergoes modification.

In addition, the waiver provided in the final rule does not apply to specialty metals purchased as end items for delivery to the Government. DoD has included the following additional changes in the final rule:

○ The inapplicability to COTS items at 212.570 has been limited to paragraph (a)(1) of the statute (the six major programs and components) and, therefore, does not include paragraph (a)(2) (specialty metal acquired directly by the Government or prime contractor for delivery to the Government as an end item).

○ The exception at 225.7002–2(q) excludes acquisition of specialty metal acquired directly by the Government or prime contractor for delivery to the Government as an end item.

3. Justification for the Waiver and Suggested Alternatives

a. Cost, Quality, and Availability

Comments:

i. *General.*

Two respondents view the justification used to support the waiver as flawed, stating that ''expense'' argument is specious, having nothing to do with the expense of domestic specialty metal, based on the fact that there is no significant difference in price between compliant U.S. metals and noncompliant foreign metals.

Another respondent states that there is also no valid lead time problem relating to availability of specialty metals, which are available as and when needed, with average lead time of less than 12 weeks during the first quarter of 2007. This respondent also states that, since Defense requirements for titanium account for less than 25 percent of the volume of domestic production, there is more than adequate domestic production to meet defense needs; and that U.S.-melted metals are generally superior from a quality standpoint.

Another respondent states that two large aerospace companies have signed long-term agreements with domestic specialty metal producers to procure titanium metal for their respective supply chains at predetermined prices which guarantee access to domestic titanium at reasonable prices, alleviating any problem with availability of specialty metals.

ii. *Major programs.* One respondent states that, on major programs such as the Marine Maritime Aircraft and the Air Force Tanker Replacement Program, prime contractors have complied, or have pledged to comply, with domestic source requirements. It has not been demonstrated that compliance with specialty metals have increased or will increase the price to DoD in these highly competitive procurements.

iii. *Cost.* Twenty-seven respondents, more than for any other issue raised, expressed concern that the law increases costs, contributes to longer lead times, and creates quality and availability problems, and that it is either impossible, time consuming, or too burdensome to comply with this statute in the COTS marketplace.

Most respondents state that 100 percent compliance is not cost-effective (if even possible), particularly for items containing trace amounts of specialty metal. One respondent states that accommodating Government restrictions

requires incurring greater costs to comply with them.

Another respondent states that a compliance program alone would be more expensive than the value of DoD sales, where DoD sales represent 2,000 vehicles out of 4 million sold annually in the United States.

Some respondents state that DoD usage of COTS hardware was very small, perhaps 10 percent in the case of fasteners, in one example, and that separate tracking and lower volumes predicated by unique requirements such as is required by 10 U.S.C. 2533b, greatly increases production costs.

○ One respondent states 10 U.S.C. 2533b increases the cost for services associated with segregating compliant from noncompliant COTS items, because it takes time to find the documentation on the origin of the metal.

○ Other respondents state that a prime aerospace contractor builds approximately 450 commercial airplanes each year compared to 15 for DoD. Therefore, production costs for the separate lot of fasteners for military use can be as much as 500 percent more than that for commercial fasteners, because the lower military volumes of compliant items do not allow for optimum lot size during the manufacturing process.

○ A respondent also offers a comparison based on Air Force testimony before the Senate Armed Services Committee that a 13-cent commercial/dual use nut that meets military conformance standards will cost 40 times more, or $5.20, and take 48 weeks if it must be compliant with the specialty metals restriction.

○ Another respondent states that it chooses to distribute only compliant fasteners, rather than keep two inventories, because of the cost involved and, as a result, material costs have risen between 30 and 40 percent.

iv. *Quality*.

One respondent expresses concern with the quality of domestic metals. The respondent states that it currently has an order in place with a manufacturer in which the metal has failed twice. Some material has been found to be inconsistent. In the respondent's experience, foreign material has always proven to be of consistently excellent quality.

v. *Lead time*.

One respondent states the lead time can be one to two years for parts manufactured from sub-standard American milled material and claims that it is becoming delinquent on multiple orders because of delays in material due to the inferior quality of the domestic stock of 8740 alloy steel they receive. If the respondent could use foreign steel for DoD requirements, which does not have these inclusions, the quality issues would decrease and the lead time would improve.

Lead times for standard aerospace fasteners can be as long as 50 weeks, according to several respondents, in addition to the raw material lead times being experienced during the current commercial aerospace market boom. If fasteners are ordered today, and the raw material is on the shelf already, the respondents claim the fasteners will be delivered in late 2008 or spring 2009, based on not having to track the specialty metal content.

Another respondent points out that, in the near term, failure to adopt the COTS rule will seriously impact current deliveries and jeopardize critical acquisitions. COTS items today are almost certainly non-compliant, or the prime contractor will be unable to document compliance. Issuing the necessary domestic non-availability determinations would be excessively time-consuming and burdensome.

vi. *Availability*.

One respondent is very concerned about the ability of DoD to acquire the materials it needs from leading manufacturers, if DoD attempts to impose undue burdens on COTs manufacturers.

Several respondents state that COTS producers make purchasing decisions based on cost, quality, timely delivery, availability, and maintaining state-of-the-art products, not on the country in which the specialty metal contained in the components were melted. The complexity of the global supply chain makes compliance difficult and costly.

One respondent comments that fastener manufacturers would prefer to purchase domestic specialty metals when possible, regardless of whether they are producing fasteners for military or commercial purposes, but to remain competitive, they must be able to make the best business decisions based on the commercial marketplace.

Two respondents state that many COTs manufacturers are unwilling to change their business model to track specialty metals country of origin to accommodate DoD. For example—

○ One respondent states that it consistently declines and, absent the proposed waiver, will continue to decline to sell to DoD.

○ Another respondent states that it would likely have to forgo selling to DoD, because the cost of compliance would be more expensive than the value of the DoD sales.

○ Another respondent questions its ability to continue to supply COTS items to the Government without some type of waiver.

DoD Response: While the cost of the compliant and non-compliant specialty metal contained in COTS items might be relatively the same, the added costs (which may be significant) to ensure that the final COTS part or sub-assembly is compliant must also be taken into consideration. Further, the cost of setting up dual lines (at which point it is no longer really a COTS item), is usually prohibitive.

The titanium industry has recently expanded its capacity, so that lead time for titanium may be less of a problem now. However, the argument that there is no valid lead time problem with respect to the availability of specialty metals, ignores the problem of the lead time to obtain compliant COTS items.

DoD must comply with 10 U.S.C. 2377, which mandates that DoD procure commercial items to the ''maximum extent practicable,'' while DoD Directive 5000.1, The Defense Acquisition System, (E1.1.18.1) states that the procurement or modification of commercially available products, services, and technologies, from domestic or international sources, is the preferred acquisition strategy and is to be considered before any other alternative. Therefore, many COTS items are now used routinely in every one of the ''big six'' classes of products covered in the law. For example, a domestic non-availability determination for lids and leads in circuit card assemblies was required to be able to accept COTS semiconductors, transistors, diodes, etc., embedded in COTS equipment used in DoD systems. Other COTS items of a similar nature are commercial hardware (such as slides, hinges, knobs, dials, pointers, etc.) and springs made of specialty metals. As a result, DoD frequently finds itself in situations where it is impossible to accept common COTS items embedded within equipment. The end item cannot be accepted until DoD processes a domestic non-availability determination, or requires a replacement for the COTS item, either of which options create lead time problems.

As stated in the previous paragraph on lead time and in the preamble to the proposed rule, COTS items are produced and manufactured within a global economy, causing industry to make hundreds of decisions in order to remain competitive, none of which take the specialty metal's melt country of origin into account. For example, a military truck contains an electronically

controlled COTS transmission. The transmission is not modified for military use. The supplier does not know whether the specialty metal is compliant. DoD has two alternatives:

○ Shut down the line to obtain compliant transmissions, possibly from a qualifying country, which will require design changes to integrate and additional testing and modification to the truck and subsequent delays in delivery; or

○ Process and approve a domestic non-availability determination, which will take market research and documentation. In order for DoD to support such a determination, a contractor must work with its suppliers at every tier to identify non-compliant parts from among potentially hundreds of thousands of parts, determine that it cannot find a compliant source (either because lead times are longer than the contract permits or because sufficient quantity is not available) and research whether and by when it can become compliant. The Department must then conduct a validation review and develop a report to document the determination. These efforts may entail thousands of hours of work, at considerable cost to the taxpayer and a significant addition in lead-time to the acquisition cycle. For additional discussion related to the challenges associated with processing a domestic non-availability determination, see paragraph d. below.

The law does not require U.S. manufacturers or distributors to change their processes or systems to meet DoD-unique restrictions. Unless this COTS waiver is implemented, DoD will not have access to many U.S. COTS items that contain noncompliant specialty metals. The status quo is unacceptable if DoD is to meet its commitments to our warfighters.

b. Traceability of Origin of the Metal

Comments: Several respondents comment that the assertion in the preamble to the proposed rule, that tracking of compliant COTS items is too hard, is false. Two of these respondents state that aerospace manufacturers require manufacturers of titanium and other specialty metal parts to deliver ''heat'' information with every part put into an aircraft, which identifies the source of the metal, when and where it was melted, and what alloys were used. One respondent states that ISO Standard 16426:2002 requires fasteners with full traceability back through all previous manufacturing operations to a given heat or cast number of the raw material of manufacture. Another respondent states that this traceability is the key to determining cause of failure in post-accident safety investigations. Another respondent states that the magnet industry is a low-volume industry, and tracking is not a burden.

Ten other respondents comment that the effort to track the source of the specialty metal in COTS items, in order to ensure 100 percent compliance with the law, is cost prohibitive and burdensome.

○ One respondent notes that DoD is the only purchaser of COTS items that requires tracking of the country of origin for specialty metals, and states that the processes required and the expenses associated with tracking and documenting for each component of an end product or item are significant.

○ Other respondents state that it is not possible or cost-effective, and it is burdensome, to determine and monitor the country of origin for specialty metals at every level of the supply chain, particularly when the COTS item contains only trace quantities of specialty metals.

○ One respondent states that tracing the specialty metal content of its thousands of parts from hundreds of suppliers through the supply chain, and through product model year changes, supplier changes, and parts improvements would be very costly and labor intensive. Another respondent also states that tracking requires creation of an expensive and inefficient recordkeeping system, by prime contractors, as well as subcontractors at all tiers, resulting in huge increases in cost and delays in delivery of products.

○ Several respondents state that manufacturers sell large quantities of fasteners to distributors not knowing, in many cases, whether the fasteners will be used in a commercial or military aircraft. These fasteners meet all quality and safety specifications, but tracking the source of the metal and producing separate lots of fasteners only for DoD orders substantially increases costs with no value added. One respondent states that fastener manufacturers and distributors will be forced to reconsider whether or not to continue doing business with the Government if separate tracking and manufacturing is required.

○ Another respondent states that the United States is not the top producer of any of these specialty metals. The United States has no active nickel mines. The United States imports far more titanium sponge than it can produce. This respondent notes that while tracking is required for the *use* of specialty metals for manufacturers selling to DoD, there are no corresponding restrictions in the *purchase* of such raw materials by specialty metals companies for melting and selling the metal to U.S. manufacturers. In other words, specialty metals can be purchased in unlimited quantities as ore from Russia, melted in the United States, and resold to U.S. manufacturers, and be compliant with the specialty metals restriction, but U.S. manufacturers cannot use or sell items to DoD that are made from specialty metals directly from Russia and be compliant.

DoD Response: 10 U.S.C. 2377 mandates that the DoD procure commercial items to the ''maximum extent practicable.'' DoD Directive 5000.1 (E1.1.18.1) states that the procurement or modification of commercially available products, services, and technologies, from domestic or international sources, is the preferred acquisition strategy and is to be considered before any other alternative. DoD procures commercial items to reduce costs, speed acquisition, reduce development risk, gain access to the most leading-edge commercial technology, increase its ability to secure increased production, and leverage the competition inherent in the global commercial market.

10 U.S.C. 2533b adds a unique tracking requirement to every supplier of the ''big six'' major systems, which flows down to each supplier within that supply chain. This same tracking requirement to the country source of origin for specialty metal does not exist in the commercial, global marketplace. To comply with this law, every prime and sub-contractor must establish duplicate processes and inventories to accommodate DoD's requirement or must trace the country source of specialty metal for every item it produces or distributes. Even trace amounts must be tracked unless the item is a commercially available electronic component containing under 10 percent specialty metal. Even if the manufacturers of a particular part state that they can track the source of the specialty metal, the problem becomes overwhelming at the prime level for complex items. Industry overwhelmingly concludes that this results in increased costs and is burdensome.

According to industry sources, tracking the metal at the mill level is not burdensome or difficult, and tracking this metal throughout the supply chain for military-unique items can be accomplished with less impact to industry. However, for COTS items, tracking the source of specialty metal above the mill level items, through the manufacturers and distributors of COTS

end items or components of major systems requires instituting unique, costly, and burdensome systems and processes at each level of the supply chain, requiring continual updating and tracking at each supplier level as parts are updated or suppliers change. These costs and efforts do not add value to the end item or make COTS items safer.

c. Market Clout of DoD to Enforce Compliance

Comments: Respondents offered differing views on DoD's ability to ensure compliance. One respondent states that, even though DoD asserts that it does not have the market power to enforce compliance, the DoD market is a large and important market for the majority of the companies who supply the military services. Another respondent states that DoD does indeed ''drive the market'' for many classes of domestic magnets.

Ten other respondents view COTS sales to DoD as small in relation to sales in the global market. For example:

○ One respondent states that DoD is such a small customer in many of these markets that suppliers simply cannot economically comply with the regulations.

○ Another respondent cites the Annual Industrial Capabilities Report to Congress, ''whereas U.S. defense spending accounts for roughly half the world's defense spending, U.S. defense spending accounts for only about one percent of the world IT market.''

○ More specifically, one respondent states that only a small percentage of its sales are made to the U.S. Government but that the burden of specialty metal origin tracking leads to manufacturers sometimes foregoing such small revenue propositions of military sales in order to avoid the enormous burden of entirely changing their existing systems and processes. Therefore, this respondent consistently declines, and absent the proposed waiver, will continue to decline to sell COTS items containing specialty metals to DoD, denying DoD the benefit of considering its product solutions.

○ Another respondent states that it sells 4 million vehicles in the United States, and sales to DoD are less than 2,000 vehicles annually. This respondent states that the compliance program would be more expensive than the value of the DoD sales, and it would likely have to forgo selling to DoD if this waiver is not implemented.

DoD Response: By definition, COTS items are sold in substantial quantities in the commercial marketplace. Based on the facts presented by the respondents, DoD requirements represent a small part of the global sales of COTS items and DoD will in fact be deprived the opportunity to buy many COTS items if this waiver is not implemented.

d. Use of Domestic Non-availability Determinations (DNADs)

Comments: One respondent disagrees that the DNAD process poses difficulties, and suggests that DoD's own policy of accepting waiver applications only from prime contractors, rather than directly from the sub-tier supplier, contributes to the unwillingness of prime contractors to comply with the law. The respondent also states that five contractors have availed themselves of this reasonable waiver process, and this should continue to grow. Another respondent disagrees that DNAD processing adds significant lead time to the acquisition cycle, because there is no valid lead time problem with respect to the availability of specialty metals, which are available as and when needed.

However, multiple respondents view the process of obtaining relief through DNADs to be difficult, time consuming, not feasible for some companies, and costly. One respondent adds that DoD will have to issue DNADs for every Federal Supply Class, NAICs code, or similar classification that may cover COTS items containing specialty metals if there is no COTS exemption. Several respondents also note that fastener manufacturers are dependent on prime contractors for initiating and requesting market research, and note that DNADs can be rescinded.

DoD Response: DoD only has contractual relationships with the prime contractor, and does not have privity of contract with sub-tier suppliers. By dealing directly with subcontractors, DoD would take the risk of relieving the contractors of responsibility for performing the contract. For example, if a sub-tier supplier asked for a DNAD for fasteners directly from DoD, rather than the prime contractor, for an aircraft contract, and DoD agreed, but the waived fastener then failed in flight, the prime contractor could disavow responsibility for the failure, citing the DNAD as the document that transferred responsibility for that part. DoD must continue to hold the prime contractor responsible for performance and conformance of the end item, as well as for solving its own supply chain compliance issues.

DNADs may be approved only if it is established that specialty metals in covered items cannot be obtained in sufficient quantity, satisfactory quality, and in the required form, as and when needed. The justification for such a determination requires market research down to the level of the part at which the availability occurs. The fastener DNAD, approved in April 2007, was requested in October 2006. The circuit card assembly DNAD, approved in January 2007, was initially requested in June 2006. This does not include the additional time that the prime and sub-tier suppliers needed to prepare each of these DNAD requests. DNADs require the cooperation of every supplier between the prime contractor and the level at which the availability problem occurs, and experience shows that it takes at least 12–18 months to develop the documentation, review the documentation, and obtain DNAD approval.

The argument that there is no valid lead time problem with respect to the availability of specialty metals is incorrect. For example, a DNAD for lids and leads in circuit card assemblies was required to be able to accept COTS semiconductors, transistors, diodes, etc., embedded in COTS equipment used in DoD systems. Other COTS items of a similar nature for which a DNAD is under consideration include cotter pins, dowel pins, commercial hardware (such as slides, hinges, knobs, dials, pointers, etc.), and springs made of specialty metals.

As stated above, 10 U.S.C. 2377 mandates that DoD procure commercial items to the ''maximum extent practicable,'' while DoD Directive 5000.1 (E1.1.18.1) states that the procurement or modification of commercially available products, services, and technologies, from domestic or international sources, is the preferred acquisition strategy and is to be considered before any other alternative. As a result, DoD frequently finds itself in situations where it is impossible to accept common COTS items embedded within equipment. In these cases, DoD must either issue a DNAD, obtain a replacement, or reject the end item.

DNADs are approved at a very high level in DoD, either by the Secretary of the military department concerned or by the Under Secretary of Defense for Acquisition, Technology and Logistics (USD (AT&L)). DNADs require many levels of review and, at any point in the process, further documentation or analysis can be required or requested prior to approval. DoD takes great care to fully support each DNAD and does not approve a DNAD casually.

Without some additional relief from the specialty metals restriction, or unless one of the narrowly drawn exceptions in the law applies, DoD has

only three alternatives when faced with delivery of a major system embedded with any noncompliant COTS item: DoD can (1) refuse delivery of the end item, (2) require tear down and replacement of the part, or (3) undergo the lengthy process of researching and documenting a DNAD, if justified. Replacement or refusal of delivery is often not practical or prudent, leaving the DNAD process as the only resort, although time-consuming and inefficient. The COTS exception would eliminate the need for processing and documenting additional DNADs for COTS items.

e. Use of One-Time Waiver

Comments: Two respondents note that the one-time waiver authority provided in 2006 is a reasonable approach to providing a non-compliant supplier time to establish appropriate measures for compliance. These respondents disagree that the one-time waiver authority is burdensome for DoD and its suppliers.

DoD Response: The one-time waiver is beneficial to DoD by providing a period under which suppliers can become compliant on parts that can become compliant. In cases where the one-time waiver does not apply, for example, where a COTS item was manufactured, assembled, or produced after the date of enactment of 10 U.S.C. 2533b or where final acceptance will not take place until after September 30, 2010, this authority is not available. In such cases, the only recourse is a DNAD. More importantly, it is not always easy to determine specifically when the COTS item was manufactured, assembled, or produced, because this inventory is not tracked the same way as unique defense parts. The one-time waiver is not usable in those cases. For most COTS items, becoming compliant is not an option for the manufacturer because the increased costs would make the item non-competitive. Manufacturers will often decline to produce a compliant product (except at unreasonably higher prices). In those cases, DoD has no alternative but to begin the DNAD process in order to procure the COTS item or an item containing an unmodified COTS item.

f. De minimis Exception for Commercially Available Electronic Components

Comments: Four respondents state that the proposed rule cannot legitimately use computers and semiconductors as a basis for a COTS exception, because these items are already exempt under the existing de minimis exception for commercially available electronic components. One respondent states that computers would also likely be exempt from compliance under DoD's class deviation of December 6, 2007, interpretation of a ''component'' as not including so-called ''third tier'' items.

Another respondent states that the de minimis exception results in a prohibitive requirement for each supplier to make a determination about the commerciality and specialty metal content for all of the electronic components that are included in DoD weapons systems today. This respondent states that the circuit card assembly DNAD, approved by USD(AT&L), has recognized the prohibitive nature of this requirement but that, unfortunately, the list of items and parts that comprise electronic components is long and all await additional comparable determinations in order to ensure their continued delivery to the warfighter.

DoD Response: The circuit card assembly DNAD was approved by USD(AT&L) because it was apparent that compliant parts were not available, and these parts are used widely on every weapon system, aircraft, etc. The task of calculating percentages of specialty metals in similar electronic parts is burdensome for sub-tier and prime contractors alike. While the de minimis exception is beneficial, particularly for very small amounts of specialty metals in commercial electronic components, it will not eliminate the need for additional DNADs for COTS items.

The contention is incorrect, that computers would not be covered because of the interpretation that ''component'' does not include third-tier and lower parts and assemblies. Even lower-tier parts and assemblies of the six major categories are covered by the restrictions of the statute, unless they are purchased separately from the major item. For example, when buying an aircraft or a missile, all components, parts, and assemblies are covered by the specialty metal restriction.

g. DX Rating

Comments: One respondent states DoD has the capability to issue a ''DX'' rating under the Defense Priorities and Allocations System (DPAS) in order to prioritize DoD orders over other customers, should availability be a problem. Another respondent states that foreign suppliers are not subject to this priority statute, which makes a robust domestic industry all the more critical. Another respondent comments that DoD has not exercised its powers under the Defense Production Act to put its items at the head of the line in situations where alleged shortages exist.

DoD Response: DPAS provides DoD with the ability to ensure that DoD orders receive priority treatment from domestic industry if necessary to meet required delivery dates. Although DoD uses ''DX'' ratings, the standard ''DO'' rating used on DoD contracts, and flowed down through the supply chain, provides priority delivery over unrated (commercial) orders when necessary. (''DX ratings'' are used for a select list of DoD programs, and provide delivery priority over other DoD programs if necessary. The lower DO rating is sufficient to provide priority over commercial orders.)

However, the DPAS system cannot provide any relief from the problem that COTS items generally do not contain compliant specialty metals. The DPAS system can require priority delivery of a COTS item. COTS items, by definition, are procured as offered and without modification. COTS items are non-compliant because commercial industry does not restrict itself to using only domestically-smelted metals. The non-compliant metals have already been incorporated into the item by the time it is offered to DoD.

4. Impact

a. Sufficiency of Research to Determine Impact

Comments: One respondent states that there is no factual basis upon which DoD can determine the impact of the proposed exemption on domestic specialty metals producers or on their continued ability to supply specialty metals for the six covered categories of defense articles.

Another respondent states that one of the primary purposes of its organization is economic and policy research. The respondent has researched and deliberated on this issue, and offers its information for the public record, in order to be useful to policymakers. This respondent considers the waiver to be absolutely vital to DoD's continuing access to the commercial marketplace.

Another respondent has represented and advised numerous defense contractors concerning 10 U.S.C. 2533b. The respondent cites DoD and client market research performed in conjunction with Section 2533b corrective action plans, one-time waivers, and domestic non-availability determinations.

Additional respondents have provided detailed analysis of the impact on certain segments of the market.

DoD Response: This rule was reviewed by the Office of the Deputy

Under Secretary of Defense for Industrial Policy, which is tasked with analyzing the impact of DoD policy on various segments of the industrial base in order to meet the DoD objective of achieving and maintaining reliable and cost-effective industrial capabilities sufficient to meet strategic objectives. DoD believes that this rule will positively impact the health of the defense industrial base by allowing it to more easily and quickly procure COTS items for inclusion in DoD systems. The rule will not have a negative impact on domestic specialty metal producers, because it only addresses COTS items. The amount of product domestic specialty metals producers sell to commercial industry is based on their metal price and quality; it is not influenced by whether DoD can or cannot buy non-compliant COTS items, for the simple reason that producers of COTS items do not take DoD restrictions into account when making sourcing decisions. The rule will have no impact on the amount of domestically-produced specialty metal sold to commercial industry.

b. Scope of the Waiver

Comments: Respondents offered mixed views. Some respondents state that this waiver is too broad and will amount to an across-the-board waiver of the specialty metal requirement. One respondent states that the rule would ''gut the law and be a de facto repeal of a significant portion of the specialty metals law.'' Another respondent objects that the exemption would exempt all COTS items, not just those containing small amounts of specialty metal. Another respondent states that the rule would potentially waive all domestic specialty metals requirements, even for weapons systems that are uniquely military in nature. Two more respondents state that even the most complicated military equipment is manufactured from COTS items at the lowest level of the supply chain. One of these respondents is concerned that even specialty metals mill products themselves could fall under the definition of COTS items. At the mill level, military and commercial articles of specialty metal are often interchangeable. Some of these respondents recommend that the rule should be limited to a waiver of only those COTS items that contain de minimis or less than some specific percentage of specialty metals.

Other respondents believe the waiver does not provide sufficient relief and request additional rulemaking by DoD in this area as follows:

○ Waive specialty metals restrictions where the source of the metal cannot be confirmed and the specialty metal represents a ''de minimis'' piece of the end product to be delivered to DoD.

○ Waive specialty metal restrictions based on similar de minimis requirements provided for electronic components.

○ Make meaningful changes in this area, including the actions by the newly established Strategic Materials Protection Board.

DoD Response: DoD does not agree that this waiver is too broad. To the extent that DoD can utilize COTS items, it should be able to do so without being hampered by this DoD-unique requirement. Despite attempts to increasingly rely on the commercial marketplace, the items that DoD buys in the six major categories must necessarily diverge from items sold in the commercial marketplace, in order to meet military-unique requirements. DoD aircraft, ships, weapons systems, etc., still contain many components that are not COTS, that have to be manufactured specifically to fulfill military requirements. The respondents that oppose the rule are overlooking that the COTS items must be offered to the Government without modification.

However, the final rule contains changes that make the waiver applicable only to end products and components in the six major categories, not specialty metal acquired directly by the Government, or by a contractor for delivery to the Government as the end product.

To limit the rule to only COTS items with less than a specified percentage of specialty metals would require an unacceptable level of research into the composition of the COTS item, to determine for each item the percentage of specialty metal contained therein. This would introduce delays in the process similar to those associated with doing a domestic non-availability determination.

c. Impact on U.S. Industry and National Security

Comments: Several respondents consider the rule to constitute a threat to U.S. industry and, therefore, a threat to national security. The respondents state that 10 U.S.C. 2533b serves an important role in maintaining a strong U.S. industrial base, and DoD, Congress, and industry should partner to find a means of compliance; and that, by this waiver, DoD is jeopardizing the availability of a future domestic supply of defense materials.

○ *Specialty metals.* With specific regard to specialty metals, one respondent states that exempting COTS items will reduce the demand of domestic specialty metals in down market cycles below sustainable levels for the specialty metals industry. Another respondent states that uniquely military articles do not account for sufficient volume to sustain the domestic specialty metals industry during down cycles.

○ *Titanium.* One respondent specifically addresses the titanium industry. This respondent states that there are only four titanium companies in the world that are capable of supplying titanium in the quantity and quality needed by DoD. Three of those companies are U.S. companies that are vigorously competing with the fourth company located in Russia, which is government owned, and need not even make a profit to survive. This respondent also cites the cyclical nature of the titanium industry. Even though the industry is strong now, it would be foolhardy to assume that U.S titanium producers will not in the future be seriously harmed by opening the U.S. defense market to Russian titanium.

○ *High-performan*ce magnets. One respondent is concerned about impact on the high-performance magnet industry in particular. This respondent states that the domestic high-performance industry depends on the DoD market, and without it there might not be sufficient commercial volume to sustain it. Although they admit that most high-performance magnets are not COTS items, they are concerned that items containing such high-performance magnets could be designated as COTS items.

On the other hand, eighteen respondents state that this waiver will strengthen the U.S. industrial base. For example—

○ This waiver is important to maintaining and broadening the industrial base. Without this waiver, DoD's access to commercial products and developing commercial technologies will be compromised.

○ This waiver will ensure that many commercial manufacturers will have the ability to remain as a qualified domestic supplier to DoD.

○ This waiver will benefit manufacturers, by augmenting their sales, decreasing compliance costs, stabilizing U.S. manufacturing jobs, and providing companies the satisfaction of knowing they are contributing to the defense of our nation.

○ Exempting COTS items from 10 U.S.C. 2533b will help U.S. fastener manufacturers and distributors, many of whom are small or medium sized

businesses, remain a viable part of the U.S. defense supplier base.

○ 10 U.S.C. 2533b has caused thousands of the respondent's parts to become less valuable or unable to be sold at all. Although the material is bought from a foreign mill, all processing and manufacturing occurs in the United States. On the average, the value of the foreign material is only 15 percent of the total value of each part.

Some respondents provide specific arguments that the proposed waiver will not negatively impact the specialty metals industry to the extent that the respondents opposing the rule claim. Eighty percent of all aerospace fasteners are COTS items, of which only ten percent is supplied to DoD. One respondent states that—

○ Total sales worldwide for aerospace fasteners was approximately $2.4 billion in 2006.

○ The U.S. aerospace fastener market totaled $1.6 billion in sales.

○ DoD's portion was approximately $550 million for defense contracts. Of that $550 million, approximately $330–385 million (60–70 percent) were dual-use fasteners that would qualify as COTS items, and the remaining $165–220 million (30–40 percent) were military unique.

○ The alloy steel fasteners industry estimates that $150 million were made of alloy steel (of the $550 million in 2006 defense fastener sales).

○ Since sales figures are estimated to be about twice the manufacturing cost, approximately $75 million would be for the manufacturing cost.

○ Most industry analysts suggest an 8 percent raw material/manufacturing cost ratio for alloy steel fasteners, which would equate to $6 million in alloy steel costs. Therefore, even if all alloy steel military aerospace fasteners were considered to be COTS items, and if all of the alloy steel contained in the fasteners shifted from U.S. sources to foreign sources, the maximum impact would be $6 million.

○ Likewise, the titanium/nickel-based fasteners industry estimates that $400 million of the fasteners were made of titanium/nickel base.

○ Approximately $200 million would be manufacturing costs.

○ Using an average 22.5 percent raw material cost/manufacturing cost ratio, $45 million would be titanium/nickel costs. Therefore, even if all titanium/nickel-based military aerospace fasteners were considered COTS items (which is unlikely), the maximum impact on the specialty metals industry would be approximately $45 million annually, if all the titanium contained in the fasteners shifted from U.S. sources to foreign sources.

Another respondent provides another approach to assessing impact. This waiver is not primarily to allow currently compliant COTS items to begin using non-compliant specialty metals. The respondent states that the core reality is that COTS items are not Section 2533b-compliant now, and almost certainly will not be in the future. Up until the codification of the new 10 U.S.C. 2533b, the Government could withhold payment for components containing noncompliant specialty metals. 10 U.S.C. 2533b no longer permits this. Therefore, this waiver provides a solution that permits DoD to accept needed defense articles that would otherwise be non-compliant.

Those respondents who are concerned with negative impact on the specialty metal or magnet industry see that negative impact as a threat to national security. For example—

○ One respondent states that 10 U.S.C. 2533b plays an important role in ensuring our national security.

○ Another respondent states that if domestic specialty metals are not used in COTS items, it is far less likely that COTS items critical to defense procurement will be manufactured in the United States. Thus, potential availability issues extend not only to specialty metals themselves, but to every item made from specialty metals in DoD's supply chain.

○ A third respondent states that the fact that critical parts that the United States loses its ability to produce were COTS items will be of little comfort as the United States' security becomes vulnerable through its dependency on foreign sources or, even worse, when in a time of crisis, foreign sources become unavailable and the United States cannot produce needed military aircraft, missiles, spacecraft, ships, tanks, weapons, and ammunition.

○ Another respondent states that certain items containing high-performance magnets may be considered COTS, but it is a threat to national security to outsource production of these high-performance magnet components to foreign suppliers.

Aside from the arguments that the impact will not be as negative as the specialty metals and high-performance magnets industry predict, most of the supporters of the proposed rule are concerned that failure to provide this waiver of 10 U.S.C. 2533b will have a negative impact on national security because, if the COTS waiver is not implemented, DoD will be unable to buy needed COTS items. For example—

○ One respondent supports the waiver because ''it is essential that we provide our Soldiers, Sailors, Airmen, and Marines the best equipment possible.''

○ Another respondent cites the DoD Annual Industrial Capabilities report to Congress in February 2006, stating that DoD relies on commercial information technology because it is the most current and advanced available.

○ One respondent strongly believes that waiving the restrictions on COTS will help DoD in acquiring the products that it needs and will perhaps save lives, especially in time of war.

DoD Response: DoD believes this rule promotes national security. It is restricted to addressing the application of 10 U.S.C. 2533b to COTS items; the rule does not in any way alter requirements to purchase compliant non-COTS items. The rule simply allows DoD to purchase those needed COTS items that are already non-compliant.

The amount of product domestic specialty metals producers sell to commercial industry is based on their metal price and quality; it is not influenced by whether DoD can or cannot buy non-compliant COTS items for the simple reason that producers of COTS items do not take DoD restrictions into account when making sourcing decisions. This rule will have no impact on the amount of domestically-produced specialty metal sold to commercial industry, and thus will have no negative impact on the viability of domestic specialty metal producers or national security.

The current restriction against buying non-compliant COTS items harms national security by impeding the promotion of a healthy defense industrial base, frustrating attempts to foster defense trade and industrial cooperation with friends and allies, and directly and negatively impacting DoD's ability to supply the warfighter. To comply with the limitations imposed by 10 U.S.C. 2533b, the defense suppliers are forced to deviate from making sound business decisions in sourcing and production, with corresponding lost opportunities for efficiency and effectiveness. Furthermore, it is not possible to procure needed COTS items in compliant form, and this directly and negatively impacts DoD's ability to support the warfighter.

Domestic specialty metal producers are financially outperforming most other sectors of the defense industry. Further, there is no danger of the United States losing the capabilities of its domestic specialty metals industry. In the unlikely event that, for whatever reason,

action needs to be taken in the future to protect the domestic specialty metals industry for national security reasons, DoD would be able to use its existing authority under 10 U.S.C. 2304(c)(3) and implementing DFARS provisions to restrict procurements of specialty metals to domestic sources.

One respondent is concerned about impact on high-performance magnets. However, as stated by that respondent, most high-performance magnets are not COTS items. Furthermore, the applications that demand high-performance magnets usually have military-specific performance requirements, so they would not typically be COTS either.

d. Precedent

Comments: Most of the respondents that oppose the rule are concerned with the precedent that this rule will set.

○ Several respondents state that DoD's rule inappropriately accommodates the prime contractor's unwillingness to change their existing processes, inventory systems, or facilities.

○ Other respondents are concerned about the precedent of this rule as it relates to the Berry Amendment and other products covered by 10 U.S.C. 2533a. One respondent states that it is inappropriate for DoD to consider the COTS exemption for specialty metals without taking into account the broader implications of such a precedent.

One respondent considers that this waiver sets a good precedent, enhancing genuine and meaningful compliance with 10 U.S.C. 2533b. This respondent states that those who argue that DoD should just insist that COTS items become compliant are ignoring reality. If followed, this would seriously undermine overall compliance efforts and invite skepticism that DoD is serious about compliance.

DoD Response: Consistent with Section 35 of the OFPP Act, this rulemaking is designed to facilitate access to the commercial marketplace by waiving application of a Government-unique requirement where the OFPP Administrator has not determined that its application to COTS is in the best interest of the Government. There is no requirement or law that compels a U.S. COTS manufacturer or COTS distributor to change its competitive process or systems to meet DoD-unique restrictions. The law only requires DoD to ensure that the specialty metals in items it buys are compliant. A U.S. COTS manufacturer that decides not to make its COTS products compliant is not breaking the law.

The theoretical possibility of a future waiver of 10 U.S.C. 2533a is an issue outside the scope of this case. No such action has been proposed.

e. Level the Playing Field With Qualifying Countries

Comments: Four respondents state that the proposed COTS exemption, if adopted, would narrow the loophole that provides exemption to end products or components from qualifying countries.

○ The same regulations that restrict the American companies provide a loophole to foreign competitors.

○ This puts U.S. companies, both large and small, at a significant competitive disadvantage compared to manufacturers from qualifying countries.

○ The proposed exemption would lessen the disadvantage currently plaguing companies providing parts and services to DoD.

○ Because of this exemption for manufacturers in countries that have certain types of defense-related agreements with the United States, implementation of 10 U.S.C. 2533b, absent promulgation of the proposed rule as a final rule, would actually serve to undermine the goal of creating a strong industrial base. If a U.S. manufacturer cannot comply with the specialty metal requirements, DoD has the option to buy the product from a qualifying country instead.

DoD Response: DoD concurs with the statements of these respondents.

5. Pending Legislation

Comment: One respondent considers it inappropriate and inefficient for DoD to consider this rule while legislative action is pending.

DoD Response: This rule implements a section of the Fiscal Year 2007 Defense Authorization Act, an enacted law. If any new legislation is enacted, DoD will take the necessary steps to implement it.

6. Recommended Changes to the Rule

Several respondents who support the rule suggested revisions.

a. Definition of ''COTS Item''

Comment: One respondent is concerned that the requirement for ''no modification'' is unfair when applied to vastly different items such as a computer or GPS or a fastener. Another respondent requests a more definitive meaning of ''substantial quantities.''

DoD Response: The definition of ''COTS item'' used in the rule is consistent with 41 U.S.C. 431(c). The term ''substantial'' is used as a modifier throughout the FAR, and its interpretation must be on a case-by-case basis.

b. Use of the Term ''Waiver''

Comment: One respondent suggests that DoD should change the title of the case from ''Waiver of Specialty Metals Restrictions * * *'' to ''Inapplicability of Specialty Metals Restrictions * * *''. The rationale for this change is that the sole purpose of this rule is to satisfy the administrative requirement of paragraph (a) of Section 35, to list laws inapplicable to the procurement of COTS items. The respondent states that this rule does not constitute a waiver.

DoD Response: DoD does not agree to change the title of the case. DoD considers ''waiver'' to be an appropriate term because of the discretionary aspects of determining whether a law is covered and whether it is in the best interest not to exempt its application to COTS. DoD notes that the title of a DFARS case is not relevant once the rule is incorporated into the regulations.

c. Introductory Statement at DFARS 212.570

Comment: One respondent recommends that DFARS 212.570 should include the same introductory statement as does FAR 12.503 and DFARS 212.503.

DoD Response: DFARS 212.570 does not include the same introductory statement as FAR 12.503 and DFARS 212.503, because there is currently only one law on the list. If additional laws are added to the list, an introductory statement will be included in DFARS 212.570.

d. Location of Definition of ''COTS Items''

Comment: One respondent is concerned because the only definition of COTS items is at 212.570, referring contracting officers to 41 U.S.C. 431(c) for the definition of COTS items. This does not provide the needed definition to contractors and subcontractors. Nor is there a source provided for definition of ''COTS item'' when the term is used in the proposed exceptions at 225.7002–2.

DoD Response: Since publication of this DFARS final rule precedes publication of the FAR final rule under FAR Case 2000–305, which will incorporate the definition of ''COTS item'' in the FAR, DoD has added the statutory definition of ''COTS item'' at DFARS 202.101, which makes it applicable to clauses as well as text throughout the DFARS.

This rule was not subject to Office of Management and Budget review under

Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because manufacturers of COTS items generally have not changed their manufacturing and purchasing practices based on DoD regulations. The burden generally falls on the Government to forego purchase of the item or to process a domestic nonavailability determination requested by the prime contractor. So far, only large contractors have had the resources to request a domestic nonavailability determination. If there is any impact of this rule, it should be beneficial, because small businesses providing COTS items, many of whom are subcontractors, will not have to—

○ Rely on the prime contractor to request a domestic nonavailability determination from the Government; or

○ Face the decision whether to cease doing business with the Government or set up systems to track and segregate all DoD parts that contain specialty metals.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because this rule contains no information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 202, 212, and 225

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 202, 212, and 225 are amended as follows:

■ 1. The authority citation for 48 CFR parts 202, 212, and 225 continues to read as follows:

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

PART 202—DEFINITIONS OF WORDS AND TERMS

■ 2. Section 202.101 is amended by adding the definition ''Commercially available off-the-shelf item'' to read as follows:

202.101 Definitions.

Commercially available off-the-shelf item—

(1) Means any item of supply that is—

(i) A commercial item (as defined in FAR 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in Section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.

* * * * *

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 3. Section 212.570 is added to read as follows:

212.570 Applicability of certain laws to contracts and subcontracts for the acquisition of commercially available off-the-shelf items.

Paragraph (a)(1) of 10 U.S.C. 2533b, Requirement to buy strategic materials critical to national security from American sources, is not applicable to contracts and subcontracts for the acquisition of commercially available off-the-shelf items.

PART 225—FOREIGN ACQUISITION

■ 4. Section 225.7002–2 is amended by adding paragraph (q) to read as follows:

225.7002–2 Exceptions.

* * * * *

(q) Acquisitions of commercially available off-the-shelf items containing specialty metals. This exception does not apply when the specialty metal (e.g., raw stock) is acquired directly by the Government or by a prime contractor for delivery to the Government as the end item.

[FR Doc. E7–21888 Filed 11–7–07; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Response to Court on Significant Portion of the Range, and Evaluation of Distinct Population Segments, for the Queen Charlotte Goshawk (Accipiter gentilis laingi)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Response to court on significant portion of the range, and evaluation of distinct population segments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce our response to the May 24, 2004, order of the United States District Court for the District of Columbia in *Southwest Center for Biological Diversity, et al.* v. *Norton, et al.* (*Civil Action No. 98–0934 (RMU)*), directing the Service, on remand, to determine whether Vancouver Island constitutes a significant portion of the range of the Queen Charlotte goshawk (*Accipiter gentilis laingi*) and whether the goshawk should be listed as threatened or endangered on Vancouver Island, in connection with our 1997 finding on a petition to list the Queen Charlotte Goshawk as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). After a thorough review of the best scientific and commercial data available, we conclude that Vancouver Island is a significant portion of the Queen Charlotte goshawk's range and that listing the subspecies on Vancouver Island is warranted.

In addition to addressing the court's remand, we have assessed whether listing is warranted for the Queen Charlotte goshawk beyond Vancouver Island. Our review has indicated that the subspecies' populations in British Columbia and Alaska each constitute distinct population segments (DPSs) of the Queen Charlotte goshawk. Based on differences in forest management, with substantially greater existing and anticipated habitat loss in British Columbia than in Alaska, we find that we have sufficient information about biological vulnerability and threats to the goshawk to determine that the entire British Columbia DPS warrants listing as threatened or endangered. We find that the best available information on biological vulnerability and threats to the goshawk does not support listing the Alaska DPS as threatened or endangered at this time. Pursuant to section 4(b)(3)(B)(ii) we will promptly publish in the **Federal Register** a proposed rule to list the British Columbia DPS of the Queen Charlotte goshawk. In that proposed rule we will indicate whether the British Columbia DPS and the Vancouver Island portion of the range should be listed as either endangered or threatened.

DATES: The finding in this document was made on November 8, 2007.

ADDRESSES: Submit data, information, comments, or questions regarding this finding to the Field Supervisor, U.S. Fish and Wildlife Service, Juneau Fish and Wildlife Field Office, 3000 Vintage Blvd., Suite 201, Juneau, AK 99801–7125.

FOR FURTHER INFORMATION CONTACT: Bruce Halstead, Field Supervisor, U.S.

Fish and Wildlife Service, Juneau Fish and Wildlife Field Office, 3000 Vintage Blvd., Suite 201, Juneau, AK 99801–7125; telephone 907–780–1161; facsimile 907–586–7154. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: The supporting file for this finding is available for inspection, by appointment during normal business hours, at the street address listed in the **ADDRESSES** section. The April 25, 2007, status review for the Queen Charlotte goshawk, upon which much of this finding is based, and a list of all references cited in this finding are available online at *http://alaska.fws.gov/*.

Petition History and Previous Federal Actions

On May 9, 1994, the Service received a petition from eight conservation groups and two individuals to list the Queen Charlotte goshawk as endangered and to designate critical habitat. Logging of old-growth forest, where the bird nests and forages, was the primary threat identified. On August 26, 1994, we published our 90-day finding that the petition presented substantial information indicating that listing may be warranted, opened a public comment period, and initiated a status review to determine whether listing the subspecies was warranted (59 FR 44124).

Following our status review, we determined that listing the Queen Charlotte goshawk as threatened or endangered under the Act was not warranted and published our finding in the **Federal Register** on June 29, 1995 (60 FR 33784). We expressed concern for long-term viability of the bird under the existing management plan for the Tongass National Forest (covering about 80 percent of Southeast Alaska), but we acknowledged that a new management plan was being drafted, and the new plan was expected to provide improved protection for the subspecies. The June 1995 ''not warranted'' finding was challenged in the U.S. District Court for the District of Columbia, in a suit filed on November 17, 1995, by 8 of the original 10 petitioners, plus 2 additional conservation organizations and 1 additional individual. The district court granted summary judgment for the plaintiffs on September 25, 1996, holding that the Service should not have relied on ''possible future actions'' described in a draft revision to the 1979 Tongass Land Management Plan (TLMP) ''to provide sanctuary for the goshawk.'' The decision was remanded to the Service with instructions to make a listing determination based on the existing 1979 TLMP (*Southwest Center for Biological Diversity* v. *Babbitt*, 939 F. Supp. 49 (D.D.C. 1996)). The district court established a deadline of May 31, 1997, for us to complete this analysis.

On May 23, 1997, the U.S. Forest Service (Forest Service) released a new land management plan. Therefore, we requested and received an extension from the district court of August 31, 1997, to review the petitioned action and the status of the subspecies in light of the new plan. On August 28, 1997, we published our new finding that listing the Queen Charlotte goshawk as threatened or endangered was not warranted (62 FR 46710). In 1998, this finding was challenged in the same district court, and on July 20, 1999, the finding was remanded to us, with instructions to provide a more accurate and reliable population estimate, and to consider a 1999 revision of the 1997 TLMP. We appealed the district court's decision to the Court of Appeals for the District of Columbia. The court of appeals agreed with the Service and remanded the case back to the district court (*Southwest Center for Biological Diversity* v. *Babbitt*, 215 F. 3d 58 (DC. Cir. 2000)).

On July 29, 2002, a district court magistrate issued recommended findings that: (1) We had fulfilled our requirement to use the best scientific data available; (2) the ''not warranted'' determination was entitled to deference; (3) our determination that the Queen Charlotte goshawk would persist in Alaska and the Queen Charlotte Islands was not unreasonable; (4) Vancouver Island, which constituted one-third of the subspecies' geographic range, was a ''significant portion'' of the subspecies' range; and (5) our failure to make a specific finding as to the conservation status of the subspecies on Vancouver Island was a material omission. The magistrate recommended a remand to the Service to make a finding as to whether the Queen Charlotte goshawk should be listed based on its conservation status on Vancouver Island (*Southwest Center for Biological Diversity* v. *Norton*, No. 98–934, 2002 U.S. Dist. LEXIS 13661, (D.D.C. July 29, 2002)).

On May 24, 2004, a district court judge issued an order that adopted the magistrate's recommendations, except for the magistrate's finding that Vancouver Island constituted a significant portion of the range for the Queen Charlotte goshawk. Instead, the district court directed the Service upon remand to reconsider and explain any determination as to whether or not Vancouver Island is a significant portion of the subspecies' range, and assess whether the Queen Charlotte goshawk is endangered or threatened on Vancouver Island (*Southwest Center for Biological Diversity* v. *Norton,* No. 98–0934 (D.D.C. May 24, 2004)).

In the ten years since the Service's 1997 determination on the petition to list the Queen Charlotte goshawk, the Service has obtained a substantial amount of new information and data relevant to the subspecies. Therefore, we updated our 1997 rangewide status review for the Queen Charlotte goshawk, to allow an evaluation of Vancouver Island's significance in the context of current knowledge of the subspecies' biology, habitat, and population status throughout its entire range. The updated status review (USFWS 2007) incorporates data and information on goshawks and forest management from a variety of sources including peer-reviewed scientific journals, agency reports, agency Web sites, public comments, and personal communications. Additional detail on many of the topics discussed below is available in the April 25, 2007, updated status review.

In October 2005, we hosted a workshop of goshawk experts who presented recent findings and suggested updates for portions of the 1997 status review. We also solicited input from the public through a December 15, 2005, notice in the **Federal Register** (70 FR 74284). We received and have evaluated information from 31 parties who commented during the 2005 notice's 60-day comment period. Comments were submitted by wildlife agencies in Alaska and British Columbia, several falconers and falconry groups, two conservation groups (including one of the plaintiffs), a forest industry group, and several private citizens. Peer reviews of an updated draft of our status review by experts at Brigham Young University, the U.S. Forest Service, Alaska Department of Fish and Game, British Columbia Ministry of Environment, and the British Columbia Ministry of Forests and Range helped us improve the status review.

Below, we summarize the Service's analysis of the best available data on the status of the Queen Charlotte goshawk. As directed by the court, we have evaluated whether Vancouver Island represents a significant portion of the Queen Charlotte goshawk's entire range, and whether listing the subspecies as threatened or endangered is warranted for Vancouver Island.

We have also, of our own initiative, evaluated new information and data

relevant to the subspecies rangewide (described in the April 25, 2007, updated status review (USFWS 2007)) to determine whether listing is warranted. We conclude that there are two DPSs with different conservation status. As such, our finding includes a determination of the DPSs, and an evaluation of whether we have sufficient information on the biological vulnerability and threats to the subspecies to support listing the goshawk as threatened or endangered in all or a significant portion of the range of the DPSs.

Species Description

The Queen Charlotte goshawk is a comparatively small, dark subspecies of northern goshawk (*Accipiter gentilis*) that lives in the temperate rainforest archipelagos of Southeast Alaska and British Columbia. Adults have blue-gray to nearly black backs and tails, and gray bellies and chests that are finely marked with dark gray bars and streaks. A bold white stripe above the eye accents the vivid orange to bright scarlet eye. Females are larger than males; a sample of male goshawks trapped in Southeast Alaska averaged 29 ounces (827 grams), and females averaged 38 ounces (1074 grams) (Titus et al. 1994, p. 46), while males on Vancouver Island averaged 25 ounces (710 grams) and females 34 ounces (952 grams) (McClaren 2003, p. 39). Variation in color (Taverner 1940, pp. 158–159; Webster 1988, pp. 46–47; Flatten and McClaren 2003, p. 40) and size (Beebe 1974, p. 54; Titus et al. 1994, pp. 10–12; Flatten and McClaren 2003, p. 40; Flatten et al. 2002, p. 2) has been noted across the range of the subspecies, with birds averaging largest in the northern portion of their range (Titus et al. 1994, p. 12).

Taxonomy and Distribution

The Queen Charlotte goshawk was initially described and proposed as a subspecies by Taverner (1940, pp. 158–160) based on its darker coloration and geographic discreteness (Queen Charlotte and Vancouver Islands, British Columbia). The proposed subspecies was accepted by the American Ornithologists' Union in 1957 (AOU 1957, p. 103). Subsequent analyses added Southeast Alaska to the range of the subspecies (Beebe 1974, p. 54; Webster 1988, pp. 46–47) and established that the subspecies was smaller than goshawks elsewhere in North America, including those on the nearby British Columbia mainland (Johnson 1989, p. 638; Whaley and White 1994, pp. 179–181). Taxonomic treatments and reviews have generally accepted the Queen Charlotte goshawk (*A. g. laingi*) as distinct from the subspecies found across most of North America (*A. g. atricapillus*) (reviewed in USFWS 2007, pp. 11–13).

Preliminary results of an investigation of genetic relationships among goshawks from within and around the reported range of the Queen Charlotte goshawk suggest that the birds on the Queen Charlotte Islands may be distinct from goshawks elsewhere (Talbot et al. 2005, p. 3), and that those on Vancouver Island are genetically closer to *atricapillus* than *laingi* (Talbot 2006, p. 1). To date, these potentially significant genetic data have not been reviewed by qualified taxonomists, and there have been no scientific publications or other reports proposing modification of currently accepted taxonomy for the species or subspecies. Accordingly, we continue to treat the birds on the Queen Charlotte Islands, Vancouver Island, and Southeast Alaska as within the range of the *laingi* subspecies.

We interpret the morphological and genetic variation found on Vancouver Island and in Southeast Alaska as ''stable hybrid zones'' (Haig et al. 2006, p. 7), where the *laingi* subspecies contacts the larger, lighter-colored *atricapillus* subspecies that inhabits most of North America. Flatten et al. (2002, p. 2) found that most adult goshawks in Southeast Alaska and on Vancouver Island showed at least partial expression of the darker *laingi* form. While this suggests an indefinite boundary, for purposes of this decision we include the mainland and islands of Southeast Alaska south of the international border between Mount Fairweather and Mount Foster, and Vancouver Island and the Queen Charlotte Islands in British Columbia, but not the British Columbia mainland (USFWS 2007, p. 14–21). This definition differs slightly from that used in our 1997 listing decision (62 FR 46710) as it incorporates nests in northern Southeast Alaska reported in 1999 and 2001.

For purposes of this finding, the term ''Southeast Alaska'' hereafter refers to the mainland and islands of Southeast Alaska south of the international border between Mount Fairweather and Mount Foster. ''Vancouver Island'' refers to Vancouver Island, British Columbia, and the smaller islands surrounding it. ''Queen Charlotte Islands'' refers to the Queen Charlotte Islands, British Columbia, also known by the Haida (First Nation) name of Haida Gwaii.

Some biologists believe that goshawks on the British Columbia coastal mainland, on Washington State's Olympic Peninsula, and in the Cascade Range of Washington and Oregon may be Queen Charlotte goshawks, based on proximity of similar habitat (USFWS 2007, pp. 17–21). No taxonomists or goshawk researchers, however, have included these areas within published range descriptions for the subspecies since Jewett et al. (1953, p. 162) included ''the Pacific slopes'' of Washington and Oregon in the range of the subspecies. Subsequent authors have not accepted Jewett et al.'s (1953, p. 162) range extension, which was based on isolated museum specimens believed to represent rare incursion migrants (Whaley 1988, p. 47). We recognize that some goshawks on the coastal mainland of British Columbia and the Olympic Peninsula may exhibit *laingi* characteristics, because similar rainforest habitat exists there and is close enough for birds from Vancouver Island to reach. The only examinations of these birds that we are aware of, however, indicate that coastal mainland birds are larger than those on Vancouver Island (Johnson 1989, pp. 637–638; Whaley and White 1994, pp. 180–181; Flatten et al. 2002, p. 2). No analyses of plumage characteristics are available. Until data are available to demonstrate otherwise, we consider mainland British Columbia, Washington, and Oregon outside the range of the *laingi* subspecies.

Conservation Designations

In Canada, the *laingi* subspecies has been federally listed as ''Threatened'' under the Species at Risk Act (SARA) since 2002 (51 Eliz. II, Ch. 29), following listings by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) as ''Vulnerable'' in 1995 and ''Threatened'' in 2000 (Cooper and Chytyk 2000, p. 23; COSEWIC 2005, p. 1). British Columbia has included the subspecies on its ''Red List,'' indicating imperiled status, since 1998. In 2004, British Columbia designated the bird a Schedule 1 species at risk, indicating vulnerability to forest management and a need for protection beyond that provided by general forest management regulations (BCMSRM 2002, pp. 1–2; Barisoff 2004, p. 2; USFWS 2007, pp. 11–12).

The State of Alaska designated the bird a ''species of concern'' in 1998 due to threats to its nesting and foraging habitat, and the Forest Service designated it a ''sensitive species'' in 1994 (ADF&G 1998, pp. 1–2; USDA Forest Service 1997, p. 3/232). State, Provincial, and international heritage programs (which maintain data on species of concern) list the Queen Charlotte goshawk as ''imperiled'' State- and Province-wide, nationally, and globally (NatureServe 2005, p. 1).

Habitat

Queen Charlotte goshawks nest and forage in dense, wet, coastal rainforests. Goshawks in Southeast Alaska preferentially use medium and high volume forests for foraging and other daily activities and avoid non-forested and clear-cut areas. Young stands of regenerating forest (also called ''second growth'' or ''second-growth forest'') are avoided, probably because they are too dense for goshawks to effectively hunt.

Second-growth stands reach economic maturity as their growth rates begin to slow. Typically, trees of this age have not reached maximum size and the canopy of these stands is usually uniformly dense. There is usually little understory unless the stand has been thinned. In this finding, we refer to such stands as ''mature'' or ''mature second growth''. Goshawks use such stands in proportion to their availability (Titus et al. 1994, pp. 19–24; Iverson et al. 1996, pp. 27–40), and may nest in mature stands where old growth is limited.

''Old growth'' or ''old forest'' refers to a structural stage of forest characterized by several age classes of trees, including dominant trees that have reached the maximum size typical for the site, accumulations of dead, dying, and decaying trees and logs, and younger trees growing in gaps between the dominant trees. Such stands are typically over 250 years old within the range of the Queen Charlotte goshawk, and have not been previously harvested.

The term ''productive forest'' typically describes forest land capable of producing stands of trees large enough to support commercial timber harvest. Productive forest may be of any age, from young second growth to old forest. Non-productive or ''scrub'' forest is land that supports over 10 percent cover by trees that are too small to be of commercial value. For purposes of this document, we use ''productive forest'', as defined by the U.S. Forest Service and the British Columbia Ministry of Forests and Range (USFWS 2007, pp. 32 and 139), as a reasonable approximation of goshawk habitat amount and distribution because goshawks have shown positive selection for such stands unless they have been converted to second growth. Low-productivity forests are used for foraging in proportion to their availability, indicating neither selection for, nor avoidance of, these habitats (Titus et al. 1994, pp. 19–24; Iverson et al. 1996, pp. 27–40). Non-productive forest that has not been harvested is, by definition, old growth forest, but in this finding we use the terms old growth and old forest to describe only productive forest that has not been previously harvested.

Nests are typically located in large trees within mature or old growth forest stands that have greater volume and canopy cover than the surrounding forest (Iverson et al. 1996, pp. 47–56; Flatten et al. 2002, pp. 2–3; McClaren 2003, p. 12; McClaren and Pendergast 2003, pp. 4–6; Doyle 2005, pp. 12–14; USFWS 2007, pp. 26–30). As with goshawks elsewhere, nesting pairs appear to be territorial, with nests spaced somewhat uniformly across available habitat. Thorough searches on Vancouver and the Queen Charlotte Islands have documented goshawk nest stands spaced 4 to 9 miles (7 to 15 kilometers (km)) apart, as compared to 2 to 5 miles (3 to 7 km) apart for goshawks outside the range of the Queen Charlotte subspecies (McClaren 2003, pp. 13 and 21; Doyle 2005, p. 15; USFWS 2007, pp. 45–47).

Mature and old forest habitat provides productive habitat for prey species in a setting that goshawks can effectively hunt (see Food Habits). Such habitat appears to be critical in the vicinity of the nest (Ethier 1999, p. 31; Finn et al. 2002, pp. 270–271; McClaren 2003, pp. 11 and 16; Desimone and DeStefano 2005, pp. 317–318; Patla 2005, pp. 328–330), where it is used by fledglings learning to fly and hunt (Reynolds et al. 1992, pp. 15–16; Kennedy et al. 1994, p. 80; McClaren et al. 2005, pp. 260–261).

Doyle (2005, p. 14) found that all 10 known nest territories on the Queen Charlotte Islands had at least 41 percent mature and old growth forest, and successful nest territories had at least 60 percent mature-old growth forest, suggesting that about half of the territory must be mature or old forest to support nesting goshawks.

Food Habits

Goshawks hunt primarily by flying between perches and launching attacks from those perches. They take a variety of medium-sized prey, depending largely on local availability (Squires and Reynolds 1997, p. 1), which varies markedly among the islands in the Queen Charlotte goshawk's range. Red squirrels (*Tamiasciurus hudsonicus*) and sooty grouse (*Dendragopus fuliginosis*) (formerly blue grouse, *D. obscurus*) form the bulk of the diet in many locations (although neither occur on Prince of Wales and nearby islands in southern Southeast Alaska), with thrushes, jays, crows, ptarmigan, and woodpeckers frequently taken as well (Ethier 1999, pp. 21–22 and 32–47; Lewis 2001, pp. 81–107; Lewis et al. 2004, pp. 378–382; Doyle 2005, pp. 30–31). During winter, many avian prey species migrate from the region, reducing the variety and abundance of prey available. Rabbits and hares are frequently taken by goshawks during winter elsewhere, but within the range of the Queen Charlotte goshawk, rabbits and hares are limited to portions of the mainland, Vancouver Island (BC), and Douglas Island (AK) (Ethier 1999, p. 22; MacDonald and Cook 1999, pp. 23–24; Nagorsen 2002, pp. 92–97; Doyle 2005, p. 31).

Prey availability is defined by both prey abundance and suitability of habitat for successful hunting. Timber harvest typically results in prey declines because few potential prey species adapted to open and edge habitats exist within the range of the Queen Charlotte goshawk (Iverson et al. 1996, pp. 59–61; Doyle and Mahon 2003, p. 39; USFWS 2007, pp. 42–45). Goshawks hunt from perches and have limited ability to take prey far from forest cover (i.e., in large openings created by logging). Potential prey animals that use dense second-growth stands (which typically follow logging) are likely to be unavailable, because these stands do not offer adequate flight space for goshawks (DeStefano and McCloskey 1997, p. 38; Beier and Drennan 1997, p. 570; Greenwald et al. 2005, pp. 125–126; USFWS 2007, pp. 62–67).

Home Range and Seasonal Movements

Breeding-season home ranges average about 11,000 acres (ac) (4,500 hectares (ha)) for females and 15,000 ac (6,000 ha) for males. During winter, Queen Charlotte goshawks typically shift their activity centers and range farther, but remain in the region. Females often move more than males during winter, when use areas average about 84,000 ac (34,000 ha) for females and 47,000 ac (19,000 ha) for males. Males apparently remain within or near their nesting home ranges during winter, while some females leave their nesting areas altogether to winter elsewhere in the region (Flatten et al. 2001, pp. 9–11; Lewis and Flatten 2004, pp. 2–3; McClaren 2004, p. 6). Following winter, some females and apparently all surviving males return to their previously used nesting areas, while some females move to new nesting areas and pair with new mates (Flatten et al. 2001, p. 9–11).

Reproduction

Nest occupancy (percentage of nest areas with adult goshawks present) and nesting activity (percentage of nest areas with eggs laid) appear to vary with habitat suitability (Ethier 1999, p. 31; Finn et al. 2002, pp. 270–271; McClaren 2003, pp. 11 and 16; Desimone and

DeStefano 2005, pp. 317–318; Patla 2005, pp. 328–330), prey availability (Doyle and Smith 1994, p. 126; McClaren et al. 2002, p. 350; Ethier 1999, p. 36; Salafsky et al. 2005, pp. 242–244), and weather (Patla 1997, pp. 34–35; Finn et al. 1998, p. 1; McClaren et al. 2002, p. 350; Fairhurst and Bechard 2005, pp. 231–232), with greater occupancy or activity in areas with less fragmented forest habitat and in years with higher prey abundance and with warmer, drier weather.

Individual nests are frequently not used in subsequent years as pairs often move to an alternate nest. Most alternate nests are clustered within a few hundred hectares (McClaren 2003, p. 13; Flatten et al. 2001, p. 9), although females have been documented leaving the nesting area altogether and nesting in subsequent years with a new mate in a different territory up to 95 miles (152 km) away. Males have been documented moving up to 2 miles (3.2 km) between subsequent nests, but apparently remain in their nesting area in subsequent years (Flatten et al. 2001, pp. 9–10).

When prey availability and weather are suitable and nesting is initiated, nest success (percent of active nests that fledge at least one young) is typically high (87 percent rangewide, 1991 to 2004), as is productivity (1.6 to 2.0 fledglings per active nest) (USFWS 2007, p. 54), although Ethier (1999, p. 31) found higher productivity in contiguous old and mature second growth forests than in fragmented forest.

Fledglings typically spend about 6 weeks within several hundred yards of their nests, in an area of 570 ac (230 ha) or less (average 146 ac (59 ha)) learning flight and hunting skills before dispersing (McClaren et al. 2005, p. 257). Retention of mature forest structure near the nest is believed to be important for supporting this developmental stage (Reynolds et al. 1992, pp. 15–16; Kennedy et al. 1994, p. 80; McClaren et al. 2005, pp. 260–261). Adults continue to feed the young and protect them from predators during this period. In Southeast Alaska, juveniles moved up to 100 miles (160 km) (some possibly farther as their radio-telemetry signals were lost) to areas where they either spent the winter or died (Iverson et al. 1996, p. 30).

Survival Rates

Annual survival rates for adult goshawks in Southeast Alaska were low for males (0.59) and for females that wintered in the same area where they nested (0.57), but high for females that left their breeding areas during the winter (0.96), with most mortality occurring in winter (Flatten et al. 2002, p. 3; Titus et al. 2002, p. 1; McClaren 2003, p. 23).

Life-table calculations using vital rates observed and inferred from Southeast Alaska suggest that juvenile survival must approach 50 percent and a high proportion of adults must breed if goshawk populations are to remain stable in the region (USFWS 2007, pp. 58–59). Population viability analyses for goshawks on the Queen Charlotte Islands (approximately 12 percent of the subspecies' geographic range) estimate the probability of long-term population survival to be between 0 and 31 percent, due primarily to stochastic effects on the small population likely to remain after projected logging occurs (Doyle and Holt 2005, p. 7). Data on juvenile survival, age at first breeding, and percent of adults breeding, however, are lacking for Queen Charlotte goshawks. Therefore, these demographic models are necessarily speculative, and of limited reliability.

Population Estimates

Goshawk populations are difficult to census, but breeding pair populations have been estimated by adjusting habitat capability (number of potential territories) to reflect observed nest area occupancy rates. Marquis et al. (2005, pp. 22–26) calculated habitat capability for Vancouver Island by extrapolating mean nest spacing (4.3 mi (7 km) between adjacent nests) to determine that up to 126 territories could fit on the island. Potential territories were ranked by the percentage of suitable habitat (defined by stand age, tree species, biogeoclimatic subzone, and canopy closure). Only 103 territories had more than 25 percent suitable habitat, 44 had more than 50 percent suitable habitat, and 6 had more than 75 percent suitable habitat.

It is not known how much suitable habitat is required within a territory, and the amount probably varies depending on the prey community present in the area, but Doyle (2005, p. 14) found that all 10 known nest territories (25,000-ac (10,000-ha) circles centered on the nests) on the Queen Charlotte Islands had at least 41 percent mature and old growth forest, and successful nests had at least 60 percent mature-old growth forest. Iverson et al. (1996, p. 55) documented an average of 51 percent coverage by productive mature and old forest in 10,000-acre (4,000 ha) circles surrounding nests in Southeast Alaska, although coverage by productive forest ranged from 22 to 89 percent. These observations suggest that territories composed of 50 percent or more productive mature and old forest provide the best habitat, although some pairs will use territories with lesser amounts of this preferred habitat. We therefore conclude that Vancouver Island may support about 44 to 100 viable territories. Given recent nest occupancy rates of 55 percent on Vancouver Island (McClaren 2006, p. 8), there may be only 24 to 45 breeding pairs on average. In years with abundant prey and good weather, nest activity is likely to be higher, but based on territory spacing, it seems unlikely that there could be more than about 100 pairs on Vancouver Island.

McClaren (2006, p. 8) applied the observed 55 percent nest occupancy rate to Cooper and Chytyk's (2000, p. 19) less sophisticated estimate that Vancouver Island might have space for up to 300 territories, to calculate an average of 165 breeding pairs on Vancouver Island.

Marquis et al. (2005, pp. 27–28) plotted 53 potential nesting areas on the Queen Charlotte Islands, 47 of which contained more than 25 percent suitable habitat and 9 of which contained more than 50 percent suitable habitat. Recent nest occupancy rates of 43 percent on the Queen Charlotte Islands (McClaren 2006, p. 8) suggest there may be only 4 to 20 pairs on the Queen Charlotte Islands in average years.

Doyle and Holt (2005, p. 4) plotted 61 potential territories on the Queen Charlotte Islands, 24 to 43 of which were thought to be viable based on the percentage of mature and old forest cover. McClaren (2006, p. 8) adjusted that estimate with recent nest area occupancy rates from the Queen Charlotte Islands (43 percent) to estimate that there may be 10 to 18 breeding pairs. Doyle (2005, pp. 13–18) plotted 58 potential territories on the Queen Charlotte Islands, but only 10 to 25 had adequate habitat to support nesting. Doyle (2005, p. 18) used nest activity rates to estimate that 4 to 13 of those territories might support breeding. Cooper and Chytyk (2000, p. 20) estimated that the Queen Charlotte Islands might support 50 pairs, based on their analysis of relative size and perceived habitat quality compared to Vancouver Island. Doyle (2007, p. 6) documented 6 active nests on the Queen Charlotte Islands in 2006.

An interagency modeling effort using observed home range sizes estimated that the Tongass National Forest (76 percent of the total area and 85 percent of the productive forest in Southeast Alaska) could hold 580 to 747 nesting territories, depending on how suitable habitat is defined (Schempf and Woods 2000, pp. 1–8; Schempf 2000, p. 1). Adjustment to reflect 45 percent territory occupancy observed in

Southeast Alaska, 1991 to 1999 (Flatten et al. 2001, p. 7) suggests 261 to 336 breeding pairs on the Tongass National Forest. Extrapolation of this number suggests 300 to 400 pairs across Southeast Alaska. An earlier habitat capability model based on home range sizes suggested that Southeast Alaska may hold between 100 and 200 breeding pairs (Crocker-Bedford 1994, p. 4).

We consider the habitat capability estimates by Marquis et al. (2005, pp. 22–28) to represent the best available data for Vancouver Island, those of Doyle and Holt (2005, p. 4) to be the best available for the Queen Charlotte Islands, and the interagency effort described by Schempf and Woods (2000, pp. 1–8) to be the best available for Southeast Alaska. These estimates are judged better than other available estimates because they were based on evaluation of territory-sized arrangement of habitat, rather than region-wide estimates of habitat (e.g., Crocker-Bedford 1994, Cooper and Chytyk 200, p. 19). We favor Doyle and Holt's (2005, p. 4) estimate for the Queen Charlotte Islands over Marquis et al.'s (2005, p. 27–28) estimates for those islands because of Doyle's field experience with goshawks on those islands (which Marquis et al. lacked). Doyle and Holt's (2005, p. 4) effort represented a refinement of Doyle's (2005, p. 18) estimates, so we favor the former. None of the models have been verified, and we consider all to be of low precision. Based on these models, a review of the range of estimates available, and discussions with goshawk biologists, we estimate that Vancouver Island may have about 50 to 100 pairs, the Queen Charlotte Islands 8 to 15 pairs, and Southeast Alaska 300 to 400 pairs. We believe the rangewide population is approximately 350 to 500 pairs, plus an unknown number of non-breeding juveniles and adults.

Populations are believed to have declined, primarily due to timber harvest since the mid 1900s, although direct measures of goshawk populations and population trends are not available. Habitat models suggest that habitat capability has declined 30 percent in Southeast Alaska, 50 percent rangewide (Crocker-Bedford 1990, pp. 6–7), and by 57 to 81 percent on the Queen Charlotte Islands (Doyle 2005, pp. 15–16). Further declines are projected on the Queen Charlotte Islands through year 2050 (Doyle and Holt 2005, p. 4). Habitat capability projections are not available for Vancouver Island.

Response to the District Court's Question on Vancouver Island

In its May 24, 2004 order, the D.C. District Court directed the Service in connection with its 1997 12-month finding under 16 U.S.C. 1533(b)(3)(B), to reconsider and explain a determination as to whether or not Vancouver Island is a ''significant portion'' of the Queen Charlotte goshawk's entire range, and to assess whether the subspecies is endangered or threatened on Vancouver Island (*Southwest Center for Biological Diversity* v. *Norton,* No. 98–934, 2002 U.S. Dist. LEXIS 13661, (D.D.C. July 29, 2002).

The Act defines an endangered species as one ''in danger of extinction throughout all or a significant portion of its range'', and a threatened species as one ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The term ''significant portion of its range'' is not defined by the statute.

For purposes of this finding, a significant portion of a species' (or subspecies') range is an area that is important to the conservation of the species because it contributes meaningfully to the representation, resiliency, or redundancy of the species. Adequate representation insures conserving the breadth of the genetic makeup of the species needed to conserve its adaptive capabilities. Populations in peripheral areas, for example, may be important in this aspect. Resilience refers to the ability of a species to recover from periodic disturbances or environmental variability. In general, a species is usually most resilient in highest quality habitat. Redundancy of populations is needed to provide a margin of safety for the species to withstand catastrophic events. The contribution of the range portion must be at a level such that its loss would result in a decrease in the ability to conserve the species. It does not mean however, that if such portion of the range were lost, the species as a whole would be in danger of extinction immediately or in the foreseeable future; rather, that the ability to conserve the species would be compromised.

We estimate that Vancouver Island once held approximately 37 percent of the Queen Charlotte goshawk's habitat, yet due to disproportionate logging, now contains about 27 percent (USFWS 2007, pp. 99–101). Population estimates are uncertain, but there are probably only several hundred breeding pairs of Queen Charlotte goshawks throughout the entire range of the subspecies. Vancouver Island may support 50 to 100 breeding pairs, or about 15 to 20 percent of the rangewide population. Given the apparently low numbers of breeding pairs rangewide, loss of the Vancouver Island population would result in a meaningful decrease in redundancy and resilience of the rangewide goshawk population, and increase rangewide demographic vulnerability.

Preliminary genetic results suggest that goshawks on Vancouver Island may be genetically distinct from goshawks on the Queen Charlotte Islands and in Southeast Alaska (Talbot et al. 2005, pp. 2–3; Talbot 2006, p. 1). These potentially significant findings, if confirmed by peer review and/or corroborated by additional work, may provide additional indication of the significance of the Vancouver Island population because loss of genetic variability found there could reduce both representation and resilience of the subspecies, as defined above. This genetic diversity, for example, may help allow the subspecies to respond and adapt to future environmental changes, particularly as warmer-adapted forest communities move northward in response to climate change.

In summary, the Queen Charlotte goshawk population on Vancouver Island contributes to the redundancy of the subspecies rangewide, as this area historically provided a significant amount of goshawk habitat, and continues to do so by supporting a significant proportion of the rangewide population. We therefore conclude that Vancouver Island is a significant portion of the Queen Charlotte goshawk's entire range. Further, genetic variation present in the goshawk population on Vancouver Island may be important to the long-term conservation of the species, and potentially provides additional (although unconfirmed at this time) support for Vancouver Island as a significant portion of the subspecies' range.

The goshawk population on Vancouver Island lies within the British Columbia DPS, which we discuss in the next section (see Distinct Population Segments). As such, threats to the goshawk on Vancouver Island and elsewhere within the British Columbia DPS are evaluated in detail below (see *British Columbia Distinct Population Segment*). The court's question of whether listing is warranted for the Queen Charlotte goshawk on Vancouver Island, is addressed following our analysis of threats within the British Columbia DPS (see *Significant Portions of the British Columbia DPS's Range*).

We ultimately conclude that we have sufficient information to support listing the subspecies as threatened or

endangered in the British Columbia DPS, which includes the Vancouver Island SPR (See British Columbia DPS Finding). Because this determination covers all of the Vancouver Island SPR, a separate listing determination for the Vancouver Island SPR is not needed at this time. As we formally propose to list the British Columbia DPS of the Queen Charlotte goshawk, we will make a separate determination of listing status for the Vancouver Island SPR.

Distinct Population Segments

Section 2(16) of the Act defines ''species'' to include ''any distinct population segment of vertebrate fish or wildlife which interbreeds when mature.'' To interpret and implement the DPS provisions of the Act and Congressional guidance, the Service and the National Marine Fisheries Service published a Policy Regarding the Recognition of Distinct Vertebrate Population Segments in the **Federal Register** (DPS Policy) on February 7, 1996 (61 FR 4722). Under the DPS policy, three factors are considered in a decision concerning the establishment and classification of a possible DPS. These are applied similarly for additions to the list of endangered and threatened species. The first two factors—discreteness of the population segment in relation to the remainder of the taxon and the significance of the population segment to the taxon to which it belongs—bear on whether the population segment is a valid DPS. If a population meets both tests, it is a DPS and then the third factor is applied—the population segment's conservation status in relation to the ESA's standards for listing, delisting or reclassification (i.e., is the population segment endangered or threatened).

Discreteness Analysis

Under the DPS policy, a population segment of a vertebrate taxon may be considered discrete if it satisfies either of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation; or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of Section 4(a)(1)(D) of the Act.

Queen Charlotte goshawks in British Columbia (on the Queen Charlotte Islands and Vancouver Island) are separated from those in Southeast Alaska by an international border. The subspecies is listed as Threatened under the SARA by the Canadian Federal Government, and as a Species at Risk by the British Columbia Provincial Government. Management of habitat and the mechanisms that regulate that management differ substantially, with greater levels of habitat loss from logging in British Columbia than in Southeast Alaska. In Southeast Alaska, approximately 13 percent (880,000 ac (356,000 ha)) of the 6.4 million ac (2.6 million ha) of productive forest has been harvested to date, with another 15 percent (929,000 ac (376,000 ha)) expected to be harvested over the next 50 to 100 years (USFWS 2007, pp. 96–98, and Appendix A, Table A–9). In British Columbia, 45 percent (3.7 million ac (1.5 million ha)) of the 8.4 million ac (3.4 million ha) of productive forest has been harvested to date, with another 14 percent (1.2 million ac (480,000 ha)) expected to be harvested over the next 40 years (USFWS 2007, pp. 96–98, and Appendix A, Table A–9). Designated parks, reserves, and other non-development designations protect about 55 percent (3.5 million ac (1.4 million ha)) of the productive forest in Southeast Alaska and about 9 percent (776,000 ac (314,000 ha)) in British Columbia (USFWS 2007, pp. 96–98, and Appendix A, Table A–9).

Based on the differences in conservation status, habitat management, and regulatory mechanisms (discreteness criteria 2), we conclude that the ''British Columbia'' population and the ''Southeast Alaska'' populations are each discrete.

Significance Analysis

If a population segment is considered discrete under one or more of the conditions described in our DPS policy, its biological and ecological significance is to be considered in light of Congressional guidance that the authority to list DPSs be used ''sparingly'' while encouraging the conservation of genetic diversity. In carrying out this examination, we consider available scientific evidence of the population segment's importance to the taxon to which it belongs. This consideration may include, but is not limited to: (1) Its persistence in an ecological setting unusual or unique for the taxon; (2) evidence that its loss would result in a significant gap in the range of the taxon; (3) evidence that it is the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or (4)evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics. A population segment needs to satisfy only one of these criteria to be considered significant. Furthermore, the list of criteria is not exhaustive; other criteria may be used, as appropriate. Below, we consider the biological and ecological significance of the Southeast Alaska DPS, followed by the British Columbia DPS.

Southeast Alaska: The ecological setting in Southeast Alaska encompasses the northernmost occurrences of the subspecies, where it confronts colder temperatures year-round and more snow at low elevation during winter, especially in the northern portion of the range. Loss of this segment would result in a significant gap in the subspecies distribution, as approximately two-thirds of the land area and about 60 percent of the remaining habitat for the subspecies is in Southeast Alaska (USFWS 2007, Appendix A, Tables A–9 and A–12). Southeast Alaska formerly held 52 percent of the rangewide habitat for Queen Charlotte goshawks, but now has 61 percent and is projected to have 66 percent by 2100 (USFWS 2007, pp. 99–101). This area supports most of the world's population of Queen Charlotte goshawks, without which the subspecies would be restricted to the heavily impacted and vulnerable forests of coastal British Columbia. Therefore, we conclude that the Southeast Alaska population of the Queen Charlotte goshawk is significant to the taxon to which it belongs.

British Columbia: Loss of the Queen Charlotte goshawk from British Columbia would result in a significant gap in the subspecies' distribution, as approximately one-third of the land area and half of the productive forest (much of which has been harvested) is in British Columbia (USFWS 2007, Appendix A, Tables A–9 and A–12). As a result, we conclude that the British Columbia population of the Queen Charlotte goshawk is significant to the taxon to which it belongs. Further, preliminary genetic results additionally suggest that goshawks on the Queen Charlotte Islands and Vancouver Island may be distinct from those in Southeast Alaska (Talbot et al. 2005, pp. 2–3; Talbot 2006, p.1), and appear to encompass much of the genetic diversity present in the taxa. These potentially significant findings, if confirmed by peer review and/or corroborated by additional work, may provide additional indication of the significance of the British Columbia population segment.

Summary: As a result of the analysis described above, we find that the Southeast Alaska and British Columbia populations of Queen Charlotte goshawks are each discrete, as well as significant in relation to the remainder of the taxon; thus, are two separate, valid DPSs.

Factors Affecting Distinct Population Segments

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR 424) describe procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a), we may list a species on the basis of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

An endangered species is defined by the Act, with exception, as ''any species which is in danger of extinction throughout all or a significant portion of its range.'' A threatened species is defined as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' A species is defined by the Act to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.''

Since we have identified Southeast Alaska and British Columbia as two separate, valid DPSs, we next evaluate each DPS with regard to its potential threatened or endangered status using the five listing factors enumerated in section 4(a) of the Act. Additional detail on our analyses of these factors is available in our updated status review dated April 25, 2007 (USFWS 2007, pp. 102–121).

Southeast Alaska Distinct Population Segment

On May 24, 2004, the U.S. District Court ruled that the Service's 1997 decision to not list the Queen Charlotte goshawk as endangered or threatened based on its status in Southeast Alaska was neither arbitrary nor capricious, and the court showed deference to the agency on the technical and scientific conclusions in this case (*Southwest Center for Biological Diversity* v. *Norton,* No. 98–0934 (D.D.C. May 24, 2004)). Below, we provide an updated analysis of factors affecting the subspecies in Southeast Alaska.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Mature and old forest provides nesting and foraging habitat for goshawks, and supports populations of preferred prey (see Habitat and Food Habits sections, above). Logging within and near nest stands has been implicated in nest site abandonment, although effects of such logging on productivity have varied (Crocker-Bedford 1990, pp. 263–266; Penteriani and Faivre 2001, p. 213; Doyle and Mahon 2003, p. 39; Mahon and Doyle 2005, pp. 338–340; Doyle 2006, pp. 138–139). Clearcut logging also reduces prey populations (USFWS 2007, pp. 62–64) and negatively impacts foraging habitat by removing perches and hunting cover, creating openings and dense second-growth stands that are avoided by goshawks in Southeast Alaska (Iverson et al. 1996, p. 36).

Timber harvest began in Southeast Alaska in the early 1900s and peaked in the 1970s. Since then, harvests have declined dramatically due primarily to declining market demand and other economic conditions (Brackley et al. 2006, pp. 11–15; USFWS 2007, p. 73). Approximately 13 percent (880,000 ac (356,000 ha)) of the 6.4 million ac (2.6 million ha) of productive forest within the range of the Queen Charlotte goshawk in Alaska has been harvested to date, with another 15 percent (929,000 ac (376,000 ha)) expected to be harvested over the next 50 to 100 years (USFWS 2007, pp. 96–98, and Appendix A, Table A–9). Designated parks, reserves, and other non-development designations protect about 55 percent (3.5 million ac (1.4 million ha)) of the productive forest. Some productive forest outside designated reserves will be retained on either inoperable ground (e.g., too steep, unstable, or wet; 9 percent of the productive forest) or in retention areas designed to protect other resources (e.g., beach and stream buffers; 7 percent of the productive forest) on lands otherwise available for timber production (USFWS 2007, pp. 96–98, and Appendix A, Table A–9).

Approximately 85 percent of the 6.4 million ac (2.6 million ha) of productive forest in Southeast Alaska is managed by the U.S. Forest Service (USFWS 2007, Appendix A, Table A–9) under the terms of the TLMP, which includes a conservation strategy intended to reduce impacts of forest management on vulnerable species. Included are old growth reserves and other Forest Service non-development land use designations (such as Wilderness, Remote Recreation, Municipal Watershed, etc.), corridors of unharvested forest linking reserves, goshawk nest buffers, canopy retention in harvest units on part of one island, and pre-project goshawk surveys to locate nests prior to timber harvest.

Details of the conservation strategy were developed collaboratively by a planning team consisting of managers, research scientists, and resource specialists from the Forest Service, Service, and Environmental Protection Agency (Everest 2005, p. 21). The Alaska Department of Fish and Game was also closely involved. During development of the conservation strategy, the Forest Service published a conservation assessment for goshawks in Southeast Alaska (Iverson et al. 1996, pp. 1–101), and hosted goshawk risk assessment panels in 1995 and 1997 (Shaw 1999, p. 18). Biologists from the Forest Service, Service and the Alaska Department of Fish and Game were involved with the conservation assessment and the risk assessment panels.

Existing standards and guidelines within the TLMP are projected to maintain approximately 66 percent of the 2 million ac (807,000 ha) of productive old growth forest in areas open to commercial timber harvest on the Tongass National Forest (USFWS 2007, Appendix A, Table A–9). Under the current TLMP, operability standards that define the physical limitations of timber harvest due to factors such as slope and soil stability are projected to protect 35 percent of the remaining old growth in areas otherwise available for harvest. Areas with such limitations are termed ''inoperable''. Retention of forest stands to protect non-timber resources (such as fish-bearing streams, marine shorelines, eagle nests, wolf dens, caves, and cultural sites) is expected to protect an additional 31 percent of the old growth in areas open to timber harvest (USFWS 2007, p. 72, Table 9).

Small Old Growth Reserves or land use designations that prohibit timber harvest protect at least 16 percent of the land and at least 8 percent of the productive forest in each Value Comparison Unit (VCU) open for timber harvest. VCUs vary from about 1,000 acres (400 ha) to nearly 9,000 acres (3,600 ha), and generally follow the boundaries of medium-order watersheds. Designation of Small Old Growth Reserves and other non-development designations in VCUs open to timber harvest is in addition to whatever inoperable and retention areas

exist within the timber production designation.

There are approximately 3.7 million acres (1.5 million ha) open to logging on the Tongass National Forest (USDA Forest Service 1997, ROD p. 7), but only 2.0 million acres (0.8 million ha) support productive forest (USFWS 2007, Table A–9, p. 129); that is, lands open to logging are 54 percent forested. Retention of 66 percent of the productive old forest within the area open to timber harvest will therefore result in a landscape with an average of about 36 percent cover by old forest. Old Growth Reserves protect an additional 8 percent or more of the productive forest within each watershed otherwise open for timber harvest, and maturing second growth will provide additional habitat. We therefore expect that approximately 45 percent of the harvested landscape will support productive old or mature forest, once all forest available for harvest is converted to second growth.

Across all ownerships in Southeast Alaska, approximately 41 percent of the vegetated landscape (i.e., ice, bare rock, water, and other non-vegetated areas that are not goshawk habitat excluded) is covered by productive mature and old forest (Albert 2007, p. 2).

Doyle (2005, p. 14) found that nest territories on the Queen Charlotte Islands had at least 41 percent mature and old forest, and successful nests had at least 60 percent mature and old forest in the 25,000 ac (10,000 ha) surrounding the nest. Productive old and mature forest covered an average of 51 percent of each 10,000 ac (4,000 ha) circle surrounding 34 nests in Southeast Alaska (Iverson et al. 1996, p. 55). These observations lead us to believe that retention of 66 percent of the existing productive old forest within the otherwise harvested matrix of the Tongass National Forest, in addition to Small Old Growth Reserves in every watershed open to logging, and larger reserves outside the harvested matrix, will provide adequate nesting and foraging habitat for goshawks on the Tongass National Forest.

Nest trees discovered on the Tongass National Forest during pre-project surveys are protected from harvest and disturbance with 100-ac (40-ha) buffers (USDA Forest Service 1997, pp. 4–89). Because goshawks are sometimes secretive at their nests and may not be detected during pre-project surveys (Boyce et al. 2005, pp. 296–302), we expect that some nest stands will be inadvertently harvested. We expect this to be a relatively rare event that would usually lead to reproductive failure for the affected pair that year. Occasional nest failures occur naturally for various reasons, and a small number of such failures resulting from timber harvest is not likely to jeopardize the population if suitable alternate nest sites are available for subsequent nesting seasons. In most cases we expect that suitable alternative nest stands will be available in nearby reserves, retention areas, or on inoperable lands. Thus, while we believe that surveys for Queen Charlotte goshawk nests prior to timber harvest are important to the conservation of the subspecies, we do not consider occasional failure of such surveys to detect goshawks that are present to be a significant threat to the continued existence of the Queen Charlotte goshawk.

In 1954, prior to large-scale industrial timber harvest, the Tongass National Forest had 416 watersheds (as approximated by VCUs) with greater than 48 percent mature and old forest. By 1995, logging had reduced this number to 347, a 17 percent decline. Projections of logging on the Tongass National Forest done in 1997, based on full implementation of the 1997 TLMP, predicted that watersheds with greater than 48 percent mature and old forest would decline to 294 by 2055 (a 15% decrease from 1995 levels) and recover somewhat, to 338 by 2095 (3% decline from 1995) as second-growth matured (USFWS 2007, pp. 75–78). Since 1997, far less timber has been harvested than anticipated (30 to 50 million board feet annually, rather than the 267 million board feet annually used in the projections), so we expect impacts to goshawk territories to be much lower than predicted in 1997. Current projections of timber harvests are quite uncertain, with estimates of annual demand ranging from 48 to 370 million board feet (Brackley et al. 2006, p. 2). Unless new processing facilities are developed, timber harvests on National Forest lands are likely to remain well below 267 million board feet, as allowed under the TLMP (Brackley et al. 2006, pp. 24–27).

Most or all of the Queen Charlotte goshawk territories in which timber harvest will occur will likely remain viable territories because the conservation strategy within the TLMP ensures adequate amounts of mature and old forest will be available to support nesting and foraging. Reduced demand for wood from the Tongass National Forest, as compared to the 50 years prior to 1997 when now-defunct pulp mills were operating, is expected to result in lower impacts than previously believed. Therefore, we believe that the conservation strategy contained in the TLMP will substantially reduce the impact of future harvest on the Queen Charlotte goshawks on the Tongass National Forest, as compared to timber harvest done without consideration for goshawk conservation.

Approximately one-third of the timber harvested to date in Southeast Alaska has been on private land owned by Alaska Native corporations. Corporate lands, which cover only 3 percent of the total area of Southeast Alaska but include 7 percent of the region's 6.4 million ac (2.6 million ha) of productive forest, are distributed throughout Southeast Alaska, with concentrations on and near Prince of Wales Island in southern Southeast Alaska. Approximately 285,000 ac (116,000 ha) of productive forest have been harvested on corporate lands to date, with another 104,000 ac (42,000 ha) likely to be harvested over the next few decades (USFWS 2007, pp. 81–82, and Appendix A, Table A–8 and A–9).

Intensive logging on corporate lands has probably eliminated goshawk nesting and foraging habitat, and may have affected territories roughly in proportion to the percentage of region-wide productive forest that has been harvested. That is, we estimate that logging by native corporations has probably reduced the number of potential nesting territories by approximately 4 percent across Southeast Alaska. Future harvest on corporate lands may affect another 2 percent of the breeding territories. We believe that this proportionate relationship is reasonable because native logging has been concentrated rather than dispersed across the landscape thereby minimizing the number of potential territories affected. However, this logging has probably reduced mature and old forest representation to far below 50 percent in most of the territories affected, thus rendering such territories poor habitat.

Loss of territories is potentially of concern to long-term population resilience. However, population-level impacts from the loss of 4 to 6 percent of potential goshawk territories to native logging in Southeast Alaska may affect population growth by a smaller increment than suggested by number of impacted territories because (1) in some cases, adults in impacted territories may establish new territories in otherwise vacant territories, and (2) impacted territories in the southern portion of Southeast Alaska (Prince of Wales and vicinity) where Native Corporation lands are concentrated, naturally lack key prey and have probably always had relatively low reproductive success compared to territories elsewhere in the

range of the Queen Charlotte goshawk. Surveys across the range of the goshawk have consistently documented a significant percentage of unoccupied territories (55 percent in Southeast Alaska, 21 to 46 percent elsewhere in North America) (USFWS 2007, p. 48), suggesting that vacant territories are probably available for at least some displaced pairs.

A variety of federal agencies, the State of Alaska, municipalities, and private owners other than the Forest Service and native corporations manage 8 percent of the productive forest in Southeast Alaska (USFWS 2007, pp. 81–82 and 128). Some of these lands are protected from harvest while other lands are available for various forms of development. We expect Queen Charlotte goshawks to continue to use many of these lands, because with minor exceptions, timber harvest and clearing for other purposes tends to be less intensive on these lands than on lands designated by the Forest Service for timber production, or on native corporation lands.

To evaluate trends in habitat conditions across Southeast Alaska, the Service has developed a habitat value model using discount factors to award full habitat value to protected, productive forest and lower habitat value for second growth, fragmented, and vulnerable stands (USFWS 2007, pp. 99–101 and Appendix A, Tables A–10 to A–15). This model suggests that approximately 92 percent of the historical goshawk habitat value remains in Southeast Alaska. Future logging is projected to leave approximately 80 percent of the historical habitat value and 88 percent of the current habitat value if logging proceeds at the maximum pace allowed by TLMP which, as discussed above, is unlikely (USFWS 2007, Appendix A Table A–13). Slower rates of harvest than modeled are likely to result in retention of greater than 80 percent of the historic habitat value.

Intensive logging has the potential to modify habitat to such a degree that Queen Charlotte goshawks could be excluded from large portions of their range, leading to extinction of the subspecies from Southeast Alaska. We believe this outcome is unlikely because the conservation strategy of the TLMP, which covers 85 percent of the productive forest in Southeast Alaska, combined with habitat remaining on other ownerships in Southeast Alaska, is expected to retain adequate habitat within the vast majority of goshawk territories, with only a small number of territories likely to be harvested to a degree that would exclude goshawks. Therefore, we conclude that destruction, modification, or curtailment of habitat does not currently put the Queen Charlotte goshawk at risk of extinction in Southeast Alaska, nor is it likely to do so in the foreseeable future.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We do not believe that the Queen Charlotte goshawk is subject to frequent shooting or other illegal take, although occasional shootings may occur. Most of its range is very sparsely inhabited by humans and contacts with humans are relatively rare. Take of Queen Charlotte goshawks for falconry is extremely limited, with one known instance in Alaska since 1990 (USFWS 2007, p. 107). Overutilization for commercial, recreational, scientific, or educational purposes is not believed to be a significant risk in Southeast Alaska and is therefore not expected to contribute to population declines or extinction risk.

Factor C. Disease or Predation

Squires and Reynolds (1997, p. 20), Squires and Kennedy (2006, pp. 39–40), and Reynolds et al. (2006, pp. 269–270) summarized information on diseases and parasites affecting northern goshawks, including tuberculosis, trichomoniasis, erysipelas, *Aspergillus*, lice, West Nile virus, heart failure caused by *Chlamydia tsittaci* and *Escherichia coli*, and various blood parasites as potential infectious agents in goshawk populations. Although there has been little or no investigation in this area, we have no indication that Queen Charlotte goshawks have experienced any significant problems with disease.

Squires and Reynolds (1997, p. 20) cite instances of predation on northern goshawks by great horned owl (*Bubo virginianus*), bald eagle (*Halieetus leucocephalus*), marten (*Martes americana*), and wolverine (*Gulo gulo*). All of these predators are present in Southeast Alaska. Wiens et al. (2006, p. 411) documented predation as a leading cause of mortality (along with starvation) among fledgling goshawks in Arizona. Data on predation are not available for the Queen Charlotte goshawk, but we expect that predators do take young and occasionally adult Queen Charlotte goshawks.

Disease and predation can contribute to population declines, especially in the presence of other stress factors such as prey shortages. Either threat can also suppress the recovery of small populations that have been depressed by other factors such as overharvest or habitat loss, even after the initial cause of the population decline has been removed.

The goshawk population in Southeast Alaska is spread over many islands covering 20 million ac (8 million ha). Predator and prey communities vary among island groups across the southeast region of Alaska, so the effects of predation are likely to vary accordingly. There is no indication that Queen Charlotte goshawks have experienced any significant problems with disease or predation in Alaska, and neither appear to place the Queen Charlotte goshawk in danger of extinction, now or in the foreseeable future.

Factor D. Inadequacy of Existing Regulatory Mechanisms

Regulatory mechanisms in Alaska protect both goshawks and their habitat. Goshawks, their nests, eggs, and young are protected from take by the federal Migratory Bird Treaty Act, except as permitted by regulations governing scientific research, falconry, and similar activities (16 U.S.C. 703). The State of Alaska allows take of goshawks only by permitted falconers (5 AAC 92.037), and only one goshawk has been taken for permitted falconry since 1990 in Southeast Alaska.

Goshawk habitat is protected by a variety of regulatory mechanisms. Protected lands in Southeast Alaska include Congressionally designated National Monuments, Wilderness Areas, and roadless land designations within the Tongass National Forest (31 percent of the productive forest in Southeast Alaska); Forest Service land use designations such as Remote Recreation and Old Growth Habitat (23 percent of the region-wide productive forest); and National Parks (13 percent of the land base but less than 1 percent of the productive forest) (USFWS 2007, pp. 72 and 81, and Appendix A, Tables A–8 and A–9). About 69,000 ac (28,000 ha) are protected in State Parks, and 54,000 ac (22,000 ha) are protected in parks and various conservation agreements on municipal and private lands (together less than 1 percent of the total area and productive forest of Southeast Alaska) (Albert and Schoen 2006, p. 19). Designations that prohibit timber harvest collectively cover approximately 3.5 million ac (1.4 million ha) (55 percent) of the 6.4 million ac (2.6 million ha) of productive forest in Southeast Alaska (USFWS 2007, Appendix A, Table A–9).

The conservation strategy of the 1997 TLMP, which covers 76 percent of the land area and 85 percent of the productive forest in Southeast Alaska, incorporates several elements to reduce

impacts of timber harvest on goshawks, as discussed above under Factor A. Included are large, medium and small old growth reserves and other Forest Service non-development land use designations, nest buffers, canopy retention in harvest units on heavily-harvested portions of Prince of Wales Island, and pre-project goshawk surveys to locate nests prior to timber harvest. Each of these elements is discussed below.

Small old growth reserves on the Tongass National Forest protect a minimum of 16 percent of the total National Forest land and 8 percent of the productive old growth forest in each watershed that is designated for timber harvest, in addition to retention areas such as stream and beach buffers, and inoperable lands. This arrangement, which maintains significant amounts of unharvested forest within timber harvest areas is particularly appropriate for goshawks, which space their nests fairly uniformly across the landscape (about 4 to 9 miles (7 to 14 km) apart in British Columbia, unmeasured in Alaska) (McClaren 2003, pp.13 and 21; Doyle 2005, p. 15; USFWS 2007, pp. 45–47). Large reserves are approximately 40,000 ac (16,000 ha), with at least 20,000 ac (8,000 ha) of productive old growth forest, and medium reserves are approximately 10,000 ac (4,000 ha) with at least 5,000 ac (2,000 ha) of productive old growth forest. Large and medium reserves protect several adjacent watersheds, and are linked by corridors of old growth forest retained primarily along streams and marine shorelines (USDA Forest Service 1997, TLMP Appendix K). These corridors are expected to benefit several prey species, such as squirrels, grouse, and passerines. The Forest Service has worked in partnership with the Service and the Alaska Department of Fish and Game to improve the location and composition of many small old growth reserves following the guidelines specified in Appendix K of the TLMP. Among the Appendix K guidelines designed for goshawk conservation are those that specify that reserves should maximize interior forest conditions, minimize early seral stages and include the largest remaining blocks of contiguous old growth within the watershed and known or suspected goshawk nesting habitat.

Buffers of 100 ac (40 ha) of productive old growth forest are required around confirmed and probable nests (occupied or not), where (1) timber harvest is not allowed; (2) new road construction is allowed only if no other reasonable alternative exists; and (3) continuous disturbance is prohibited during the nesting period. Surveys for nesting goshawks are required during project evaluations, and retention of 30 percent canopy closure is required in heavily-harvested areas on Prince of Wales Island in the southern Tongass National Forest, where key prey (red squirrels and sooty grouse) are naturally lacking.

As discussed above under Factor A, existing standards and guidelines within the TLMP are projected to maintain approximately 66 percent of the 1.4 million ac (582,000 ha) of productive old growth forest in areas open to commercial timber harvest on the Tongass National Forest (USFWS 2007, p. 72, Table 9). Parks and various non-development designations protect essentially all of the 3.5 million ac (1.4 million ha) of productive forest outside the areas open to timber harvest.

Concerns have been expressed over effectiveness of both the design of the conservation strategy contained in the TLMP (e.g., Powell et al. 1997, pp 2–10), and its implementation (Greenwald and Bosman 2005, pp. 9–17). Specific issues include: (1) Reserves are too small and are inadequately linked by corridors (primarily stream and beach buffers) that are too narrow to provide interior forest conditions and withstand windstorms; (2) most of the largest old growth blocks are vulnerable to fragmentation by roads and logging as the highest-volume stands continue to be disproportionately harvested, primarily by large-scale clearcutting, a method that neither mimics natural disturbance patterns in the rainforest nor maintains old-forest habitat; (3) harvest rotations averaging 105 years as planned (USDA Forest Service 1997, FEIS pp. 3–299) will not regenerate old growth characteristics in harvested stands (Powell et al 1997, p. 9); (4) the 100-ac (40-ha) nest buffers for goshawk are inadequate to protect foraging habitat within the home range of nesting birds (Greenwald and Bosman 2006), alternate nests (Flatten et al. 2001, pp. ii and 16–17), and post-fledging areas (USFWS 2007, p. 110); (5) old growth reserve designations have been inadequate; (6) timber harvest and other developments have been permitted in old growth reserves; and (7) pre-project goshawk surveys have been inconsistent and ineffective (Greenwald and Bosman 2006, pp. 9–17). Our responses to these (numbered) concerns are discussed in the following (correspondingly-numbered) paragraphs.

(1) We agree that goshawks would benefit from greater retention of large blocks of structurally diverse old growth, particularly in heavily harvested areas. However, in addition to old growth reserves, many other designations on the Tongass National Forest, such as Wilderness, National Monument, Research Natural Area, Special Interest Area, Remote Recreation, and Municipal Watershed, contribute to habitat protection for goshawks. Old Growth Reserves are not intended to supply all the habitat necessary for goshawk conservation. Rather, they are intended to strategically supplement the other non-development designations in a way that together the combination of protected lands and the corridors linking them provide adequate habitat for the entire suite of old-growth-dependent wildlife on the Tongass National Forest. We believe that the system as implemented provides adequate habitat for Queen Charlotte goshawks on the Tongass National Forest because large reserves outside the harvested areas will provide suitable habitat for most of the breeding pairs in Southeast Alaska while significant blocks of old growth forest will remain in areas otherwise subject to timber harvest. We expect only a small percentage (probably less than 5 percent) of the watersheds that currently provide adequate nesting habitat to be rendered unsuitable by logging, especially given current and reasonably foreseeable demand for timber from the Tongass National Forest (see discussion under Factor A, above).

Connectivity among forest patches is unlikely to be problematic for goshawks directly because they can fly between forest patches, but it is probably critical to some of their prey such as red squirrels. DeSanto et al. (2006, pp. 6–10) reported that several avian prey species (e.g., red-breasted sapsucker *(Sphyrapicus ruber),* hairy woodpecker (*Picoides* villosus), hermit thrush *(Catharus guttatus),* and varied thrush *(Ixoreus naevius)*) nested successfully in 1,000-foot (305-meter) wide beach buffers, but were less successful in narrower beach buffers. Based on these results, we believe that 1,000 ft (305 m), as specified in the TLMP, is a reasonable minimum width for corridors. Goshawks probably forage in the beach and stream buffers that connect old growth reserves, but these remnants should not be considered prime nesting habitat, as they lack interior conditions apparently favored by goshawks.

(2) Fragmentation by roads, rock pits and timber harvest (including salvage and thinning) may have degraded some reserves. Minor fragmentation is unlikely to adversely affect goshawks, as they forage over large areas of heterogeneous habitat. Forest habitat in some parts of Southeast Alaska has been, or will be, fragmented to a much

greater degree (USFWS 2007, pp. 71–78). Queen Charlotte goshawks appear to be sensitive to timber harvest when it reduces mature and old growth forest to less than approximately 50 percent of a bird's home range (Doyle 2005, p. 14). Across all areas available for timber harvest, however, the Forest Service estimates that approximately 66 to 69 percent of the productive old growth forest will be retained in various buffers (e.g., riparian, beach, and estuary buffers) or inoperable areas (e.g., wet, steep, or unstable areas) (USDA Forest Service 1997, ROD p. 7; USFWS 2007, Appendix A, Table A–9). These buffers and other unharvested areas are interspersed throughout the otherwise harvested matrix lands, with retention required in every watershed. Few of the watersheds that currently offer suitable habitat are likely to be reduced below critical levels on National Forest lands, and most of those are likely to recover as second growth matures and harvest shifts away from old growth forest and onto second growth. We therefore believe that adequate habitat will remain in most goshawk territories on the Tongass National Forest.

Harvest regimes that create smaller openings, such as single-tree and group selections would favor goshawk conservation by avoiding creation of extensive blocks of dense second growth that goshawks cannot penetrate. Partial harvests such as shelterwood cuts or retention of patches of trees within harvest units, could provide perches and hunting cover for several years before second growth stands filled the understory. Overstory retained in such systems, if windfirm and left unharvested, might also provide nesting structures as the surrounding second growth approached maturity. Such retention is currently required on Tongass National Forest lands on Prince of Wales Island for goshawks, and in a few other heavily harvested areas to help reduce impacts on American marten. Clearcuts up to 100 acres (40 ha) remain the primary means of timber harvest across most of the Tongass National Forest (USDA Forest Service 1997, ROD p. 5), but retention of various buffers and reserves between harvest units should provide adequate foraging habitat in most areas, as approximately 72 percent of the productive forest in Southeast Alaska will not be logged (USFWS 2007, pp. 98 and 129), and 66 to 69 percent of the productive old growth in areas of commercial harvest will be retained (USDA Forest Service 1997, ROD p. 7). Although mature and old forest cover is likely to be reduced to below 50 percent in some watersheds, the number of watersheds so affected is likely to be much lower than projected in 1997 because timber harvests since then have taken only about 15 percent of the volume expected at that time.

(3) Harvest rotations averaging 105 years in even-aged stands, as specified in the current TLMP, will provide a decade or two at the end of each rotation when goshawks will be able to use the regenerating forests. While these areas provide some habitat value for part of the rotation, unharvested areas are far more important because they cover a much greater area and they will remain interspersed among harvested stands, protecting over half of the productive forest in most of the goshawk territories on the Tongass National Forest.

(4) Nest buffers of 100 ac (40 ha) of productive old growth, as specified in the TLMP, are intended to protect individual nests from disturbance. Larger buffers would likely enhance goshawk conservation by providing better habitat for fledglings in the immediate vicinity of the nest, but lack of larger buffers is not expected to reduce fecundity or survival to an unsustainable level because old growth reserves, which typically protect much larger patches of old growth forest, and other retained forest patches are reserved in each watershed, and we expect goshawks to nest in these reserves as the forest around them is increasingly harvested. In some cases, suitable nesting habitat in nearby reserves may already be occupied by nesting pairs, but the territoriality of goshawks is likely to prevent this in most cases.

(5) and (6) As stated above, we agree that goshawks would benefit from greater retention of large blocks of structurally diverse old growth, particularly in heavily harvested areas, and that fragmentation by roads, rock pits and timber harvest (including salvage and thinning) may have degraded some reserves. However, many designations in addition to old growth reserves contribute to habitat protection for goshawks (discussed under (1), above), and we believe that the full complement of protected habitat is sufficient to maintain goshawk populations in Southeast Alaska because large and small blocks of unharvested productive forest will remain interspersed among the harvested units, retaining over 50 percent of the productive forest in most goshawk territories which, as discussed above under Factor A, should provide suitable nesting and foraging habitat.

(7) Current standards for pre-project goshawk surveys in project areas where there is no previous history of goshawk activity rely largely on incidental observation of goshawks followed by a more focused survey effort where evidence of goshawks is reported. Forest Service records document pre-project surveys for goshawks at 6,356 sites, resulting in 260 goshawk detections (Rose 2006, p. 2). We believe that active surveys for nesting goshawks prior to timber harvest or other projects that could affect nesting habitat are a valuable tool for minimizing impacts to goshawks. Reliance on inadequate or inconsistent surveys can lead to erroneous conclusions about goshawk presence. Therefore, consistent implementation of adequate surveys is important.

In spite of the shortcomings discussed above, we find that the full suite of standards, guidelines, and land designations contained in the 1997 TLMP are likely to provide adequate habitat protection to sustain goshawks in Southeast Alaska into the foreseeable future, largely because adequate amounts of old and mature productive forest will be protected in reserves, retention areas, and inoperable stands, in large and small patches, throughout the harvested matrix. Protection of nest stands remains an important element of the conservation strategy for goshawks because nest stands typically support several alternate nests (some of which may remain undetected) and frequently support active nesting after one or more years of nest inactivity. Nest inactivity is often due to inclement spring weather or low prey populations (USFWS 1997, pp. 41 and 53), but where suitable habitat remains intact in the surrounding landscape, nest stands are likely to be re-used by nesting goshawks. Surveys to identify nests increase the likelihood that nest stands are discovered and protected.

The TLMP and its conservation strategy are currently being reviewed, with a range of alternatives under consideration. We have been instructed by the court, in this case, to base our decision on the management plan(s) in place at the time of our decision. We believe the current TLMP provides adequate protection to the goshawk and its habitat, and that it will continue to do so unless the protections relevant to goshawk conservation are substantively reduced or weakened.

Goshawk habitat receives less protection on State-managed and Native corporation lands, and we expect that goshawk nesting territories will be eliminated from some of those lands. For the reasons discussed above, we believe that adequate habitat will remain on National Forest and other

lands to sustain goshawks into the foreseeable future in Southeast Alaska, in spite of modest declines in habitat (and possibly goshawk populations) over the next 70 to 80 years. Therefore, we do not believe that inadequate regulatory mechanisms in Southeast Alaska currently contribute to extinction risk, nor do we believe that they will in the foreseeable future, unless protections are substantially weakened in an amended TLMP.

Factor E. Other Natural or Manmade Factors Affecting the Species' Continued Existence Competition

Several species of hawks, owls, and mammals have diets that overlap that of the goshawk. Red-tailed hawks *(Buteo jamaicensis),* barred owls *(Strix varia),* and great-horned owls occur in Southeast Alaska and prey on some of the same species as goshawks. These raptors typically make greater use of open habitats than goshawks and could be favored where timber harvest reduces forest cover and increases fragmentation (La Sorte et al. 2004, pp. 311–316; Mazur and James 2000, pp. 1–5; Preston and Beane 1993, pp 5–6; Houston et al. 1998, pp. 2–7). Mammalian predators such as wolverines *(Gulo gulo),* raccoons *(Procyon lotor),* lynx *(Lynx canadensis),* and marten *(Martes americana)* take some of the same prey as goshawks, notably grouse and squirrels, and could have competitive effects when prey are at low numbers. Marten are the most widespread and probably the most abundant of these predators in Southeast Alaska. Wolverines are found at low densities on the mainland and several of the near-shore islands, lynx are found in a few locations on the mainland, and (introduced) raccoons are found only on a few islands in southern Southeast Alaska (McDonald and Cook 2007, pp. 68, 85, and 98).

Competition among predators for limited prey may influence goshawk nesting effort during periods of low prey abundance where logging has fragmented the forest to favor species that use more open habitat when foraging. This effect would vary geographically, depending on local conditions, and may act, along with other factors, to reduce fecundity or survival in some areas. We are aware of no documentation of such competitive effects, though, so this potential threat must be considered hypothetical at this time. Accordingly, we are not aware, nor do we believe, that food competition places the Queen Charlotte goshawk in danger of extinction in Southeast Alaska, nor is it likely to in the foreseeable future.

Other species of birds use nest trees similar to those of the goshawk (e.g., red-tailed hawk, great horned owl, great blue heron *(Ardea herodias)*). Trees used for nesting must have adequate limb or top structures to support a large nest. Modern forestry practices usually retain significant numbers of such trees, enabling a wide range of species to have adequate nesting trees. Thus, we do not believe that availability of nest sites limits or reduces goshawk populations, nor is it likely to in the foreseeable future.

Contaminants: Goshawks have historically had low levels of organochlorine pesticides compared to other raptors (Snyder et al. 1973, pp. 300–304; Elliot and Martin 1994, pp. 189–198). Large-scale application of pesticides to control forest pests could have effects on goshawks, either directly or through their prey, but regulation of pesticides is intended to minimize such effects. We are not aware of any current threats to goshawk survival due to contaminants. We do not believe that contaminants place the Queen Charlotte goshawk in danger of extinction throughout all of its range, nor are they likely to in the foreseeable future.

Natural Disasters: Windstorms, landslides, avalanches, earthquakes, tsunamis, forest fires, and volcanic eruptions could affect localized areas of the subspecies range. These events would only affect small numbers of goshawks and thus are not believed to pose population-level threats, either now or in the foreseeable future.

Climate Change: Global climate change is expected to affect forest species composition and distribution over the next several decades as warmer-adapted tree species such as Douglas-fir and red-cedar expand northward and cool-adapted coastal hemlock (*Tsuga* spp.) forest invades alpine tundra (Hamann and Wang 2006, pp. 2781–2782, Bachelet et al., p. 2251). These changes should be positive for goshawks, as the area of productive forest is likely to increase, although *atricapillus* goshawks dispersing from surrounding areas could become more numerous within the existing range of *laingi* goshawks, exerting a greater competitive influence in the warmer forests. However, this effect could be offset by expansion of *laingi* range northward in Alaska toward Yakutat, where we presume the *laingi* phenotype would retain a competitive advantage because it is presumably better adapted to coastal rainforest.

Climate change is expected to increase the frequency and intensity of forest fires across much of Alaska, but the effects on fire frequency in Southeast Alaska are not clear as they will depend largely on how precipitation is affected (Bachelet et al. 2005, pp. 2244–2245). Insect infestations or tree diseases might also increase (Bachelet et al. 2005, p. 2248), although we are not aware of any projections quantifying such changes. We lack sufficient information on the effects of climate change to conclude that climate change places the Queen Charlotte goshawk at risk in Southeast Alaska.

Genetic and Demographic Risks: The Queen Charlotte goshawk is believed to freely interbreed throughout Southeast Alaska, and it does not appear to be genetically isolated from adjacent goshawk populations, except that there has apparently been little or no recent genetic interchange between Southeast Alaska and the Queen Charlotte Islands to the south (Gust et al. 2003, p. 22; Talbot et al. 2005, pp. 2–3; Robus 2006, p. 2; USFWS 2007, pp. 117–118). Isolated populations are typically at greater risk of extinction or genetic problems such as inbreeding depression, hybridization, and loss of genetic diversity, particularly where populations are small (Lande 1988, pp. 1456–1457; Frankham et al. 2002, pp. 312–317).

The best population estimates of the Queen Charlotte goshawk in Southeast Alaska place the breeding population at a few hundred pairs, plus an unknown component of non-breeding birds. Studies of northern goshawk populations in Europe have estimated that one-third to one-half of the adults are non-breeders (Squires and Kennedy 2006, p. 38). With a similar proportion of non-breeders, the Alaska population of Queen Charlotte goshawks would still probably be less than 1,000 individuals. Small populations such as this are at greater risk than larger populations from stochastic events such as disease epidemics, prey population crashes, or environmental catastrophes.

The International Union for the Conservation of Nature uses estimates of population size (i.e., <50, 250, 1,000, 2,500 or 10,000 mature individuals), alone or with indications of population declines or geographic range fragmentation, constriction or contraction, as indicators of extinction vulnerability in their Red List evaluations (IUCN 2006, pp. 8–10). No such absolute criteria for minimum population size exist for listing under the Act. Population estimates and demographic modeling for Queen Charlotte goshawks are believed to be of low precision and unknown reliability, necessitating reliance on additional indications of vulnerability.

Queen Charlotte goshawk populations are relatively small and therefore at risk from genetic effects and stochastic events; yet demographic rates are not well enough known to allow reliable quantitative estimation of viability prospects. We currently have no indication that genetic factors such as inbreeding depression, hybridization, or loss of genetic diversity place the subspecies at risk in Alaska.

Prey Availability: Prey availability appears to limit Queen Charlotte goshawk populations in some parts of Southeast Alaska. Because of the fragmented nature of the island habitat it inhabits, prey species distributions vary. Researchers have identified food stress as a limitation for goshawks on Prince of Wales Island and surrounding islands in southern Southeast Alaska, which naturally lack both red squirrels and sooty grouse, important primary prey elsewhere (Lewis 2001, pp. 80, 100, and 111–112). Areas of extensive timber harvest also appear to lack sufficient prey, as few species of adequate size adapted to open habitats exist over much of the range of the Queen Charlotte goshawk. Prey availability is particularly limited in winter when many avian species migrate.

Annual fluctuations in prey abundance appear to affect goshawk breeding effort (Doyle and Smith 1994, p. 126; Ethier 1999, pp. 35–40; Doyle 2003, pp. 24–25; Salafsky 2004, pp. 16–19; Salafsky et al. 2005, pp. 242–243; Keane et al. 2006, pp. 93–96; Reynolds et al. 2006, pp. 267–268; Doyle 2007, p. 2). Fluctuations in conifer cone crops influence squirrel populations (Smith et al. 2003, p. 176; Keane et al. 2006 p. 93) and could contribute to goshawk population declines.

Queen Charlotte goshawks presumably evolved in coastal rainforests characterized by variable but limited prey communities, as compared to northern goshawk populations elsewhere. The typically smaller size of the subspecies may be an adaptation to the limited prey base. The naturally fragmented environment with different prey communities on different islands probably allows goshawks in some parts of the range to successfully reproduce while goshawks elsewhere in the range avoid nesting during some years.

Although natural and manmade factors could potentially affect Queen Charlotte goshawk populations in some parts of Southeast Alaska, such factors are either not well enough understood or limited, with effects that vary among the islands and mainland of the region. Therefore, we do not believe that competition, contaminants, natural disasters, climate change, genetic or demographic risks, or prey availability place the Queen Charlotte goshawk in danger of extinction in Alaska, now or in the foreseeable future.

Foreseeable Future

The principal difference between an ''endangered'' and a ''threatened'' species under the Act is whether the species is currently in danger of extinction, or if it is likely to become so ''within the foreseeable future.'' The Act does not define the term ''foreseeable future.''

Threats facing the Queen Charlotte goshawk are primarily related to loss of nesting and foraging habitat and declines in prey populations due to timber harvest. In evaluating habitat threats, we relied largely on analyses of lands available for, and protected from, timber harvest. Projections of timber harvest and forest growth rates indicate that most of remaining old growth forest available for harvest on the Tongass National Forest will be harvested within 70 years (USDA Forest Service 1997, p. 3–299 to 3–303). Such projections are not available for other ownerships.

Habitat destruction that causes or contributes to reduced survival or fecundity can have a delayed effect on species dependent on that habitat, with extinction resulting several generations after the habitat loss has occurred, as the affected species reach equilibrium with their habitat (Tilman et al. 1994, pp. 65–66). Current data and monitoring techniques are inadequate to allow prediction of the extinction threshold (in terms of habitat requirements) for Queen Charlotte goshawks, and existing estimates of survival, fecundity, and population resilience are too imprecise to allow us to detect declining trends, if they exist. We recognize, however, that goshawk populations may continue to decline for several years after logging of old growth forests has ceased and timber harvest is restricted to second-growth stands because it is likely to take several generations for the populations to equilibrate with their modified environments. Goshawks are sexually mature and may breed at age 2 or 3, where vacant territories with suitable habitat are available (Squires and Reynolds 1997). A generation is therefore defined as 2 to 3 years.

We expect goshawk habitat quantity and quality to decline as timber harvest converts the remaining available old growth (that is, old growth not protected by reserves, retention or its location in an inoperable area) to second growth, after which, habitat capability would begin to stabilize. However, goshawk populations will most likely continue to decline for another 10 years (about 3 to 5 generations) following conversion of old growth to second growth forest, as the population reaches equilibrium with the reduced amount and distribution of habitat. Therefore, combining conversion rates above with 10 years for population equilibrium, we use 60 years to define foreseeable future for the Queen Charlotte goshawk in British Columbia, and 80 years in Southeast Alaska.

Southeast Alaska DPS Finding

Based on our analyses of threats to the Queen Charlotte goshawk within the Southeast Alaska DPS, and our evaluation of current management by the U.S. Forest Service and other land managers in Southeast Alaska, we find that the Southeast Alaska DPS of the Queen Charlotte goshawk is not in danger of extinction, nor is it likely to become in danger of extinction in the foreseeable future, given the current management regime. The TLMP provides relatively large reserves where timber harvest is not allowed, and adequate protection of habitat within areas open to timber harvest to ensure that most goshawk territories will remain suitable habitat. No information suggests that disease, predation, or overutilization for commercial, recreational, scientific, or educational purposes contributes to goshawk population declines in Southeast Alaska. Also, potential effects of other natural and manmade factors are limited across the landscape and not expected to have population-level impacts on the subspecies. Therefore, we find that the best available information on biological vulnerability and threats to the goshawk does not support listing the Southeast Alaska DPS of the Queen Charlotte goshawk as threatened or endangered.

Significant Portions of the Alaska DPS's Range

Threats to the Queen Charlotte goshawk in Southeast Alaska are greatest on Prince of Wales Island and the surrounding smaller islands at the southern end of the DPS. Timber harvest on both the Tongass National Forest and native corporation lands has been intensive in some parts of this area. Approximately 26 percent of the productive forest on Prince of Wales and the surrounding islands has been harvested, including some of the most productive forest lands in Southeast Alaska (Albert and Schoen 2006, pp. 15–18). Key prey (especially red squirrels and sooty grouse) are naturally lacking, resulting in comparatively low goshawk nesting densities and lower reproductive success than elsewhere in

the DPS (USFWS 2007, pp. 39–42 and pp. 74–78). We therefore focus on this portion of the Southeast Alaska DPS, to determine if it is a significant portion and whether the best available information on the biological vulnerability and threats to the goshawk support listing the subspecies as threatened or endangered on Prince of Wales Island.

The four biogeographic provinces that cover this area (North Prince of Wales, South Prince of Wales, Outside Islands, and Dall Island Complex) contain approximately 1.4 million ac (560,000 ha) of productive forest, or about 22 percent of the productive forest habitat across the entire DPS (Albert and Schoen 2006, p. 16). This area is likely to provide important redundancy for the DPS, as defined above, because it probably supports nearly one-fifth of the small population. Goshawks from this area tend to be smaller than those from the northern portion of the DPS (Titus et al. 1994, pp. 10–12), suggesting a possible adaptation to a prey-poor environment, perhaps providing important genetic representation. Based on these observations, we conclude that loss of the goshawk population on Prince of Wales and the surrounding smaller islands would significantly reduce redundancy and representation of the Queen Charlotte goshawk within Southeast Alaska, and would compromise conservation of the subspecies in the Southeast Alaska DPS. We conclude that Prince of Wales Island and the surrounding islands constitute a significant portion of the Alaska DPS's range.

Management protections of the TLMP conservation strategy, as discussed above under Factor D, apply throughout the Southeast Alaska DPS, with special provisions in VCUs on Prince of Wales Island, where over 33 percent of the productive forest had been harvested as of 1997. Within those VCUs, timber harvest on National Forest lands must be designed to retain an average of 30 percent canopy cover, with at least 8 large trees per ac (20 per ha) and 3 large dead or dying trees per ac (7 per ha) in harvest units over 0.8 ha (2 ac). Harvest units smaller than 0.8 ha (2 ac) may not collectively remove more than 25 percent of any stand in any 50-year period (USDA Forest Service 1997, pp. 4–91). These standards are intended to protect important features of forest stand structure. We believe that these measures of the TLMP will provide improved foraging opportunities for goshawks for the first 10 to 20 years following timber harvest, and provide improved nesting habitat as the second-growth stand approaches maturity. Goshawks may use some of these partially-harvested stands while the second-growth is middle-aged and typically too dense for efficient foraging, but this possibility is less certain.

We conclude that threats within the Prince of Wales area appear to be adequately managed, and thus do not support listing this SPR at this time. We have not identified any other significant portions of the Alaska DPS that meet the definition of threatened or endangered.

British Columbia Distinct Population Segment

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Timber harvest impacts goshawk nesting habitat, abundance of key prey species, and foraging habitat. These impacts are discussed above under Southeast Alaska Distinct Population Segment.

Industrial-scale logging began in the coastal rainforests of British Columbia in the early 1900s and peaked in the 1980s. Unlike in Alaska, however, harvests have remained relatively high since then (USFWS 2007, pp. 89–90). Timber harvest has converted approximately 3.7 million ac (1.5 million ha) (45 percent) of the 6.4 million ac (2.6 million ha) of productive forest on the coastal islands of British Columbia to second growth. This represents a loss in habitat value of 38 percent, compared to pre-logging conditions (USFWS 2007, Appendix A, Tables A–9 and A–13). Continued logging is projected to convert another 1.2 million ac (480,000 ha) (26 percent) of the remaining productive old growth forest to second growth over the next 50 years, representing a decline in current habitat value of 28 percent (USFWS 2007, Appendix A, Tables A–9 and A–15).

Retention of productive forest to protect various non-timber resources, such as riparian areas and important wildlife habitat, is expected to protect about 11 percent of the productive forest within the DPS. Inoperable areas cover 21 percent of the unharvested productive forest, although changes in technology and methods may allow future harvest of some of these stands. Designated parks and other such reserves protect about 9 percent of the productive forest within the DPS. Altogether we expect about 41 percent of the productive forest in the DPS to remain after all available old growth is converted to second growth forest over the next 50 years (USFWS 2007, pp. 82–90 and Appendix A, Tables A–1 and A–9). Loss of 59 percent of the historically-available old growth is projected to result in a 55 percent decline in habitat value, as regeneration of harvested stands will provide some suitable habitat for a decade or two as the second growth stands approach economic maturity (USFWS 2007, pp. 99–101 and Appendix A, Table A–13).

High-quality nesting territories appear to contain at least 50 percent mature and old forest (Doyle 2005, p. 14; USFWS 2007, pp. 75–78), although goshawks may use areas with lower proportions of old forest where prey adapted to more open habitats is abundant (Iverson et al. 1996, p. 55; USFWS 2007, p. 36). On the Queen Charlotte Islands, where there are few prey available in non-forested areas, at least 50 percent mature and old forest cover appears to be crucial to goshawk nesting (Doyle 2005, p. 14). Vancouver Island supports hares and cottontail rabbits, so goshawks there are likely to successfully nest in areas with a somewhat lower percentage of mature and old forest. Given these observations, we consider landscapes with greater than 50 percent cover by mature and old forest to be high-quality habitat, those with less than 50 percent lower-quality habitat, and those with less than 30 percent poor-quality habitat (discussed above, under Southeast Alaska Distinct Population Segment, and in USFWS 2007, pp. 75–78).

Loss of 59 percent of the old forest cover across the British Columbia DPS is likely to result in very poor goshawk habitat. Although 1.6 to 1.7 million ac (650,000 to 680,000 ha) are protected by provincial and national parks within the British Columbia DPS, only 34 to 60 percent of those lands are forested (depending on how productive forest is defined) (USFWS 2007, pp. 82–84). On the Queen Charlotte Islands, as little as 26 percent of the protected lands may be forested (USFWS 2007, p. 84), offering poor habitat.

Within the areas open to timber harvest, only 35 percent of the productive old forest will remain in retention and inoperable areas (USFWS 2007, Appendix A, Table A–9). Since the area open to timber harvest was only 69 to 83 percent forested to begin with (USFWS 2007, pp. 82–84), we expect that only about 25 to 30 percent of the harvested landscapes will have productive old forest cover. Mature second growth will provide additional habitat (approximately 15 percent of the harvested areas), so approximately 35 to 40 percent of the landscape is likely to be mature and old forest. This habitat is likely to be distributed unevenly, with relatively few areas supporting higher

levels of productive mature and old forest (and reproducing goshawks), and relatively large areas with more dispersed patches of mature and old forest habitat. In general, we expect continued decline in the quality of the habitat within the range of the British Columbia DPS as the old growth forest available for harvest is converted to second growth. Ultimately, most of the landscape is likely to be low-quality or poor-quality habitat. Based on these analyses, we conclude that habitat loss is likely to contribute substantially to the long-term viability of Queen Charlotte goshawks.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

In British Columbia, the subspecies has been protected from harvest since becoming Red-listed in 1994 (Cooper and Stevens 2000, p. 14). Birds may be taken illegally on occasion, but we have no indication that such activity is common, or that it poses any threat to the subspecies. Overutilization for commercial, recreational, scientific, or educational purposes is not believed to be a significant risk, and is not expected to contribute to population declines or extinction risk of the Queen Charlotte goshawk in British Columbia.

Factor C. Disease or Predation

Disease and predation associated with Queen Charlotte goshawks are not well documented, but small populations such as those on Vancouver Island and the Queen Charlotte Islands can be vulnerable to diseases, particularly when simultaneously stressed by other factors such as prey shortages. Predation can also suppress small populations, leaving them vulnerable to other population stress factors. Goshawk predators within the British Columbia DPS include great horned owl, bald eagle, American marten, wolverine, and black bear. Raccoons, which could take eggs or nestlings, have also been introduced on the Queen Charlotte Islands. No information suggests that disease and predation currently put Queen Charlotte goshawks in danger of extinction in the British Columbia DPS, but either disease or predation may contribute to extinction risk in the foreseeable future if their effects are exacerbated by other population stressors such as prey shortages, habitat limitations, or unfavorable weather (which affects nesting effort).

Factor D. Inadequacy of Existing Regulatory Mechanisms

Direct Take: Throughout Canada, the SARA protects the Queen Charlotte goshawk from direct harm, harassment, and take on Federal lands. The birds, their eggs, and occupied nests are protected on all jurisdictions in British Columbia under the provincial Wildlife Act (RSBC 1996, section 34). Possession and trade in the subspecies is forbidden throughout Canada, as is destruction of nests. Based on the available information, regulation of direct take appears to be adequate throughout the range of the goshawk.

Habitat Protection: Two mechanisms exist to protect habitat under the SARA in Canada: (1) Identification of critical habitat which may not be destroyed, and (2) conservation agreements which may be negotiated with any entity or individual. The SARA requires development of a recovery strategy, which identifies the scientific framework for recovery, as well as development of a recovery action plan, which outlines specific measures to implement the recovery strategy. Although a recovery team is currently developing a Queen Charlotte goshawk recovery strategy and action plan, which would identify areas that need protection, neither critical habitat nor conservation agreements exist at this time.

Land use planning is the primary method identified by the British Columbia Provincial Government for establishing protected areas and limits on development to conserve biodiversity across the Province. On Vancouver Island, where a land use plan was approved in 2000, 13 percent of the landscape is in protected status, but much of it is at high elevation and on low-productivity sites. Eight percent of the landscape is in ''Special Management'' zones where timber harvest is allowed but non-timber values such as wildlife and recreation are given additional consideration. An approved land use plan is not yet available for the Queen Charlotte Islands, but 23 percent of the land base has been protected in parks and other reserves. Depending on how productive forest is defined, as little as 26 percent of the protected land on the Queen Charlotte Islands may support productive forest, however, offering poor goshawk habitat. Altogether, protected areas cover approximately 9 percent of the productive forest within the range of the British Columbia DPS, most of which is probably low-quality habitat (USFWS 2007, Appendix A, Table A–9).

Logging on Crown (Provincial) lands open to timber harvest, which cover 84 percent of the productive forest on Vancouver and the Queen Charlotte Islands (USFWS 2007, Appendix A, Table A–6), is regulated by the Forest and Range Practices Act. This act and its companion regulations set objectives for many resources, and require timber harvest plans describing how each objective will be met. Integrated with the Forest and Range Practices Regulations is the Identified Wildlife Management Strategy (IWM Strategy), which was developed by the British Columbia Government to provide additional protection for species requiring specific measures beyond the ''coarse filter'' system of protected areas and the various regulations governing timber harvest generally. The IWM Strategy provides for establishment of Wildlife Habitat Areas around known goshawk nests, and allows prescription of management measures within those areas (BCMWLAP 2004, pp. 1–4). Timber harvest is not allowed in a core area of approximately 500 ac (200 ha) around designated nests to protect the active nest, alternate nests, and post-fledging habitat. A management plan must be developed for timber harvesting and road construction in the surrounding management zone of about 5,000 ac (2,000 ha) to protect foraging habitat. Non-binding recommendations have been developed to help guide these management plans (McClaren 2004, pp. 10–11). To date, 28 Wildlife Habitat Areas covering 36,470 ac (14,765 ha) have been designated for *laingi* goshawks in British Columbia (USFWS 2007, p. 113).

Provincial policy limits the amount of land that may be protected under the IWM Strategy to one percent of the short-term timber supply in each Forest District, for all Identified Wildlife species combined. This limitation may be waived with adequate justification, and does not have legal force of law, but is considered a goal of government (BCMWLAP 2004, p. 4; FPB 2004, pp. 7–8). Because the 1 percent cap is on impacts to the ''short-term'' timber supply, rather than the long-term supply, calculations must be based on mature forest stands. In the South Island Forest District (which covers southern Vancouver Island), less than one-third of the productive forest is at or near economic maturity, so Wildlife Habitat Areas and other such retentions for Identified Wildlife are limited to approximately one-third of 1 percent of the productive forest in the Timber Harvesting Land Base. Similar situations exist wherever past harvest is extensive, yet these are the areas with the greatest need for conservation (FPB 2004, pp. 7–8).

The 1 percent cap is likely to interfere with meaningful conservation for goshawks in areas with high numbers of

other at-risk species and continuing threats to those species (Wood and Flahr 2004, pp. 394–395). Southern Vancouver Island, for example, is a biodiversity ''hot spot,'' with a large number of rare and endemic species (Scudder 2003). Some of these species have habitat needs that differ from those of the goshawk, yet their legitimate conservation needs must be accommodated along with the goshawk within the 1 percent limit. In the South Island Forest District, Wildlife Habitat Areas are approaching, and may have already exceeded, the 1 percent cap (Wood et al. 2003, p. 53).

In 2004, the British Columbia Ministry of Sustainable Resource Management established ''Provincial Non-Spatial Old Growth Objectives'' that must be addressed in Forest Stewardship Plans (Abbott 2004, pp. 1–6). The order established ''Landscape Units'' and old growth forest retention objectives for each of those units. Individual Landscape Units are assigned to low, intermediate, or high biodiversity emphasis, with lower percentages of old growth retention identified for lower-emphasis units. The exact amount of old growth that must be retained depends on the forest type (biogeoclimatic zone) and the ''natural disturbance regime'' identified for each biogeoclimatic zone variant. Within the Coastal Western Hemlock (*Tsuga heterophylla*) Zone, old growth retention objectives range from 9 to 13 percent; in the Mountain Hemlock (*T. mertensiana*) Zone, objectives range from 19 to 28 percent; and in the Coastal Douglas-fir (*Pseudotsuga menziesii*) Zone, 9 to 13 percent. The objectives are termed ''non-spatial'' because they describe amounts but not specific areas to be retained, unlike other orders that establish protection of specified areas. In order to meet the non-spatial old growth objectives, tenure-holders and Timber Supply Area managers can rely on existing protected areas such as Wildlife Habitat Areas, riparian reserves, inoperable lands, and other designations that result in retention of old growth stands.

The Wildlife Amendment Act, which was passed in 2004 but has not yet taken effect, is expected to enhance the ability of Provincial Governments to list and protect species and populations. At this time, however, we are unaware of specific conservation efforts or other proposals relative to Queen Charlotte goshawks under the Wildlife Amendment Act.

There is no program, mechanism, or requirement to provide for recovery at the provincial level (Wood and Flahr 2004). At the Federal level, SARA does require recovery planning, and a team is currently evaluating conservation needs of the subspecies under the authority of the Federal law. The ''Canadian Northern Goshawk *A. g. laingi* Recovery Team'' includes experts from provincial and Federal (U.S. and Canadian) government agencies, private consultants, non-government organizations, industry and First Nations (McClaren 2006). The work of this group is confidential until a recovery strategy is completed and released publicly, so little is known about conservation efforts that may be included in the strategy. The focus of the SARA, however, is on Federal lands (Smallwood 2003). For the Queen Charlotte goshawk, this means one park (with a small percentage of productive forest) in the southern portion of the Queen Charlotte Islands, and another small park on the southwest coast of Vancouver Island.

Although regulatory mechanisms exist in British Columbia to conserve biodiversity and protect natural resources, at present, we are unaware of conservation actions or plans that specifically target the Queen Charlotte goshawk at the provincial level. The Province's Protected Area Strategy protects only 9 percent of the productive forest across all ownerships on Vancouver Island, which is probably inadequate to support a viable population of goshawks. The Province's Identified Wildlife Management Strategy, which allows for designation and protection of Wildlife Habitat Areas around goshawk nests, is limited by a policy-level cap of 1 percent of the short-term timber supply. Further, resource protection provided at the Federal level only relates to a small percentage of productive forest on Vancouver Island and the Queen Charlotte Islands. Overall, we conclude that existing regulatory mechanisms may be inadequate to eliminate the risk of extinction for the British Columbia DPS of the Queen Charlotte goshawk.

Factor E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

We are not aware of current population-level threats to Queen Charlotte goshawks due to competition for either prey or nest sites. Competition among herbivores has been implicated in grouse declines on the Queen Charlotte Islands, though, where introduced deer have reportedly overbrowsed blueberries and other important grouse foods, resulting in grouse population declines (Columbia et al. 2003, pp. 10–11; Doyle 2004, pp. 15–16). This has probably reduced goshawk nesting effort (number of pairs attempting to nest) on the Queen Charlotte Islands during periods of low squirrel density, when goshawks might otherwise have nested if grouse had been more abundant.

We know of no contaminants that pose current or potential future threats to goshawks within the British Columbia DPS.

Natural disasters such as windstorms, landslides, avalanches, earthquakes, tsunamis, and volcanic eruptions could affect localized areas within the British Columbia DPS, but are not believed to pose population-level threats, either now or in the foreseeable future. Large, landscape-altering forest fires, insect infestations, or tree diseases could pose population-level threats to Queen Charlotte goshawks in the British Columbia DPS if they affect major portions of either Vancouver Island or the Queen Charlotte Islands, both of which support contiguous blocks of forest habitat on one or two large islands, rather than many islands as in the Southeast Alaska DPS. Global climate change could increase the frequency and severity of large fires, forest pests, or forest diseases (Bachelet et al. 2005, pp. 2244–2248), but we do not know how likely such events might be. Increases in forest cover, as cool-adapted species invade alpine areas, is likely to increase the amount of habitat available to goshawks in the British Columbia DPS. We conclude that although the possibility exists that landscape-level changes due to climate change could negatively affect the British Columbia DPS of the Queen Charlotte goshawk, these threats do not currently place the DPS in danger of extinction. Because of inadequate information, we do not know if these threats pose a threat in the future, so we conclude that within the foreseeable future, the British Columbia DPS is not likely to become in danger of extinction due to climate-change-induced landscape modifications.

The small goshawk population on the Queen Charlotte Islands appears to be genetically distinct from goshawks elsewhere and may be genetically isolated. Populations on Vancouver Island and in Southeast Alaska apparently interbreed with *atricapillus* goshawks from the mainland, which seems likely given the proximity of Vancouver Island to the mainland (Gust et al. 2003, p. 22; Talbot et al. 2005, pp. 2–3; Talbot 2006, p. 1). Isolated populations such as the one on the Queen Charlotte Island are typically at greater risk of extinction or genetic problems such as inbreeding depression, hybridization, and loss of

genetic diversity, particularly where populations are small (Lande 1988, pp. 1456–1457; Frankham et al. 2002, pp. 312–317). The breeding population across the British Columbia DPS appears to be about 58 to 115 breeding pairs. In addition to genetic problems, small populations such as this are at greater risk than larger populations from stochastic events such as disease epidemics, prey population crashes, or environmental catastrophes. We conclude, therefore, that the British Columbia DPS of the Queen Charlotte goshawk is not currently in danger of extinction due to natural and manmade factors such as competition, contaminants, natural disasters, climate change, or genetic problems, but due to its small population size, may be vulnerable to prey fluctuations, hybridization (on Vancouver Island), or inbreeding depression (on the Queen Charlotte Islands) in the foreseeable future.

British Columbia DPS Finding

Based on our analyses of threats to the Queen Charlotte goshawk within the British Columbia DPS, we find that the British Columbia DPS of the Queen Charlotte goshawk is in danger of extinction or likely to become in danger of extinction in the foreseeable future due to modification and destruction of habitat; inadequacy of existing regulatory mechanisms; and vulnerability to disease, predation, prey fluctuations, or genetic risks as a result of small population sizes on Vancouver Island and the Queen Charlotte Islands. Therefore, we find that the biological vulnerability and threats to the Queen Charlotte goshawk support issuing a proposed rule to list the entire British Columbia DPS as threatened or endangered. As we develop the proposal to list the British Columbia DPS of the Queen Charlotte goshawk, we will determine whether the status is endangered or threatened.

Significant Portions of the British Columbia DPS's Range

Vancouver Island is part of the British Columbia DPS, and is subject to the same threats that affect goshawks throughout the DPS. Listing is, therefore, warranted for goshawks on Vancouver Island. As we propose to list the British Columbia DPS of the Queen Charlotte goshawk, we will consider whether threats differ substantially enough between Vancouver Island and the remainder of the DPS to require a separate listing for the Vancouver Island SPR (that is, endangered if the DPS is otherwise listed as threatened). We will also determine whether there are other significant portions of the DPS where separate listings are warranted.

Conclusion

After a thorough review of the best scientific and commercial data available, we conclude that Vancouver Island is a significant portion of the Queen Charlotte goshawk's range. Further, our review has indicated that the subspecies' populations in British Columbia and Alaska each constitute distinct population segments (DPSs) of the Queen Charlotte goshawk. We have sufficient information about biological vulnerability and threats to the goshawk to determine that the entire British Columbia DPS, which includes the Vancouver Island SPR, warrants listing as threatened or endangered. Pursuant to section 4(b)(3)(B)(ii) we will promptly publish in the **Federal Register** a proposed rule to list the British Columbia DPS of the Queen Charlotte goshawk. In that proposed rule we will indicate whether the British Columbia DPS and the Vancouver Island portion of the range should be listed as either endangered or threatened.

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor at the Juneau Fish and Wildlife Field Office (see **ADDRESSES**).

Author

The primary author of this document is Steve Brockmann, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, Juneau Fish and Wildlife Field Office, Juneau, Alaska (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: November 1, 2007.

Kenneth Stansell,

Acting Director, Fish and Wildlife Service.

[FR Doc. E7–21902 Filed 11–7–07; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 72, No. 216
Thursday, November 8, 2007

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 54

[Docket No. PRM–54–4]

Friends United for Sustainable Energy; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–54–4) submitted by Susan Shapiro, Esquire, Friends United for Sustainable Energy. The petitioner requested that the NRC issue an order to enjoin the NRC from considering any new license applications until the NRC can amend its regulations so that the regulations do not suppress and/or eliminate a stakeholder's right to redress, due process and equal protection in the licensing renewal process. A notice of receipt of this petition was not published in the **Federal Register**.

ADDRESSES: For a copy of the petition, write to Michael T. Lesar, Chief, Rulemaking, Directives, and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Publicly available documents related to this petition may be viewed electronically on public computers in the NRC's public document Room (PDR), O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee.

Publicly available documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rulemaking, Directives, and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Telephone:* 301–415–7163, *or toll free:* 800–368–5642, *e-mail MTL@nrc.gov*.

SUPPLEMENTARY INFORMATION:

The Petition

The petitioner requested that the NRC issue an order to enjoin the NRC from considering any new license applications until the NRC can amend its regulations so that the regulations do not suppress and/or eliminate a stakeholder's right to redress, due process and equal protection in the licensing renewal process.

Reasons for Denial

The NRC is denying this petition because the petitioner does not provide any new information that was not previously considered by the NRC in denying the petitions submitted by County Executive Andrew Spano of Westchester County, New York in PRM–54–2 and Mayor Joseph Scarpelli of Brick Township, New Jersey in PRM–54–3 (December 13, 2006; 72 FR 74848). These petitions were denied because they raised issues: (1) That the Commission already considered at length in developing the license renewal rule (December 13, 1991; 56 FR 64943); (2) that are managed by the ongoing regulatory process or under other regulations; or (3) that are beyond the Commission's regulatory authority.

The petitioner did not present any new information that contradicts positions taken by the Commission when the December 13, 1991, regulation was established or demonstrates that sufficient reason exists to modify the current regulations.

For the reasons cited in this document, the NRC denies this petition.

Dated at Rockville, Maryland, this 29th day of October 2007.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. E7–21928 Filed 11–7–07; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 2

[Docket No. 2007N–0262]

RIN 0910–AF92

Use of Ozone-Depleting Substances; Removal of Essential-Use Designation (Epinephrine); Public Meeting; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; notice of public meeting and extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to solicit comments on a proposed rule that would amend FDA's regulation on the use of ozone-depleting substances (ODSs) in self-pressurized containers to remove the essential-use designation for oral pressurized metered-dose inhalers (MDIs) containing epinephrine. The proposed rule was published in the **Federal Register** of September 20, 2007 (72 FR 53711). Information from the public meeting, which is required by agency regulations, will be considered in finalizing the rulemaking. In addition, the comment period on the proposed rule is being extended to December 19, 2007, to accommodate the meeting and to provide a short period after the meeting to receive additional comments.

DATES: The comment period for the September 20, 2007 (72 FR 53711) proposed rule is being extended to December 19, 2007. The public meeting will be held on December 5, 2007, from 9 a.m. to 3:30 p.m. Submit written or electronic comments for consideration at the meeting and requests to speak at the meeting by November 23, 2007. Register to attend the meeting by November 23, 2007. Submit written or electronic comments on the proposed

rule and this document by December 19, 2007.

ADDRESSES: The public meeting will be held at FDA, Center for Drug Evaluation and Research, Advisory Committee Conference Room, 5630 Fishers Lane, rm. 1066, Rockville, MD 20852.

You may submit comments, identified by Docket No. 2007N–0262 and RIN number RIN 0910–AF92, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

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

• Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

• FAX: 301–827–6870.

• Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted directly to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described previously in the **ADDRESSES** portion of this document under *Electronic Submissions*.

Instructions: All submissions received must include the agency name and Docket No(s). and Regulatory Information Number (RIN) for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''Request for Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read the proposed rule, background documents, or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number 2007N–0262, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Rose Cunningham, Center for Drug Evaluation and Research (HFD–6), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5383, E-mail: *CDEREXSEC@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Clean Air Act, FDA, in consultation with the Environmental Protection Agency, is required to determine whether an FDA-regulated product that releases an ODS is an essential use of the ODS. In the **Federal Register** of September 20, 2007 (72 FR 53711) (the proposed rule), we proposed to amend our regulation on the use of ODSs in self-pressurized containers to remove the essential-use designation of MDIs containing epinephrine. You may find copies of the proposed rule on the Division of Dockets Management Web site (see **ADDRESSES**) and the GPO Access Web site at *http://www.gpoaccess.gov/fr/index.html*. If the essential-use designation is removed, epinephrine MDIs containing an ODS could not be marketed after the effective date of the final rule removing the essential-use designation.

In proposing to remove the essential-use designation for epinephrine, we applied the criterion for removing an essential-use designation in § 2.125(g)(2) (21 CFR 2.125(g)(2)). Under § 2.125(g)(2), an essential-use designation can be removed if it no longer meets the criteria specified in § 2.125(f) for adding a new essential use. The criteria in § 2.125(f)(1) are: ''(i) Substantial technical barriers exist to formulating the product without ODSs; (ii) The product will provide an unavailable important public health benefit; and (iii) Use of the product does not release cumulatively significant amounts of ODSs into the atmosphere or the release is warranted in view of the unavailable important public health benefit.''

We proposed that the removal of the essential-use designation for epinephrine be made effective on December 31, 2010. Depending on the data presented to us in the course of the rulemaking, we may determine that it is appropriate to have a different effective date than the one we proposed.

The provisions in § 2.125(g)(2) that provide the procedures and criteria being used in this rulemaking require that a public meeting be held before an essential use may be removed. This document announces the meeting that will be held to fulfill that requirement, which will also better inform the decisions we will be making during the rulemaking.

II. Issues and Questions for Discussion and Comment

If you are going to speak at the meeting or submit a written comment, you may address any issue raised in the proposed rule or on any other issue that is relevant to our decision on the proposed rule. You may wish to discuss how the criteria described in section I of this document apply to MDIs containing epinephrine. You may wish to discuss how the fact that epinephrine MDIs are the most widely used over-the-counter (OTC) treatment for the symptoms of asthma should affect our decision. You may also wish to discuss whether a different effective date is appropriate. We invite discussion of issues on which we specifically asked for comments in the proposed rule, including the following.

• Will production of albuterol HFA[1] MDIs (a primary therapeutic alternative to OTC epinephrine MDIs) be able to meet any increased demand caused by this rulemaking? (72 FR 53711 at 53716)

• Will inhaled epinephrine become available in a non-ODS formulation and when can a non-ODS inhaled-epinephrine product be reasonably expected to enter the market? (72 FR 53711 at 53716)

• Should the availability of an inhaled-epinephrine OTC drug product that does not contain ODSs affect whether we publish a final rule or the effective date of any such rule? (72 FR 53711 at 53716)

• What efforts are currently being made to develop non-ODS inhaled-epinephrine drug products that would be suitable for OTC sale? (72 FR 53711 at 53718)

• What are the impediments to developing non-ODS inhaled-epinephrine drug products that would be suitable for OTC sale? (72 FR 53711 at 53718)

• How many people who face barriers to health care purchase epinephrine MDIs because of those barriers to health care? (72 FR 53711 at 53720)

• Will programs providing free or low-cost drugs reduce any adverse impact on the public health caused by the removal of OTC epinephrine MDIs from the market? (72 FR 53711 at 53722)

• Do risks of self-treatment of asthma outweigh the public health benefits that OTC epinephrine MDIs may provide? (72 FR 53711 at 53722)

• What are the expected costs and public health effects to individuals with asthma if OTC epinephrine MDIs were removed from the market without a

[1] ''HFA'' is used in the pharmaceutical industry, and is used here, to refer to the hydrofluoralkane HFA–134a, a non-ozone-depleting propellant.

similar product being available OTC? (72 FR 53711 at 53722)

We consulted with FDA's Nonprescription Drugs Advisory Committee and Pulmonary and Allergy Drugs Advisory Committee at a joint meeting held on January 24, 2006, to discuss the essential-use status of MDIs containing epinephrine. During the meeting, several committee members expressed opinions that MDIs containing epinephrine provide important public health benefits to individuals with asthma who face barriers to health care and cannot obtain prescription drugs. You may wish to read the transcript of the joint meeting (available on the Division of Dockets Management Web site (see **ADDRESSES**)) or the summaries of the discussions at the meeting in the proposed rule (72 FR 53711 at 53716 to 53724).

III. Registration, Agenda, and Transcript

There is no fee to register for the meeting, but registration is required and space is limited. Interested parties are therefore encouraged to register early. Limited visitor parking is available for a fee, and the Twinbrook Metro Stop is within walking distance of the meeting site. Early arrival is encouraged, as there will be security screening. You will be asked for government-issued picture identification by the security officers. If you need special accommodations due to a disability, please include this information when registering.

Registration for General Attendees. Registration is required to attend the public meeting. If you wish to attend the meeting, you must register by November 23, 2007, via e-mail to: *CDEREXSEC@fda.hhs.gov*. Please indicate ''Essential-Use Designation of Epinephrine'' in the SUBJECT line and provide complete contact information for each attendee (including name, title, affiliation, e-mail address, and phone number(s)). Upon receipt and review for adequacy of information, an e-mail will be sent to confirm registration.

Registration for Speaking Attendees. If you wish to speak at the meeting, you must register by November 23, 2007, via e-mail to: *CDEREXSEC@fda.hhs.gov*. Please indicate ''Speaker--Essential Use-Designation of Epinephrine'' in the SUBJECT line. When registering, speakers must provide the following information: (1) The topic or issue to be addressed; (2) the speaker's name, title, company or organization, address, phone number, and e-mail address; and (3) the approximate length of time requested to speak. We encourage consolidation of like-minded presentations to enable a broad range of views to be presented.

Agenda and Transcript. The agenda for the public meeting will be available on FDA's Center for Drug Evaluation and Research (CDER) Web site at: *http://www.fda.gov/cder/meeting/ozone2007.htm*. After the meeting, the agenda, presentations, and transcript will be placed on file in the Division of Dockets Management under Docket No. 2007N–0262 and on CDER's Web site identified previously.

Copies of the transcript may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857, approximately 20 working days after the meeting at a cost of 10 cents per page, or on compact disc at a cost of $14.25 each. You may also examine the transcript at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and on the Internet at *http://www.fda.gov/ohrms/dockets/default.htm*.

IV. Extension of the Comment Period for the Proposed Rule

FDA is extending the comment period for the proposed rule to December 19, 2007. We believe that extending the comment period is reasonable to accommodate the public meeting and to provide a short period after the meeting to receive additional comments.

V. Request for Comments

Regardless of your attendance at the meeting, you may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments related to the proposed rule (see **DATES**). All relevant data and information should be submitted with the written comments. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one copy. Comments are to be identified with Docket No. 2007N–0262. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 5, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 07–5593 Filed 11–5–07; 4:01 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–140206–06]

RIN–1545–BF93

Withholding Procedure Under Section 1441 for Certain Distributions to Which Section 302 Applies; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to proposed regulations (REG–140206–06) that were published in the **Federal Register** on Wednesday, October 17, 2007 (72 FR 58781) regarding a withholding agent's obligation to withhold and report tax under Chapter 3 of the Internal Revenue Code when there is a distribution in redemption of stock of a corporation that is actively traded on an established financial market.

FOR FURTHER INFORMATION CONTACT: Kathryn Holman at (202) 622–3840 (not a''.

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–140206–06) that is the subject of this correction is under section 1441 of the Internal Revenue Code.

Need for Correction

As published, this notice of proposed rulemaking (REG–140206–06) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG–140206–06) that was the subject of FR Doc. E7–20504 is corrected as follows:

On page 58781, column 3, in the preamble, under the caption **''FOR FURTHER INFORMATION CONTACT:**'', line 2, the language ''Kathryn Holman, (202) 622–3440 (not a'' is corrected to read ''Kathryn Holman, (202) 622–3840 (not a)''.

Cynthia Grigsby,

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

[FR Doc. E7–21904 Filed 11–7–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–133300–07]

RIN–1545-BG80

Automatic Contribution Arrangements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under sections 401(k), 401(m), 402(c), 411(a), 414(w), and 4979(f) of the Internal Revenue Code relating to automatic contribution arrangements. These proposed regulations will affect administrators of, employers maintaining, participants in, and beneficiaries of eligible plans that include an automatic contribution arrangement under section 401(k)(13), 401(m)(12), or 414(w).

DATES: Written or electronic comments and requests for a public hearing must be received by February 6, 2008.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–133300–07), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–133300–07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 or sent electronically via the Federal erulemaking Portal at www.regulations.gov (IRS REG–133300–07).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, R. Lisa Mojiri-Azad, Dana Barry or William D. Gibbs at (202) 622–6060; concerning the submission of comments or to request a public hearing, *Richard.A.Hurst@irscounsel.treas.gov,* (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent 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, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP; Washington, DC 20224. Comments on the collection of information should be received by January 7, 2008. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in these proposed regulations is in §§ 1.401(k)–3 and 1.414(w)–1. The collection of information in § 1.401(k)–3 is required to comply with the statutory notice requirements of sections 401(k)(13) and 401(m)(12), and is expected to be included in the notices currently provided to employees that inform them of their rights and benefits under the plan. The collection of information under § 1.414(w)–1 is required to comply with the statutory notice requirements of section 414(w), and is expected to be included in the notices currently provided to employees that inform them of their rights and benefits under the plan. The likely recordkeepers are businesses or other for-profit institutions, nonprofit institutions, organizations, and state or local governments.

Estimated total average annual recordkeeping burden: 30,000 hours.

Estimated average annual burden hours per recordkeeper: 1 hour.

Estimated number of recordkeepers: 30,000.

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 tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to regulations under sections 401(k), 401(m), 402(c), 411(a), and 4979 of the Internal Revenue Code (Code) and new proposed regulations under section 414(w) in order to reflect the provisions of section 902 of the Pension Protection Act of 2006, Public Law 109–280 (PPA '06). Section 902 of PPA '06 added sections 401(k)(13), 401(m)(12), and 414(w) to the Code to facilitate automatic contribution arrangements (sometimes referred to as automatic enrollment) in qualified cash or deferred arrangements under section 401(k), as well as in similar arrangements under sections 403(b) and 457(b). An automatic contribution arrangement is a cash or deferred arrangement that provides that, in the absence of an affirmative election by an eligible employee, a default election applies under which the employee is treated as having made an election to have a specified contribution made on his or her behalf under the plan. These regulations would also amend the comprehensive regulations under sections 401(k) and 401(m) (published in 2004) and regulations under section 4979 to reflect other changes made by section 902 of PPA '06.

Section 401(k)(1) provides that a profit-sharing, stock bonus, pre-ERISA money purchase or rural cooperative plan will not fail to qualify under section 401(a) merely because it contains a qualified cash or deferred arrangement. Section 1.401(k)–1(a)(2) defines a cash or deferred arrangement (CODA) as an arrangement under which an eligible employee may make a cash or deferred election with respect to contributions to, or accruals or other benefits under, a plan that is intended to satisfy the requirements of section 401(a). Section 1.401(k)–1(a)(3) defines a cash or deferred election as any direct or indirect election (or modification of an earlier election) by an employee to have the employer either: (1) Provide an amount to the employee in the form of cash (or some other taxable benefit) that is not currently available; or (2) contribute an amount to a trust, or provide an accrual or other benefit, under a plan deferring the receipt of compensation. For purposes of determining whether an election is a cash or deferred election, § 1.401(k)–1(a)(3) provides that it is irrelevant whether the default that applies in the absence of an affirmative election is cash (or some other taxable benefit) or a contribution, an accrual, or other

benefit under a plan deferring the receipt of compensation. Contributions that are made pursuant to a cash or deferred election under a qualified CODA are commonly referred to as elective contributions.

In order for a CODA to be a qualified CODA, it must satisfy a number of other requirements. First, pursuant to section 401(k)(2)(A), the amount that each eligible employee under the arrangement may defer as an elective contribution must be available to the employee in cash. Section 1.401(k)–1(e)(2) provides that, in order for a CODA to satisfy this requirement, the arrangement must provide each eligible employee with an effective opportunity to make (or change) a cash or deferred election at least once during each plan year.

Section 401(k)(2)(B) provides that a qualified CODA must provide that elective contributions may only be distributed after certain events, including hardship and severance from employment. Similar distribution restrictions apply under sections 403(b)(7) and 403(b)(11). Section 457(d)(1)(A) includes distribution restrictions for eligible governmental deferred compensation plans.

Section 401(k)(3)(A)(ii) applies a special nondiscrimination test to the elective contributions of highly compensated employees, within the meaning of section 414(q) (HCEs). Under this test, called the actual deferral percentage (ADP) test, the average percentage of compensation deferred for HCEs is compared annually to the average percentage of compensation deferred for nonhighly compensated employees (NHCEs) eligible under the plan, and if certain limits are exceeded by the HCEs, corrective action must be taken. Pursuant to section 401(k)(8), one method of correction is distribution to HCEs of excess contributions made on their behalf.

Section 401(m) provides a parallel test for matching contributions and employee after-tax contributions under a defined contribution plan, called the actual contribution percentage (ACP) test. Similarly, pursuant to section 401(m)(6), one method of correction of the ACP test is distribution to HCEs of excess aggregate contributions made on their behalf.

Sections 401(k)(12) and 401(m)(11) provide a design-based safe harbor under which a CODA and any associated matching contributions are treated as satisfying the ADP and ACP tests if the arrangement meets certain contribution and notice requirements. Sections 1.401(k)–3 and 1.401(m)–3 provide guidance on the requirements for this design-based safe harbor.

Sections 401(k)(13) and 401(m)(12), added by PPA '06 and effective for plan years beginning on or after January 1, 2008, provide an alternative design-based safe harbor for a CODA that provides for automatic contributions at a specified level of contributions and meets certain contribution, notice, and other requirements. A CODA that satisfies these requirements, referred to as a qualified automatic contribution arrangement (QACA), is treated as satisfying the ADP and ACP tests.

Section 414(w), added to the Code by section 902(d)(1) of PPA '06 and effective for plan years beginning on or after January 1, 2008, further facilitates automatic enrollment by providing limited relief from the distribution restrictions under sections 401(k)(2)(B), 403(b)(7), 403(b)(11), or 457(d)(1)(A) for an eligible automatic contribution arrangement (EACA).

Sections 414(w)(1) and 414(w)(2) provide that an applicable employer plan that contains an EACA is permitted to allow employees to elect to receive a distribution equal to the amount of elective contributions (and attributable earnings) made with respect to the employee beginning with the first payroll period to which the eligible automatic contribution arrangement applies to the employee and ending with the effective date of the election. The election must be made within 90 days after the date of the first elective contribution with respect to the employee under the arrangement. Sections 414(w)(1)(A) and 414(w)(1)(B) provide that the amount of the distribution is includible in gross income for the taxable year in which the distribution is made, but is not subject to the additional income tax under section 72(t).

Section 414(w)(3) defines an EACA as an arrangement under which: (1) A participant may elect to have the employer make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash, (2) the participant is treated as having elected to have the employer make such contributions in an amount equal to a uniform percentage of compensation provided under the plan until the participant specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage), (3) in the absence of an investment election by the participant, such contributions are invested in accordance with regulations prescribed by the Secretary of Labor under section 404(c)(5) of the Employee Retirement Income Security Act of 1974 (ERISA), and (4) participants are provided a notice that satisfies the requirements of section 414(w)(4).

Section 414(w)(4) requires that, within a reasonable period before each plan year, each employee to whom the arrangement applies for such year receive written notice of the employee's rights and obligations under the arrangement which is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations. Section 414(w)(4)(A)(ii) requires that the notice be written in a manner calculated to be understood by the average employee to whom the arrangement applies. Section 414(w)(4)(B) provides that the notice must explain: (1) The employee's rights under the arrangement to elect not to have elective contributions made on the employee's behalf or to elect to have contributions made at a different percentage; and (2) how contributions made under the automatic contribution arrangement will be invested in the absence of any investment decision by the employee. In addition, the employee must be given a reasonable period of time after receipt of the notice and before the first elective contribution is made to make an election with respect to contributions. In many respects, the notice under section 414(w)(4) is the same as the notice required under section 401(k)(13) for a qualified automatic contribution arrangement.

Section 414(w)(5) defines an applicable employer plan as an employee's trust described in section 401(a) that is exempt from tax under section 501(a), a plan described in section 403(b), or a section 457(b) eligible governmental plan.

Section 414(w)(6) provides that a withdrawal described in section 414(w)(1) is not to be taken into account for purposes of the ADP test.

Section 411(a)(3)(G), as amended by section 902(d)(2) of PPA '06, provides that a matching contribution shall not be treated as forfeitable merely because the matching contribution is forfeitable if it relates to a contribution that is withdrawn under an automatic contribution arrangement that satisfies the requirements of section 414(w).

Section 4979 provides an excise tax on excess contributions (within the meaning of section 401(k)(8)(B)) and excess aggregate contributions (within the meaning of section 401(m)(6)(B)) not distributed within 2½ months after the close of the plan year for which the contributions are made. Section 902 of PPA '06 amended section 4979 to lengthen this 2½ month correction period for excess contributions and

excess aggregate contributions under an EACA to 6 months. Thus, in the case of an EACA, the section 4979 excise tax does not apply to any excess contributions or excess aggregate contributions which, together with income allocable to the contributions, are distributed or forfeited (if forfeitable) within six months after the close of the plan year.

Section 902 of PPA '06 amended section 4979(f)(2) to provide that any distributions of excess contributions and excess aggregate contributions are includible in the employee's gross income for the taxable year in which distributed. However, pursuant to sections 401(k)(8)(D) and 401(m)(7)(A), the distributions are not subject to the additional income tax under section 72(t). Section 902 of PPA '06 also amended sections 401(k)(8), 401(m)(6), and 4979(f)(1) to eliminate the requirement that excess contributions or excess aggregate contributions (whether or not under an EACA) include income allocable to the period after the end of the plan year (gap period income).

Section 624 of PPA '06 amended section 404(c) of ERISA to provide that a participant in an individual account plan meeting the notice requirements of section 404(c)(5)(B) of ERISA is treated as exercising control over the assets in the account which, in the absence of an investment election by the participant, are invested in accordance with regulations prescribed by the Secretary of Labor. The specific timing and content requirements for the notice required under section 404(c)(5)(B) of ERISA are generally the same as under section 414(w)(4), but the Department of Labor (DOL) has interpretative jurisdiction for that notice.

Section 902 of PPA '06 also amended section 514 of ERISA to preempt any State law which would directly or indirectly prohibit or restrict the inclusion in any plan of an automatic contribution arrangement. The Secretary of Labor is authorized to prescribe regulations which would establish minimum standards that such an arrangement would be required to satisfy in order for this preemption to apply to such an arrangement. The definition of an automatic contribution arrangement under section 514 of ERISA is generally the same as the definition of an EACA under section 414(w)(3), (including the requirement that automatic contributions under the arrangement must be invested in accordance with regulations prescribed by the Secretary of Labor under section 404(c)(5) of ERISA), but the definition does not include a notice requirement. However, section 514(e)(3) of ERISA requires a notice to be provided to each participant to whom the arrangement applies. As in the case for the notice under section 404(c)(5)(B) of ERISA, the specific timing and content requirements under section 514(e)(3) of ERISA are generally the same as the notice requirements under section 414(w)(4), but the interpretative jurisdiction for that notice is also with the DOL.

Explanation of Provisions

1. Qualified Automatic Contribution Arrangement Under Section 401(k)(13)

The proposed regulations would amend §§ 1.401(k)–3 and 1.401(m)–3 to reflect the provisions of sections 401(k)(13) and 401(m)(12) for a QACA, the new design-based safe harbor for satisfying the ADP and ACP tests. To the extent that the requirements to be a QACA are the same as those for the safe harbor described in sections 401(k)(12) and 401(m)(11), these proposed regulations would apply the existing rules currently in §§ 1.401(k)–3 and 1.401(m)–3 to a QACA. Thus, for example, because § 1.401(k)–3(e) applies to a QACA, except to the extent otherwise provided in section 1107 of PPA '06 or § 1.401(k)–3(f) or § 1.401(k)–3(g), the plan provision implementing the QACA for an existing qualified CODA would be required to be adopted before the first day of the plan year and remain in effect for an entire 12-month plan year. Similarly under § 1.401(k)–3(c)(6), a plan would be permitted to limit the amount of elective contributions that may be made by an eligible employee under the QACA, provided that each NHCE who is an eligible employee generally is permitted to make elective contributions in an amount that is at least sufficient to receive the maximum amount of matching contributions available under the plan for the plan year, and the employee is permitted to elect any lesser amount of elective contributions.

In order to be a QACA, the plan must provide a specified schedule of automatic contributions (called qualified percentages) for each eligible employee beginning with an initial minimum qualified percentage of 3 percent of compensation. This minimum qualified percentage begins when the employee first participates in the automatic contribution arrangement that is intended to be a QACA and ends on the last day of the following plan year. Thus, this initial period for a participant could last as long as two full plan years. After this initial period, the minimum qualified percentage increases by 1 percent for each of the next three plan years. Thus, the minimum qualified percentage for the plan year after the initial period is 4 percent. This minimum qualified percentage increases to 5 percent for the next plan year, and then is 6 percent for all plan years thereafter. These are merely minimum qualified percentages. Thus, a QACA can provide for higher percentages. For example, a QACA could provide for a qualified percentage in the initial period of 4 percent of compensation. If a plan did so, it could also provide a 4 percent qualified percentage for the plan year after the initial period (the statutory minimum percentage for that plan year), 5 percent in the next plan year and 6 percent thereafter. However, the qualified percentage can at no time exceed 10 percent of compensation.

Under section 401(k)(13)(C)(iii), the qualified percentage must be applied uniformly to all eligible employees. The proposed regulations would provide that a plan does not fail this requirement merely because the percentage varies for the following reasons: (1) The percentage varies based on the number of years an eligible employee has participated in the automatic contribution arrangement intended to be a QACA; (2) the rate of elective contributions under a cash or deferred election that is in effect on the effective date of the default percentage under the QACA is not reduced; or (3) the amount of elective contributions is limited so as not to exceed the limits of sections 401(a)(17), 402(g) (determined with or without catch-up contributions described in section 402(g)(1)(C) or section 402(g)(7)) or 415. Further, the proposed regulations would provide that a cash or deferred arrangement does not fail to satisfy the uniformity requirement merely because an employee is not automatically enrolled during a period that the employee is not permitted to make elective contributions because of the requirement to suspend elective contributions for a 6-month period following a hardship distribution. In the case of an employee whose elective contributions have been suspended (for example, because of a hardship distribution), the plan must provide that the employee will, at the end of the suspension period, resume elective contributions at the level (percentage) that would apply if the suspension had not occurred.

Reflecting section 401(k)(13)(C)(ii), the proposed regulations provide that the default election ceases to apply to any eligible employee if the employee makes an affirmative election that remains in effect to not have any elective contributions made on his or her behalf or to have elective

contributions made in a specified amount or percentage of compensation on his or her behalf. Thus, an employee can make an affirmative election to contribute at a certain level and have that election apply for all subsequent plan years. Similarly, an employee can make an affirmative election to have no elective contributions made on his or her behalf. This latter election is not the same as the election to withdraw prior elective contributions under section 414(w).

The proposed regulations also reflect section 401(k)(13)(C)(iv), which provides an exception from the default election for eligible employees who were eligible to participate in the CODA (or a predecessor CODA) immediately before the effective date of the QACA and who have an election in effect on that effective date. The proposed regulations would provide that an election in effect means an affirmative election that remains in effect to have the employer make elective contributions on his or her behalf (in a specified amount or percentage of compensation) or to not have the employer make elective contributions on his or her behalf. Generally, this would require that the employee have completed an election form and chosen an amount or percentage (including zero) of his compensation to be deferred.

The proposed regulations reflect the matching or nonelective contribution requirement of section 401(k)(13)(D). As with the safe harbor in section 401(k)(12), section 401(k)(13) provides a choice for an employer between satisfying a matching contribution requirement or a nonelective contribution requirement. However, while the QACA requires the same level of employer nonelective contributions as under section 401(k)(12), the matching contribution requirement for a QACA allows for a lower level of matching contributions. Specifically, a QACA using the matching contribution alternative need only provide for matching contributions on behalf of each eligible NHCE equal to 100 percent of the employee's elective contributions that do not exceed one percent of compensation and 50 percent of the employee's elective contributions that exceed one percent but do not exceed six percent of compensation. In addition, a QACA allows a slower schedule of vesting for both matching and nonelective safe harbor contributions than the safe harbor in section 401(k)(12). All QACA safe harbor contributions must be fully vested after 2 years of vesting service (within the meaning of section 411(a)), rather than immediately as required by section 401(k)(12). In addition, the proposed regulations would apply the same distribution restrictions that apply to safe harbor contributions and nonelective contributions under section 401(k)(12) to QACA safe harbor contributions.

Each eligible employee under a QACA must receive a safe harbor notice within a reasonable period before each plan year. The proposed regulations reflect the requirement that this notice must provide the information required under section 401(k)(12). The regulations also reflect the additional timing and content requirements described in section 401(k)(13)(E)(i). Thus, the notice must also explain: (1) The employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf or to elect to have contributions made in a different amount or percentage of compensation; and (2) how contributions made under the automatic contribution arrangement will be invested in the absence of any investment decision by the employee (including, in the case of an arrangement under which the employee may elect among two or more investment options, how contributions made under the automatic contribution arrangement will be invested in the absence of an investment election by the employee). These additional requirements cannot be satisfied by reference to the plan's summary plan description. Further, the proposed regulations would provide that in order to satisfy section 401(k)(13)(E)(ii)(III), under the QACA, the employee must be given a reasonable period of time after receipt of the notice and before the first elective contribution is to be made to make an election with respect to contributions and investments.

The proposed regulations interpret the requirement under section 401(k)(13)(E)(i) to provide a notice within a reasonable period before each plan year by applying the rules of § 1.401(k)-3(d)(3). Thus, the proposed regulations would provide that the general determination of whether the timing requirement is satisfied is based on all of the relevant facts and circumstances, and the deemed timing rule of § 1.401(k)-3(d)(3)(ii) applies. Under this deemed timing rule, the timing requirement is satisfied if at least 30 days (and no more than 90 days) before the beginning of each plan year, the notice is given to each eligible employee for the plan year. The proposed regulations would also provide that in the case of an employee who does not receive the notice within the period described in the previous sentence because the employee becomes eligible after the 90th day before the beginning of the plan year, the timing requirement is deemed to be satisfied if the notice is provided no more than 90 days before the employee becomes eligible (and no later than the date the employee becomes eligible). Thus, for example, the preceding sentence would apply to all eligible employees for the first plan year under a newly established plan that provides for elective contributions, and to the first plan year in which an employee becomes eligible under an existing plan that provides for elective contributions. In the case of a plan with immediate eligibility when an employee is hired, this deemed timing rule would be satisfied if the employee is provided the notice on the first day of employment.

2. Eligible Automatic Contribution Arrangement Under Section 414(w)

In order to further facilitate automatic enrollment, section 414(w) provides limited relief from the distribution restrictions under sections 401(k)(2), 403(b)(7), 403(b)(11), and 457(d) (as well as certain other relief provisions) for an applicable plan (that is, a section 401(k) plan, a section 403(b) plan, or a section 457(b) eligible governmental plan) with an EACA. Specifically, section 414(w)(2) provides that, under an applicable employer plan with an EACA, an employee can be permitted to elect to receive a distribution equal to the amount of default elective contributions (and attributable earnings) made with respect to the first payroll period to which the EACA applies to the employee and any succeeding payroll periods beginning before the effective date of the election.

An employer is permitted, but not required, to include the section 414(w)(2) permissible withdrawal provision in an applicable employer plan, and an employer who does offer this option is not required to make it available to all employees eligible under the EACA. Thus, for example, an employer might choose to make the withdrawal option available only to employees for whom no elective contributions have been made under the CODA (or a predecessor CODA) before the EACA is effective. However, under a section 401(k) plan or a section 403(b) plan, the employer may not condition the right to take the withdrawal on the employee making an election to have no future elective contributions made on the employee's behalf because such a condition would violate the contingent benefit rule under section 401(k)(4)(A) or the universal availability requirement under section 403(b)(12)(A)(ii).

Nonetheless, the employer could provide in the withdrawal election form a default election under which elective contributions would cease unless the employee makes an affirmative election.

Under section 414(w)(2)(B), the election to withdraw the contributions that were made under an EACA must be made within 90 days of the ''first elective contribution with respect to the employee under the arrangement.'' The proposed regulations would define the arrangement for this purpose as the EACA so that the withdrawal option could apply to employees previously eligible under the CODA (including a CODA that is an automatic contribution arrangement but was not an EACA). Because section 414(w) only applies to plan years beginning on or after January 1, 2008, an automatic contribution arrangement can only become an EACA on or after that date. Accordingly, a withdrawal election under section 414(w) can only apply to elective contributions made after that date. The proposed regulations would provide that the 90-day window for making the withdrawal election begins on the date on which the compensation that is subject to the cash or deferred election would otherwise have been included in gross income. In addition, the proposed regulations would provide that the effective date of the election must be no later than the last day of the payroll period that begins after the date of the election.

The proposed regulations would provide that the distribution is generally the account balance attributable to the default elective contributions, adjusted for gains and losses. The distribution may be reduced by any generally applicable fees. However, the proposed regulations provide that the plan may not charge a different fee for this distribution than would apply to other distributions. Also, if the default elective contributions are not maintained in a separate account, the amount of the allocable gains and losses will be determined under rules similar to those provided under § 1.401(k)–2(b)(2)(iv) for the distribution of excess contributions.

The amount withdrawn under section 414(w) is includible in gross income in the year in which it is distributed, except amounts that are distributions of designated Roth contributions are not included in an employee's gross income a second time. The proposed regulations would require that this amount be reported on Form 1099–R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc. However, the amount is not subject to the additional income tax under section 72(t). Finally, the proposed regulations would amend § 1.402(c)–2 to include these withdrawals in the list of distributions that are not eligible for rollover.

Any employer matching contribution with respect to the default elective contribution distributed pursuant to section 414(w) must be forfeited. The forfeited matching contribution is not a mistaken contribution or other erroneous contribution, and, thus, it cannot be returned to the employer (or be distributed to the employee as is permitted for an excess aggregate contribution). The proposed regulations would provide that the forfeited contribution must remain in the plan and be treated in the same manner under the plan terms as any other forfeiture under the plan.

Under section 414(w)(3)(B), an EACA must provide that the default elective contribution is a uniform percentage of compensation. The proposed regulations would provide that the permitted differences in contribution rates provided in these proposed regulations under section 401(k)(13) for a QACA also apply to an EACA.

Another requirement to be an EACA under section 414(w)(3)(C) is that automatic contributions are invested in accordance with regulations prescribed by the Secretary of Labor under section 404(c)(5) of ERISA. These proposed regulations would provide that this requirement only applies if the plan is otherwise subject to Title I of ERISA. Thus, for example, this provision would not apply to a governmental plan (within the meaning of section 414(d)).

The proposed regulations reflect the section 414(w) notice requirement under which notice must be provided to each employee to whom the EACA applies within a ''reasonable period'' before each plan year, but provide that, if an employee becomes eligible in a given year, notice must be given within a ''reasonable period'' before the employee becomes eligible. The proposed regulations provide a deemed timing requirement that is generally the same as the deemed timing rule in § 1.401(k)–3(d)(3)(ii).

3. Coordinated Notices

As noted in this preamble, PPA '06 provides for several notices relating to automatic contribution arrangements that have similar content and timing requirements, including the notices required by sections 404(c)(5)(B) and 514(e)(3) of ERISA. The IRS, in coordination with DOL, anticipates that a single document can satisfy all of these notice requirements, so long as it has all of the requisite information for plan participants and satisfies the timing requirements for each of those notices.

4. Other Provisions of Section 902 of PPA '06

The proposed regulations also reflect the amendments to section 4979 made by section 902 of PPA '06. First, the proposed regulations reflect the substitution of 6 months for 2½ months as the time period under section 4979(f) by which excess contributions or excess aggregate contributions with respect to an EACA must be distributed to avoid the excise tax under section 4979(a). Further, the proposed regulations reflect the elimination of the requirement that distributions of excess contributions or excess aggregate contributions (whether or not under an EACA) include attributable earnings for the period after the end of the plan year (gap period income). The proposed regulations also reflect the change in the tax treatment of a distribution of excess contributions or excess aggregate contributions (whether or not under an EACA) under which the distribution of excess contributions or excess aggregate contributions (including earnings) is includible in the participant's gross income for the year of the distribution (without regard to the amount of the distribution). The proposed regulations would also amend §§ 1.401(k)–2 and 1.401(m)–2 to reflect these provisions in the correction rules for the ADP and ACP tests. All of these changes are proposed to be effective January 1, 2008 and will impact corrective distributions made in 2009.

In addition, the proposed regulations would amend §§ 1.401(k)–2 and 1.401(m)–2 to reflect the provisions of section 414(w)(6) that default elective contributions distributed under section 414(w) are not taken into account in the ADP test. They are also not permitted to be taken into account in the ACP test. The proposed regulations under section 401(m) have added a conforming change for other elective contributions that are not taken into account in the ADP test. The proposed regulations would also amend § 1.411(a)–4(b)(7) to reflect the amendment to section 411(a)(3)(G) made by PPA '06 section 902(d)(2).

Effective Date

Sections 401(k)(13), 401(m)(12), and 414(w), and the amended provisions of sections 411(a)(3)(G) and 4979(f), are effective for plan years beginning on or after January 1, 2008. These regulations are proposed to be effective for plan years beginning on or after January 1, 2008. Taxpayers may rely on these proposed regulations for guidance

pending the issuance of final regulations. If, and to the extent, the final regulations are more restrictive than the guidance in these proposed regulations, those provisions of the final regulations will be applied without retroactive effect.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has been determined that 5 U.S.C. 533(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 proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that most small entities that maintain plans that will be eligible for the safe harbor provisions of sections 401(k) and 401(m) or the distribution relief provisions of section 414(w) currently provide a similar notice with which this notice can be combined. Therefore, an analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (one signed and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Dana Barry, William Gibbs, and Lisa Mojiri-Azad, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.401(k)–3 is also issued under 26 U.S.C. 401(k)(13)

Par. 2. Section 1.401(k)–0 is amended by:

1. Amending the entry for § 1.401(k)–2 by adding entries for §§ 1.401(k)–2(a)(5)(vi) and 1.401(k)–2(b)(2)(iv)(D).
2. Revising the entries for §§ 1.401(k)–2(b)(2)(vi)(A) and 1.401(k)–2(b)(2)(vi)(B).
3. Adding an entry for § 1.401(k)–2(b)(5)(iii).
4. Revising the entries for §§ 1.401(k)–3(a)(1), 1.401(k)–3(a)(2) and 1.401(k)–3(a)(3).
5. Adding entries for §§ 1.401(k)–3(i), 1.401(k)–3(j) through (j)(2)(iii).
6. Adding entries for § 1.401(k)–3(k) through (k)(4)(iii).

The additions and revisions to read as follows:

§ 1.401(k)–0 Table of Contents.

* * * * *

§ 1.401(k)–2 ADP test.

(a) * * *

(5) * * *

(vi) Default elective contributions pursuant to section 414(w).

* * * * *

(b) * * *

(2) * * *

(iv) * * *

(A) * * *

(D) Plan years before 2008.

* * * * *

(vi) * * *

(A) Corrective distributions for plan years beginning on or after January 1, 2008.

(B) Corrective distributions for plan years beginning before January 1, 2008.

* * * * *

(5) * * *

(iii) Special rule for eligible automatic contribution arrangements.

* * * * *

§ 1.401(k)–3 Safe harbor requirements.

(a) * * *

(1) Section 401(k)(12) safe harbor.

(2) Section 401(k)(13) safe harbor.

(3) Requirements applicable to safe harbor contributions.

* * * * *

(i) Reserved.

(j) Qualified automatic contribution arrangement.

(1) Automatic contribution requirement.

(i) In general.

(ii) Automatic contribution arrangement.

(iii) Exception for certain current employees.

(2) Qualified percentage.

(i) In general.

(ii) Minimum percentage requirements.

(A) Initial-year requirement.

(B) Second-year requirement.

(C) Third-year requirement.

(D) Later years requirement.

(iii) Exception to uniform percentage requirement.

(k) Modifications to contribution requirements and notice requirements for automatic contribution safe harbor.

(1) In general.

(2) Lower matching requirement.

(3) Modified nonforfeiture requirement.

(4) Additional notice requirements.

(i) In general.

(ii) Additional information.

(iii) Timing requirements.

Par. 3. Section 1.401(k)–1 is amended by:

1. Revising paragraph (b)(1)(ii)(C) and adding new paragraph (b)(1)(ii)(D).
2. Revising paragraph (e)(7) by adding a new sentence after the fifth sentence.

The additions and revisions read as follows:

§ 1.401(k)–1 Certain cash or deferred arrangements.

* * * * *

(b) * * * (1) * * * (ii) * * *

(C) The ADP safe harbor provisions of section 401(k)(13) described in § 1.401(k)–3; or

(D) The SIMPLE 401(k) provisions of section 401(k)(11) described in § 1.401(k)–4.

* * * * *

(e) * * *

(7) *Plan provision requirement.* * * * In addition, a plan that uses the safe harbor method of section 401(k)(13), as described in paragraph (b)(1)(ii)(C) of this section, must specify the default percentages that apply for the plan year, and whether the safe harbor contribution will be the nonelective safe harbor contribution or the matching safe harbor contribution and is not permitted to provide that ADP testing will be used

if the requirements for the safe harbor are not satisfied. * * *

* * * * *

Par. 4. Section 1.401(k)–2 is amended by:

1. Adding paragraph (a)(5)(vi).
2. Revising paragraphs (b)(2)(iv)(A) and (b)(2)(iv)(D).
3. Removing paragraph (b)(2)(iv)(E).
4. Revising paragraph (b)(2)(vi)(A).
5. Adding a new first sentence to paragraph (b)(2)(vi)(B).
6. Removing and reserving Example (3), Example (4), and Example (5) from § 1.401(k)–2 (b)(2)(viii).
7. Revising paragraph (b)(4)(iii) and adding paragraph (b)(5)(iii).

The additions and revisions read as follows:

§ 1.401(k)–2 ADP test.

(a) * * *

(5) * * *

(vi) *Default elective contributions pursuant to section 414(w).* Default elective contributions made under an eligible automatic contribution arrangement (within the meaning of § 1.414(w)–1(b) that are distributed pursuant to § 1.414(w)–1(c) for plan years beginning on or after January 1, 2008, are not taken into account under paragraph (a)(4) of this section for the plan year for which the contributions are made, or for any other plan year.

(b) * * *

(2) * * *

(iv) *Income allocable to excess contributions*—(A) *General rule.* For plan years beginning on or after January 1, 2008, the income allocable to excess contributions is equal to the allocable gain or loss through the end of the plan year. See paragraph (b)(2)(iv)(D) of this section for rules that apply to plan years beginning before January 1, 2008.

* * * * *

(D) *Plan years before 2008.* For plan years beginning before January 1, 2008, the income allocable to excess contributions is determined under § 1.401(k)–2(b)(2)(iv) (as it appeared in the April 1, 2007, edition of 26 CFR part 1).

* * * * *

(vi) *Tax treatment of corrective distributions*—(A) *Corrective distributions for plan years beginning on or after January 1, 2008.* Except as provided in this paragraph (b)(2)(vi), for plan years beginning on or after January 1, 2008, a corrective distribution of excess contributions (and allocable income) is includible in the employee's gross income for the employee's taxable year in which distributed. In addition, the corrective distribution is not subject to the early distribution tax of section 72(t). See also paragraph (b)(5) of this section for additional rules relating to the employer excise tax on amounts distributed more than 2½ months (6 months in the case of a plan that includes an eligible automatic contribution arrangement within the meaning of section 414(w)) after the end of the plan year. See also § 1.402(c)–2, A–4 for restrictions on rolling over distributions that are excess contributions.

(B) *Corrective distributions for plan years beginning before January 1, 2008.* The tax treatment of corrective distributions for plan years beginning before January 1, 2008, is determined under § 1.401(k)–2(b)(2)(vi) (as it appeared in the April 1, 2007, edition of 26 CFR Part 1). * * *

* * * * *

(4) * * *

(iii) *Permitted forfeiture of QMAC.* Pursuant to section 401(k)(8)(E), a qualified matching contribution is not treated as forfeitable under § 1.401(k)–1(c) merely because under the plan it is forfeited in accordance with paragraph (b)(4)(ii) of this section or § 1.414(w)–1(d)(2).

* * * * *

(5) * * *

(iii) *Special rule for eligible automatic contribution arrangements.* In the case of a plan that includes an eligible automatic contribution arrangement within the meaning of section 414(w), 6 months is substituted for 2½ months in paragraph (b)(5)(i) of this section.

* * * * *

Par. 5. Section 1.401(k)–3 is amended by:

1. Revising paragraph (a).
2. Revising the first sentence of paragraph (e)(1).
3. Revising the last sentence of paragraph (h)(2).
4. Revising the first sentence of paragraph (h)(3).
5. Reserving paragraph (i) and adding paragraphs (j), and (k).

The additions and revisions to read as follows:

§ 1.401(k)–3 Safe harbor requirements.

(a) *ADP test safe harbor*—(1) *Section 401(k)(12) safe harbor.* A cash or deferred arrangement satisfies the ADP safe harbor provision of section 401(k)(12) for a plan year if the arrangement satisfies the safe harbor contribution requirement of paragraph (b) or (c) of this section for the plan year, the notice requirement of paragraph (d) of this section, the plan year requirements of paragraph (e) of this section, and the additional rules of paragraphs (f), (g), and (h) of this section, as applicable.

(2) *Section 401(k)(13) safe harbor.* For plan years beginning on or after January 1, 2008, a cash or deferred arrangement satisfies the ADP safe harbor provision of section 401(k)(13) for a plan year if the arrangement is described in paragraph (j) of this section and satisfies the safe harbor contribution requirement of paragraph (k) of this section for the plan year, the notice requirement of paragraph (d) of this section (modified to include the information set forth in paragraph (k)(4) of this section), the plan year requirements of paragraph (e) of this section, and the additional rules of paragraphs (f), (g), and (h) of this section, as applicable. A cash or deferred arrangement that satisfies the requirements of this paragraph is referred to as a qualified automatic contribution arrangement.

(3) *Requirements applicable to safe harbor contributions.* Pursuant to section 401(k)(12)(E)(ii) and section 401(k)(13)(D)(iv), the safe harbor contribution requirement of paragraph (b), (c), or (k) of this section must be satisfied without regard to section 401(l). The contributions made under paragraph (b) or (c) of this section (and the corresponding contributions under paragraph (k) of this section) are referred to as safe harbor nonelective contributions and safe harbor matching contributions, respectively.

* * * * *

(e) * * * (1) *General rule.* Except as provided in this paragraph (e) or in paragraph (f) of this section, a plan will fail to satisfy the requirements of sections 401(k)(12), 401(k)(13), and this section unless plan provisions that satisfy the rules of this section are adopted before the first day of the plan year and remain in effect for an entire 12-month plan year. * * *

* * * * *

(h) * * *

(2) *Use of safe harbor nonelective contributions to satisfy other discrimination tests.* * * * However, pursuant to section 401(k)(12)(E)(ii) and section 401(k)(13)(D)(iv), to the extent they are needed to satisfy the safe harbor contribution requirement of paragraph (b) of this section, safe harbor nonelective contributions may not be taken into account under any plan for purposes of section 401(l) (including the imputation of permitted disparity under § 1.401(a)(4)–7).

(3) *Early participation rules.* Section 401(k)(3)(F) and § 1.401(k)–2(a)(1)(iii)(A), which provide an alternative nondiscrimination rule for certain plans that provide for early participation, do not apply for purposes

of section 401(k)(12), section 401(k)(13), and this section. * * *

* * * * *

(i) [RESERVED].

(j) *Qualified automatic contribution arrangement*—(1) *Automatic contribution requirement*—(i) *In general.* A cash or deferred arrangement is described in this paragraph (j) if it is an automatic contribution arrangement described in paragraph (j)(1)(ii) of this section where the default election under that arrangement is a contribution equal to the qualified percentage described in paragraph (j)(2) of this section multiplied by the eligible employee's compensation from which elective contributions are permitted to be made under the cash or deferred arrangement.

(ii) *Automatic contribution arrangement.* An automatic contribution arrangement is a cash or deferred arrangement within the meaning of § 1.401(k)–1(a)(2) that provides that in the absence of an eligible employee's affirmative election, a default applies under which the employee is treated as having made an election to have a specified contribution made on his or her behalf under the plan. The default election ceases to apply with respect to an eligible employee if the employee makes an affirmative election (that remains in effect) to—

(A) Have elective contributions made in a different amount on his or her behalf (in a specified amount or percentage of compensation); or

(B) Not have any elective contributions made on his or her behalf.

(iii) *Exception for certain current employees.* An automatic contribution arrangement will not fail to be a qualified automatic contribution arrangement merely because the default election provided under paragraph (j)(1)(i) of this section is not applied to an employee who was an eligible employee under the cash or deferred arrangement (or a predecessor arrangement) immediately prior to the effective date of the qualified automatic contribution arrangement and on that effective date had an affirmative election in effect (that remains in effect) to—

(A) Have elective contributions made on his or her behalf (in a specified amount or percentage of compensation); or

(B) Not have elective contributions made on his or her behalf.

(2) *Qualified percentage*—(i) *In general.* A percentage is a qualified percentage only if it—

(A) Is uniform for all employees (except to the extent provided in paragraph (j)(2)(iii) of this section);

(B) Does not exceed 10 percent; and

(C) Satisfies the minimum percentage requirements of paragraph (j)(2)(ii) of this section.

(ii) *Minimum percentage requirements*—(A) *Initial-period requirement.* The minimum percentage requirement of this paragraph (j)(2)(ii)(A) is satisfied only if the percentage that applies for the period that begins when the employee first participates in the automatic contribution arrangement that is a qualified automatic contribution arrangement and ends on the last day of the following plan year is at least 3 percent.

(B) *Second-year requirement.* The minimum percentage requirement of this paragraph (j)(2)(ii)(B) is satisfied only if the percentage that applies for the plan year immediately following the last day described in paragraph (j)(2)(ii)(A) of this section is at least 4 percent.

(C) *Third-year requirement.* The minimum percentage requirement of this paragraph (j)(2)(ii)(C) is satisfied only if the percentage that applies for the plan year immediately following the plan year described in paragraph (j)(2)(ii)(B) of this section is at least 5 percent.

(D) *Later years requirement.* A percentage satisfies the minimum percentage requirement of this paragraph (j)(2)(ii)(D) only if the percentage that applies for all plan years following the plan year described in paragraph (j)(2)(ii)(C) of this section is at least 6 percent.

(iii) *Exception to uniform percentage requirement.* A plan does not fail to satisfy the uniform percentage requirement of paragraph (j)(2)(i)(A) of this section merely because—

(A) The percentage varies based on the number of years an eligible employee has participated in the automatic contribution arrangement intended to be a qualified automatic contribution arrangement;

(B) The rate of elective contributions under a cash or deferred election that is in effect immediately prior to the effective date of the default percentage under the qualified automatic contribution arrangement is not reduced;

(C) The rate of elective contributions is limited so as not to exceed the limits of sections 401(a)(17), 402(g) (determined with or without catch-up contributions described in section 402(g)(1)(C) or 402(g)(7)), and 415; or

(D) The default election provided under paragraph (j)(1)(i) of this section is not applied during the period an employee is not permitted to make elective contributions in order for the plan to satisfy the requirements of § 1.401(k)–1(d)(3)(iv)(E)(*2*).

(k) *Modifications to contribution requirements and notice requirements for automatic contribution safe harbor*—(1) *In general.* A cash or deferred arrangement satisfies the contribution requirements of this paragraph (k) only if it satisfies the contribution requirements of either paragraph (b) or (c) of this section, as modified by the rules of paragraphs (k)(2) and (k)(3) of this section. In addition, a cash or deferred arrangement described in paragraph (j) of this section satisfies the notice requirement of section 401(k)(13)(E) only if the notice satisfies the additional requirements of paragraph (k)(4) of this section.

(2) *Lower matching requirement.* In applying the requirement of paragraph (c) of this section, in the case of a cash or deferred arrangement described in paragraph (j) of this section, the basic matching formula is modified so that each eligible NHCE must receive the sum of—

(i) 100 percent of the employee's elective contributions that do not exceed 1 percent of the employee's safe harbor compensation; and

(ii) 50 percent of the employee's elective contributions that exceed 1 percent of the employee's safe harbor compensation but that do not exceed 6 percent of the employee's safe harbor compensation.

(3) *Modified nonforfeiture requirement.* A cash or deferred arrangement described in paragraph (j) of this section will not fail to satisfy the requirements of paragraph (b) or (c) of this section, as applicable, merely because the safe harbor contributions are not qualified nonelective contributions or qualified matching contributions provided that—

(i) The contributions are subject to the withdrawal restrictions set forth in § 1.401(k)–1(d); and

(ii) Any employee who has completed 2 years of service (within the meaning of section 411(a)) has a nonforfeitable right to the account balance attributable to the safe harbor contributions.

(4) *Additional notice requirements*—(i) *In general.* A notice satisfies the requirements of this paragraph (k)(4) only if it includes the additional information described in paragraph (k)(4)(ii) of this section and satisfies the timing requirements of paragraph (k)(4)(iii) of this section.

(ii) *Additional information.* A notice satisfies the additional information requirement of this paragraph (k)(4)(ii) only if it explains—

(A) The level of elective contributions, which will be made on the employee's behalf if the employee does not make an affirmative election;

(B) The employee's right under the automatic contribution arrangement to elect not to have elective contributions made on the employee's behalf (or to elect to have such contributions made in a different amount or percentage of compensation); and

(C) How contributions under the automatic contribution arrangement will be invested (including, in the case of an arrangement under which the employee may elect among 2 or more investment options, how contributions made under the automatic contribution arrangement will be invested in the absence of an investment election by the employee).

(iii) *Timing requirements.* A notice satisfies the timing requirements of this paragraph (k)(4)(iii) only if it is provided sufficiently early so that the employee has a reasonable period of time after receipt of the notice and before the first elective contribution is made under the arrangement to make the elections described under paragraph (k)(4)(ii)(B) and (C) of this section.

* * * * *

Par. 6. Section 1.401(k)–6 is amended by revising the last sentence in the definition of ''Qualified matching contributions (QMACs)'' to read as follows:

§ 1.401(k)–6 Definitions.

* * * * *

Qualified matching contributions (QMACs). * * * See also § 1.401(k)–2(b)(4)(iii) for a rule providing that a matching contribution does not fail to qualify as a QMAC solely because it is forfeitable under section 411(a)(3)(G) as a result of being a matching contribution with respect to an excess deferral, excess contribution, excess aggregate contribution, or it is forfeitable under § 1.414(w)–1(d)(2).

* * * * *

Par. 7. Section 1.401(m)–0 is amended to read as follows:

Adding an entry for § 1.401(m)–2(b)(4)(iii).

§ 1.401(m)–0 Table of Contents.

* * * * *

§ 1.401(m)–2 ACP Test.

* * * * *

(b) * * *

(2) * * *

(iv) * * *

(A) * * *

(D) Plan years before 2008.

* * * * *

(4) * * *

(iii) *Special rule for eligible automatic contribution arrangements.*

* * * * *

Par. 8. Section 1.401(m)–1 is amended by:

1. Revising paragraph (b)(1)(iii) and adding paragraph (b)(1)(iv).

2. Revising the last sentence of paragraph (b)(4)(iii)(B).

3. Revising the fifth sentence of paragraph (c)(2).

The additions and revisions read as follows:

§ 1.401(m)–1 Employee contributions and matching contributions.

* * * * *

(b) * * *

(1) * * *

(iii) The ACP safe harbor provisions of section 401(m)(12) described in § 1.401(m)–3; or

(iv) The SIMPLE 401(k) provisions of sections 401(k)(11) and 401(m)(10) described in § 1.401(k)–4.

* * * * *

(b) * * *

(4) * * *

(iii) * * *

(B) *Arrangements with inconsistent ACP testing methods.* * * * Similarly, an employer may not aggregate a plan (within the meaning of § 1.410(b)–7) that is using the ACP safe harbor provisions of section 401(m)(11) or 401(m)(12) and another plan that is using the ACP test of section 401(m)(2).

* * * * *

(c) * * *

(2) *Plan provision requirement.* * * * Similarly, a plan that uses the safe harbor method of section 401(m)(11) or 401(m)(12), as described in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section, must specify the default percentages that apply for the plan year and whether the safe harbor contribution will be the nonelective safe harbor contribution or the matching safe harbor contribution and is not permitted to provide that ACP testing will be used if the requirements for the safe harbor are not satisfied. * * *

* * * * *

Par. 9. Section 1.401(m)–2 is amended by:

1. Revising the first and second sentences of paragraph (a)(5)(iv).

2. Revising paragraph (a)(5)(v).

3. Adding a new sentence to the end of paragraph (a)(6)(ii).

4. Revising paragraphs (b)(2)(iv)(A) and (b)(2)(iv)(D).

5. Removing paragraph (b)(2)(iv)(E).

6. Revising paragraph (b)(2)(vi)(A).

7. Adding a new sentence to the beginning of paragraph (b)(2)(vi)(B).

8. Adding paragraph (b)(4)(iii).

The additions and revisions to read as follows:

§ 1.401(m)–2 ACP test.

(a) * * *

(5) * * *

(iv) *Matching contributions taken into account.* A plan that satisfies the ACP safe harbor requirements of section 401(m)(11) or 401(m)(12) for a plan year but nonetheless must satisfy the requirements of this section because it provides for employee contributions for such plan year is permitted to apply this section disregarding all matching contributions with respect to all eligible employees. In addition, a plan that satisfies the ADP safe harbor requirements of § 1.401(k)–3 for a plan year using qualified matching contributions but does not satisfy the ACP safe harbor requirements of section 401(m)(11) or 401(m)(12) for such plan year is permitted to apply this section by excluding matching contributions with respect to all eligible employees that do not exceed 4 percent (3.5 percent in the case of a plan that satisfies the ADP safe harbor under section 401(k)(13)) of each employee's compensation. * * *

(v) *Treatment of forfeited matching contributions.* A matching contribution that is forfeited because the contribution to which it relates is treated as an excess contribution, excess deferral, excess aggregate contribution, or a default elective contribution that is distributed under section 414(w), is not taken into account for purposes of this section.

* * * * *

(6) * * *

(ii) *Elective contributions taken into account under the ACP test.* * * * In addition, for plan years ending on or after November 8, 2007, elective contributions which are not permitted to be taken into account for the ADP test for the plan year under § 1.401(k)–2(a)(5)(ii), (iii), (v), or (vi) are not permitted to be taken into account for the ACP test.

* * * * *

(b) * * *

(2) * * *

(iv) *Income allocable to excess aggregate contributions*—(A) *General rule.* For plan years beginning on or after January 1, 2008, the income allocable to excess aggregate contributions is equal to the allocable gain or loss through the end of the plan year. See paragraph (b)(2)(iv)(D) of this section for rules that apply to plan years beginning before January 1, 2008.

* * * * *

(D) *Plan years before 2008.* For plan years beginning before January 1, 2008,

the income allocable to excess aggregate contributions is determined under § 1.401(m)–2(b)(2)(iv) (as it appeared in the April 1, 2007, edition of 26 CFR part 1).

* * * * *

(vi) *Tax treatment of corrective distributions—(A) Corrective distributions for plan years beginning on or after January 1, 2008.* Except as otherwise provided in this paragraph (b)(2)(vi), for plan years beginning on or after January 1, 2008, a corrective distribution of excess aggregate contributions (and allocable income) is includible in the employee's gross income in the taxable year of the employee in which distributed. The portion of the distribution that is treated as an investment in the contract and is therefore not subject to tax under section 72 is determined without regard to any plan contributions other than those distributed as excess aggregate contributions. Regardless of when the corrective distribution is made, it is not subject to the early distribution tax of section 72(t). See paragraph (b)(4) of this section for additional rules relating to the employer excise tax on amounts distributed more than 2½ months (6 months in the case of a plan that includes an eligible automatic contribution arrangement within the meaning of section 414(w)) after the end of the plan year. See also § 1.402(c)–2, A–4 prohibiting rollover of distributions that are excess aggregate contributions.

(B) *Corrective distributions for plan years beginning before January 1, 2008.* The tax treatment of corrective distributions for plan years beginning before January 1, 2008, is determined under § 1.401(m)–2(b)(2)(vi) (as it appeared in the April 1, 2007, edition of 26 CFR Part 1). * * *

(4) * * *

(iii) *Special rule for eligible automatic contribution arrangements.* In the case of a plan that includes an eligible automatic contribution arrangement (within the meaning of section 414(w)), 6 months is substituted for 2½ months in paragraph (b)(4)(i) of this section.

* * * * *

Par. 10. Section 1.401(m)–3 is amended by:

1. Revising paragraph (a).
2. Revising the first sentences of paragraphs (f)(1) and (j)(3).

The additions and revisions to read as follows:

§ 1.401(m)–3 Safe harbor requirements.

(a) *ACP test safe harbor*—(1) *Section 401(m)(11) safe harbor.* Matching contributions under a plan satisfy the ACP safe harbor provisions of section 401(m)(11) for a plan year if the plan satisfies the safe harbor contribution requirement of paragraph (b) or (c) of this section for the plan year, the limitations on matching contributions of paragraph (d) of this section, the notice requirement of paragraph (e) of this section, the plan year requirements of paragraph (f) of this section, and the additional rules of paragraphs (g), (h) and (j) of this section, as applicable.

(2) *Section 401(m)(12) safe harbor.* For a plan year beginning on or after January 1, 2008, matching contributions under a plan satisfy the ACP safe harbor provisions of section 401(m)(12) for a plan year if the matching contributions are made with respect to a qualified automatic contribution arrangement described in paragraph § 1.401(k)–3(j) that satisfies the safe harbor requirements of § 1.401(k)–3, the limitations on matching contributions of paragraph (d) of this section, the notice requirement of paragraph (e) of this section, the plan year requirements of paragraph (f) of this section, and the additional rules of paragraphs (g), (h) and (j) of this section, as applicable.

(3) *Requirements applicable to safe harbor contributions.* Pursuant to sections 401(k)(12)(E)(ii) and 401(k)(13)(D)(iv), the safe harbor contribution requirement of paragraph (b) or (c) of this section, and § 1.401(k)–3(k) must be satisfied without regard to section 401(l). The contributions made under paragraphs (b) and (c) of this section, and § 1.401(k)–3(k) are referred to as safe harbor nonelective contributions and safe harbor matching contributions.

* * * * *

(f) *Plan year requirement*—(1) *General rule.* Except as provided in this paragraph (f) or in paragraph (g) of this section, a plan will fail to satisfy the requirements of section 401(m)(11), section 401(m)(12), and this section unless plan provisions that satisfy the rules of this section are adopted before the first day of that plan year and remain in effect for an entire 12-month plan year. * * *

* * * * *

(j) * * *

(3) *Early participation rules.* Section 401(m)(5)(C) and § 1.401(m)–2(a)(1)(iii)(A), which provide an alternative nondiscrimination rule for certain plans that provide for early participation, do not apply for purposes of section 401(m)(11), section 401(m)(12), and this section. * * *

* * * * *

Par. 11. Section 1.402(c)–2, A–4 is amended by redesignating paragraph (i) as (j) and adding a new paragraph (i) to read as follows:

§ 1.402(c)–2 Eligible rollover distributions, questions and answers.

* * * * *

A–4 * * *

(i) A distribution that is a permissible withdrawal from an eligible automatic contribution arrangement within the meaning of section 414(w).

* * * * *

Par. 12. Section 1.411(a)–4 is amended by revising paragraph (b)(7) to read as follows:

§ 1.411(a)–4 Forfeitures, suspensions, etc.

* * * * *

(b) * * *

(7) *Certain matching contributions.* A matching contribution (within the meaning of section 401(m)(4)(A) and § 1.401(m)–1(a)(2)) is not treated as forfeitable even if under the plan it may be forfeited under § 1.401(m)–2(b)(1) because the contribution to which it relates is treated as an excess contribution (within the meaning of § 1.401(k)–2(b)(2)(ii) and 1.401(k)–6), excess deferral (within the meaning of § 1.402(g)–1(e)(1)(iii)), excess aggregate contribution (within the meaning of § 1.401(m)–5), or default elective contributions (within the meaning of § 1.414(w)–1(e)) that are withdrawn in accordance with the requirements of § 1.414(w)–1(c).

Par. 13. Section 1.414(w)–1 is added to read as follows:

§ 1.414(w)–1 Permissible Withdrawals from Eligible Automatic Contribution Arrangements.

(a) *Overview.* Section 414(w) provides rules under which certain employees are permitted to elect to make a withdrawal from an eligible automatic contribution arrangement. This section sets forth the rules applicable to permissible withdrawals from an eligible automatic contribution arrangement within the meaning of section 414(w). Paragraph (b) of this section defines an eligible automatic contribution arrangement. Paragraph (c) of this section describes a permissible withdrawal and addresses which employees are eligible to elect a withdrawal, the timing of the withdrawal election, and the amount of the withdrawal. Paragraph (d) of this section describes the tax and other consequences of the withdrawal. Paragraph (e) of this section includes the definitions applicable to this section.

(b) *Eligible automatic contribution arrangement*—(1) *In general.* An eligible automatic contribution arrangement is

an automatic contribution arrangement under an applicable employer plan that, for the plan year, satisfies the uniformity requirement under paragraph (b)(2) of this section, the notice requirement under paragraph (b)(3) of this section, and the default investment requirement under (b)(4) of this section.

(2) *Uniformity requirement*. An eligible automatic contribution arrangement must provide that the default elective contribution is a uniform percentage of compensation. An arrangement does not violate the uniformity requirement of this paragraph (b)(2) merely because the percentage varies in a manner that is permitted under § 1.401(k)–3(j)(2)(iii), except that the rules of §§ 1.401(k)–3(j)(2)(iii)(A) and 1.401(k)–3(j)(2)(iii)(B) are applied without regard to whether the arrangement is intended to be a qualified automatic contribution arrangement.

(3) *Notice requirement*—(i) *General rule*. The notice requirement of this paragraph (b)(3) is satisfied for a plan year if each eligible employee is given notice of the employee's rights and obligations under the arrangement. The notice must be sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and be written in a manner calculated to be understood by the average employee to whom the arrangement applies. The notice must be in writing, however, see § 1.401(a)–21 for rules permitting the use of electronic media to provide applicable notices.

(ii) *Content requirement*. The notice must include the provisions found in § 1.401(k)–3(d)(2)(ii) to the extent those provisions apply to the arrangement. A notice is not considered sufficiently accurate and comprehensive unless the notice accurately describes—

(A) The level of elective contributions which will be made on the employee's behalf if the employee does not make an affirmative election;

(B) The employee's rights to elect not to have default elective contributions made to the plan on his or her behalf or to have a different percentage of compensation or amount of elective contributions made to the plan on his or her behalf;

(C) How contributions made under the arrangement will be invested in the absence of any investment election by the employee; and

(D) The employee's rights to make a permissible withdrawal, if applicable, and the procedures to elect such a withdrawal.

(iii) *Timing*—(A) *General rule*. The timing requirement of this paragraph (b)(3)(iii) is satisfied if the notice is provided within a reasonable period before the beginning of each plan year (or, in the year an employee becomes an eligible employee, within a reasonable period before the employee becomes an eligible employee). In addition, a notice satisfies the timing requirements of paragraph (b)(3) of this section only if it is provided sufficiently early so that the employee has a reasonable period of time after receipt of the notice and before the first elective contribution is made under the arrangement to make the election described under paragraph (b)(ii)(A) of this section.

(B) *Deemed satisfaction of timing requirement*. The timing requirement of this paragraph (b)(3)(iii) is satisfied if at least 30 days (and no more than 90 days) before the beginning of each plan year, the notice is given to each eligible employee for the plan year. In the case of an employee who does not receive the notice within the period described in the previous sentence because the employee becomes an eligible employee after the 90th day before the beginning of the plan year, the timing requirement is deemed to be satisfied if the notice is provided no more than 90 days before the employee becomes an eligible employee (and no later than the date the employee becomes an eligible employee).

(4) *Default investment requirement*. To the extent the plan is subject to Title I of ERISA, default elective contributions under an eligible automatic contribution arrangement must be invested in accordance with regulations prescribed by the Secretary of Labor under section 404(c)(5) of ERISA.

(c) *Permissible withdrawal*—(1) *In general*. If the plan provides, any employee who has default elective contributions made under the eligible automatic contribution arrangement may elect to make a withdrawal of such contributions (and earnings attributable thereto) in accordance with the requirements of this paragraph (c). An applicable employer plan that includes an eligible automatic contribution arrangement will not fail to satisfy the prohibition on in-service withdrawals under sections 401(k)(2)(B), 403(b)(7), 403(b)(11), or 457(d)(1) merely because it permits withdrawals that satisfy the timing requirement of paragraph (c)(2) of this section and the amount requirement of paragraph (c)(3) of this section.

(2) *Timing*. The election to withdraw default elective contributions must be made no later than 90 days after the date of the first default elective contribution under the eligible automatic contribution arrangement. The date of the first default elective contribution is the date that the compensation that is subject to the cash or deferred election would otherwise have been included in gross income. The effective date of an election described in this paragraph (c)(2) cannot be later than the last day of the payroll period that begins after the date the election is made.

(3) *Amount of distributions*—(i) *In general*. A distribution satisfies the requirement of this paragraph (c)(3) if the distribution is equal to the amount of default elective contributions made under the eligible automatic contribution arrangement through the effective date of the election described in paragraph (c)(2) of this section (adjusted for allocable gains and losses to the date of distribution). If default elective contributions are separately accounted for in the participant's account, the amount of the distribution will be the total amount in that account. However, if default elective contributions are not separately accounted for under the plan, the amount of the allocable gains and losses will be determined under rules similar to those provided under § 1.401(k)–2(b)(2)(iv) for the distribution of excess contributions.

(ii) *Fees*. The distribution amount as determined under this paragraph (c)(3) may be reduced by any generally applicable fees. However, the plan may not charge a different fee for a distribution under section 414(w) than applies to other distributions.

(d) *Consequences of the withdrawal*—(1) *Income tax consequences*—(i) *Year of inclusion*. The amount of the withdrawal is includible in the eligible employee's gross income for the taxable year in which the distribution is made. However, the portion of the distribution consisting of designated Roth contributions is not included in an employee's gross income a second time. The portion of the withdrawal that is treated as an investment in the contract is determined without regard to any plan contributions other than those distributed as withdrawal default elective contributions.

(ii) *No additional tax on early distributions from qualified retirement plans*. The withdrawal is not subject to the additional tax under section 72(t).

(iii) *Reporting*. The amount of the withdrawal is reported on Form 1099–R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., as described in the applicable instructions.

(2) *Forfeiture of matching contributions*. In the case of any withdrawal made under paragraph (c) of

this section, employer matching contributions with respect to the amount withdrawn must be forfeited.

(3) *Consent rules.* A withdrawal made under paragraph (c) of this section may be made without regard to any notice or consent otherwise required under section 401(a)(11) or 417.

(e) *Definitions.* Unless indicated otherwise, the following definitions apply for purposes of section 414(w) and this section.

(1) *Applicable employer plan.* An applicable employer plan means a plan that—

(i) Is qualified under section 401(a);

(ii) Satisfies the requirements of section 403(b); or

(iii) Is a section 457(b) eligible governmental plan described in § 1.457–2(f).

(2) *Automatic contribution arrangement.* An automatic contribution arrangement means an arrangement that provides for a cash or deferred election that provides that in the absence of an eligible employee's affirmative election, a default election applies under which the employee is treated as having elected to have default elective contributions made on his or her behalf under the plan. This default election ceases to apply with respect to an employee if the employee makes an affirmative election (that remains in effect) to—

(i) Not have any default elective contributions made on his or her behalf; or

(ii) Have default elective contributions made in a different amount or percentage of compensation.

(3) *Default elective contributions.* Default elective contributions means contributions made at a specified level or amount under an automatic contribution arrangement that are—

(i) Contributions described in section 402(g)(3)(A) or 402(g)(3)(C); or

(ii) Contributions made pursuant to a cash or deferred election within the meaning of section 457(b)(4) where the contributions are under a section 457(b) eligible governmental plan.

(4) *Eligible employee.* An eligible employee means an employee who is eligible to make a cash or deferred election under the plan.

(f) *Effective date.* Section 414(w) and this section apply to plan years beginning on or after January 1, 2008.

* * * * *

PART 54—EXCISE TAXES. PENSIONS, REPORTING AND RECORDKEEPING REQUIREMENTS

Par. 14. The authority citation for part 54 continues to read in part as follows:

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

Par. 15. Section 54.4979–1(c)(1) is amended by:

Revising the first and second sentences of paragraph (c)(1) to read as follows:

§ 54.4979–1 Excise tax on certain excess contributions and excess aggregate contributions.

* * * * *

(c) *No tax when excess distributed within 2½ months of close of year or additional employer contributions made*—(1) *General rule.* No tax is imposed under this section on any excess contribution or excess aggregate contribution, as the case may be, to the extent the contribution (together with any income allocable thereto) is corrected before the close of the first 2½ months of the following plan year (6 months in the case of a plan that includes an eligible automatic contribution arrangement within the meaning of section 414(w)). Qualified nonelective contributions and qualified matching contributions taken into account under § 1.401(k)–2(a)(6) of this Chapter or qualified nonelective contributions or elective contributions taken into account under § 1.401(m)–2(a)(6) of this Chapter for a plan year may permit a plan to avoid excess contributions or excess aggregate contributions, respectively, even if made after the close of the 2½ month period (6 months in the case of a plan that includes an eligible automatic contribution arrangement within the meaning of section 414(w)). * * *

* * * * *

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E7–21821 Filed 11–7–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Notice of Public Workshop To Discuss the Possible Need for Suspension of Operations Specifically Related to High Pressure or High Temperature Equipment

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of Public Workshop.

SUMMARY: The MMS will hold a workshop to discuss the possible need to develop a new regulation allowing for a Suspension of Operations, specifically related to high pressure or high temperature equipment needed for safe drilling, completion, or production operations. This Suspension of Operations would allow for an extension of a lease when the modification of existing technology is considered necessary in order to operate in frontier areas due to unexpected high temperatures or high pressures encountered on your lease. This type of Suspension of Operations would not apply to the initial design, development, or manufacturing of new technology.

Workshop Date: January 23, 2008, beginning at 9 a.m.

*Workshop Location:*The workshop will be held at the Gulf of Mexico Regional Office, Minerals Management Service, Room 111, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. All interested parties are invited to attend.

FOR FURTHER INFORMATION CONTACT: Carole Danos, MMS, Gulf of Mexico Outer Continental Shelf Region, Office of Production and Development, 1201 Elmwood Park Blvd., MS 5300, New Orleans, Louisiana 70123–2394, e-mail: *carole.danos@mms.gov,* telephone (504) 736–2675.

SUPPLEMENTARY INFORMATION: The MMS received requests from industry to consider a procedure to grant lease extensions in order to develop new technology which may lead to the production of hydrocarbons. The MMS will hold a workshop to gain additional insight from industry to help determine whether such suspensions would be warranted. Also to be discussed are the accompanying data and information that would be submitted to validate a request for a lease extension.

Background: Regulations governing the granting of Suspensions of Production (SOP) and Suspensions of Operations (SOO) are found at 30 CFR 250.168–177. Our current regulations allow MMS to issue SOOs for the following reasons:

- When necessary to comply with judicial decrees (see § 250.172(a)).
- When activities pose a threat or harm to life, environment, or mineral deposits (see § 250.172(b)).
- For installation of safety or environmental equipment (see § 250.172(c)).
- When necessary to carry out NEPA requirements (see § 250.172(d)).
- When inordinate delays are encountered in obtaining required permits or consents (see § 250.172(e)).
- You fail to comply with a law, regulation, order, or lease provision (see § 250.173(a)).

• The suspension is in the interest of National security or defense (see § 250.173(b)).

• When you are prevented from drilling or other operations for reasons beyond your control (see § 250.175(a)).

• When additional time is needed for potentially drilling under salt sheets (see § 250.175(b)).

• When additional time is needed to potentially drill ultra-deep wells (see § 250.175(c)).

Suspensions have been limited because lease maintenance is a very critical issue to the operator and also to MMS. Leases expire at the end of their primary term unless operations (drilling, well re-working, or production in paying quantities) are being conducted. Under current regulations, only these operations or a suspension will extend the term of a lease. Unless the suspension program is properly designed, it could delay the overall development of Outer Continental Shelf (OCS) hydrocarbon resources. The existence of many deepwater units further complicates the issue because units are comprised of multiple leases. Lastly, this proposed type of suspension may be regarded as harmful by associated businesses as it may postpone drilling and associated operations.

Discussion

The MMS has modified regulations governing suspensions in the past to reflect technological challenges, i.e., complexities of geophysical imaging under salt sheets and at extreme depths. However, the regulations do not allow for the granting of a SOP or SOO based on time needed to develop technology. The MMS will consider proposing a rule that would allow a SOO to provide additional time for the technological improvement of existing surface and wellbore equipment to promote safety and protect the environment when High Pressure (HP) or High Temperature (HT) beyond the capability of existing equipment has been encountered on the lease.

Technology Suspension

The MMS has been approached by companies that have drilled wells, made discoveries, but have encountered HT/HP conditions that create technological challenges for drilling additional wells or forming a development plan. The concept would be to allow a suspension to address these challenges.

Questions industry presenters should address:

1. Is this concept warranted? Why?
2. How would MMS define ''technological challenge'' that would make one eligible for such a suspension?
3. What other eligibility criteria should be considered?
4. What would tangible/observable milestones be for technology development related to a lease?
5. How long should such a suspension last, and should it be renewable?

Presentations and Written Comments

The MMS has not decided whether technology suspensions are warranted. This workshop is being held to provide industry with an opportunity to provide the necessary facts (pros and cons) that MMS should consider in making a determination on whether or not to propose such a rule. Therefore, we expect industry to play a major role in this workshop. Requests by parties interested in making a formal presentation at the workshop should be accompanied by a summary of the material to be covered by the presentation and an estimate of the amount of time required. If time constraints dictate, a time limit may be placed on individual presentations. Please address requests to make a presentation to Carole Danos. Requests must be received by close of business on December 7, 2007. Approved presenters will be notified prior to the workshop. A final agenda will be posted by December 21, 2007, on the MMS Web site at *http://www.gomr.mms.gov/homepg/new/calendr.html.* The MMS encourages written comments responding to this notice or the workshop discussions.

DATES: You may submit written comments by February 22, 2008. The MMS may not fully consider comments received after this date.

ADDRESSES: You may submit comments on this concept by any of the following methods. Please use ''Technology Suspension'' as the heading for your comments.

• *Federal eRulemaking Portal: http://www.regulations.gov,* select ''Minerals Management Service'' from the agency drop-down menu, then click ''submit.'' In the Docket ID column, select MMS–2007–OMM–0062 to submit public comments and to view supporting and related materials available for this rulemaking. 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. All comments submitted will be posted to the docket.

• *Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention:* Regulations and Standards Branch (RSB); 381 Elden Street, MS–4024, Herndon, Virginia 20170–4817. Please reference ''Technology Suspension'' in your comments and include your name and return address.

Registration: There is no registration fee for this workshop. However, to assess the number of participants, MMS requests participants to register with Carole Danos at (504) 736–2675 or *carole.danos@mms.gov* prior to the meeting. The deadline to register is January 11, 2008. Seating is limited and the number of attendees from each organization may have to be restricted.

Dated: November 2, 2007.

Chris C. Oynes,

Associate Director for Offshore Minerals Management.

[FR Doc. E7–21895 Filed 11–7–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–07–100]

RIN 1625–AA09

Drawbridge Operation Regulations: Isle of Wight Bay (Sinepuxent Bay), Ocean City, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the regulations that govern the operation of the US 50 Bridge across the Isle of Wight Bay (Sinepuxent Bay), at mile 0.5, in Ocean City, MD. The proposal would close the drawbridge to navigation in order to facilitate extensive rehabilitation and to maintain the bridge's operational integrity. Vessels that can pass under the bridge without a bridge opening may do so at all times.

DATES: The Coast Guard proposes closing this drawbridge to navigation beginning at 8 a.m. on January 7, 2008, through 5 p.m. on February 21, 2008. Comments and related material must reach the Coast Guard on or before December 24, 2007.

ADDRESSES: You may mail comments and related material to Commander (dpb), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or they may be hand delivered to the same address between

8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. The Commander (dpb), Fifth Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Sandra S. Elliott, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6557.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–07–100), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like confirmation to know if they were received, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of those comments.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Commander, Fifth Coast Guard District at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time at a place announced by a later notice in the **Federal Register**.

Background and Purpose

Maryland Department of Transportation—State Highway Administration (MDOT) owns and operates the bascule span of the U.S. 50 Bridge, at mile 0.5, across Isle of Wight Bay (Sinepuxent Bay) in Ocean City, MD. The bridge has a vertical clearance in the closed position to vessels of 13 feet, above mean high water (vertical clearance at center of channel increased by five feet). The current regulations are outlined at 33 CFR 117.559, which require the bridge to open on signal except: from October 1 through April 30 from 6 p.m. to 6 a.m., the draw shall open if at least three hours notice is given and from May 25 through September 15 from 9:25 a.m. to 9:55 p.m. the draw shall open at 25 minutes after and 55 minutes after the hour for a maximum of five minutes to let accumulated vessels pass, except that, on Saturdays from 1 p.m. to 5 p.m., the draw shall open on the hour for all waiting vessels and shall remain in the open position until all waiting vessels pass.

The Office of Bridge Inspection and Remedial Engineering, a division under MDOT, has requested a change to the existing operating drawbridge regulations to accommodate the necessary repairs. The repairs include replacing the existing north and south pinion/bull gear sets in the west bascule leaf and replacing the existing grid deck in the bascule span. To facilitate the repairs, the drawbridge will be locked in the closed-to-navigation position from 8 a.m. on Monday, January 7, 2008 until and including 5 p.m. on Thursday, February 21, 2008.

Information provided by MDOT indicates that during the winter months, in January and February, the bridge has an opening frequency of five openings per month. Vessel operators with mast height lower than 13 feet still can transit through the drawbridge across Isle of Wight Bay (Sinepuxent Bay) during the rehabilitation. The project will also require a small barge, measuring 8 feet x 27 feet, for the gear removal/grid deck installation. The barge will only be needed for a six-day period and removed at the end of each procedure at the end of each day. However, the barge can be removed during an emergency at any time. Also, the Atlantic Ocean is an alternate route for vessels with a mast height greater than 13 feet. Therefore, vessels should not be negatively impacted by this proposal.

Discussion of Proposed Rule

The Coast Guard proposes to suspend the operating regulations at 33 CFR 117.559 for the US 50 Bridge at mile 0.5, in Ocean City, Maryland from 8 a.m. on January 7, 2008, through 5 p.m. on February 21, 2008. During this suspension period, the Coast Guard proposes to implement temporary operating regulations for this bridge. The proposed temporary regulations will state that the bridge need not be opened by the bridge operator, Maryland Department of Transportation—State Highway Administration, during this period.

Regulatory Evaluation

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

Due to the historical average number of bridge openings during this time period, the proposed changes would have only a minimal impact on maritime traffic seeking to transit the bridge. Vessel operators with mast height lower than 13 feet still can transit through the drawbridge across Isle of Wight Bay (Sinepuxent Bay) during the rehabilitation. Also, the Atlantic Ocean is an alternate route for vessels with a mast height greater than 13 feet who cannot transit under the bridge during this period.

Small Entities

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

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

This proposed rule would affect the following entities, some of which might be small entities: owners and operators of vessels with over 13 feet of mast height seeking to transit the bridge between 8 a.m. on January 7, 2008, through 5 p.m. on February 21, 2008. This proposed rule would not have a significant economic impact on a substantial number of small entities because vessel operators with mast height lower than 13 feet still can transit through the drawbridge. The Atlantic Ocean is an alternate route for vessels with a mast height greater than 13 feet. Additionally, before the effective period of this rule, public notice will be promulgated so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, (757) 398–6222. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to temporarily amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

2. From 8 a.m. on January 7, 2008 through 5 p.m. on February 21, 2008, temporarily designate the regulatory text in § 117.559 as paragraph (a), temporarily suspend newly designated paragraph (a), and temporarily add paragraph (b) to read as follows:

§ 117.559 Isle of Wight Bay.

* * * * *

(b) From 8 a.m. on January 7, 2008 through 5 p.m. on February 21, 2008, the draw of the U.S. 50 Bridge, mile 0.5, at Ocean City, need not be opened.

Dated: October 24, 2007.

Fred M. Rosa, Jr.,

Rear Admiral, United States Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. E7–21882 Filed 11–7–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2003–0146; FRL–8493–6]

RIN 2060–AO55

National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of public hearing and reopening of public comment period.

SUMMARY: EPA is announcing that there will be a public hearing regarding the proposed rule on the National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries, published September 4, 2007. The public hearing will be held on November 27, 2007 in Houston, Texas. EPA is also announcing that the comment period is being reopened until December 28, 2007. In addition, we note that additional material has been added to the docket since the proposed rule was published.

DATES: *Comments*. EPA is reopening the comment period on the proposed rule published on September 4, 2007 (72 FR 50716). Comments must be received on or before December 28, 2007.

Public Hearing. A public hearing on the proposed amendments published on September 4, 2007 (72 FR 50716) will be held on November 27, 2007, at the Hartman Park Community Center, 9311 Avenue P, Houston, Texas 77012. The public hearing will run from 9 a.m. to 9 p.m. You must register to speak on or before November 21, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2003–0146 (for petroleum refineries), by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov*.
- *Fax:* (202) 566–9744.
- *Mail:* U.S. Postal Service, send comments to: National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries: Residual Risk Standards Docket, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mailcode: 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies. We request that a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**).
- *Hand Delivery:* In person or by courier, deliver comments to: EPA Docket and Information Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2003–0146. 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.

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. Please note that additional information has been posted to the docket since the comment period started.

Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries: Residual Risk Standards Docket, Environmental Protection Agency, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: If you would like to speak at the public hearing or have questions concerning the public hearing, please contact Mrs. Debra Lee at the address given below under **SUPPLEMENTARY INFORMATION**.

Questions concerning the proposed rule should be addressed to Mr. Robert Lucas, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–0884; fax number: (919) 541–0246; e-mail address: *lucas.bob@epa.gov.*

SUPPLEMENTARY INFORMATION:

Public Hearing

The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed rules. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearings. Written comments must be postmarked by the last day of the comment period, December 28, 2007.

The public hearing will be held at the Hartman Park Community Center, 9311 Avenue P, Houston, Texas 77012. The public hearing will begin at 9 a.m. and continue into the evening until 9 p.m. (local time) or later, if necessary, depending on the number of speakers wishing to participate. EPA is scheduling lunch breaks from 12:30 p.m. until 2 p.m. and dinner breaks from 6 p.m. to 7:30 p.m.

If you would like to present oral testimony at the hearings, please notify Mrs. Debra Lee, U.S. Environmental Protection Agency (D205–02), Research Triangle Park, NC 27711, e-mail (preferred method for registering): *lee.debra@epa.gov;* telephone: (919) 541–0860. She will arrange a general time slot for you to speak. EPA will make every effort to follow the schedule as closely as possible on the day of the hearings; however, please plan for the hearing to run either ahead of schedule or behind schedule. Please note that

registration closes at 5 p.m. EST on Wednesday November 21, 2007.

Oral testimony will be limited to 5 minutes for each commenter to address the proposal. We will not be providing equipment for commenters to show overhead slides or make computerized slide presentations unless we receive special requests in advance. Commenters should notify Mrs. Lee if they will need specific audiovisual equipment. Commenters should also notify Mrs. Lee if they need specific translation services for non-English speaking commenters. EPA encourages commenters to provide written versions of their oral testimonies either electronically on computer disk or CD ROM or in paper copy.

The hearing schedule, including a list of speakers, will be posted on EPA's Web site for the proposal at *http://www.epa.gov/ttn/atw/petrefine/petrefpg.html* prior to the hearing. Verbatim transcripts of the hearings and written statements will be included in the rulemaking dockets.

Comment Period

Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing. To allow for adequate time for comment after the public hearing, the public comment period will now end on December 28, 2007.

How can I get copies of the proposed rule and other related information?

The proposed rule for the National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries was published September 4, 2007 (72 FR 50716). EPA has established the public docket for the proposed rulemaking under docket ID No. EPA–HQ–OAR–2003–0146. We note that, since the proposed rule was published, additional materials have been added to the docket. Information on how to access the docket is presented above in the **ADDRESSES** section.

Dated: November 2, 2007.

Stephen L. Johnson,

Administrator.

[FR Doc. E7–21938 Filed 11–7–07; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 72, No. 216

Thursday, November 8, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMMISSION

Annual Meeting

TIME AND DATE: 9:30 a.m.–12:30 p.m., November 9, 2007.

PLACE: Harrisburg Hilton and Towers, One North Second Street, Harrisburg, PA 17101.

STATUS: Most of the meeting will be open to the public. However, the executive session will be closed to the public.

MATTERS TO BE CONSIDERED: *Portions Open to the Public:* The primary purpose of this meeting is to: (1) Review the independent auditors' report of Commission's financial statements for fiscal year 2006–2007; (2) Review the Low-Level Radioactive Waste (LLRW) generation information for 2006; (3) Consider a proposal budget for fiscal year 2008–2009; (4) Review recent national developments regarding low activity and LLRW management and disposal; and (5) Provide an update on PADEP Agreement State Status with the NRC; and (6) Elect the Commission's Officers.

Portions Closed to the Public: An Executive Session, will be held to discuss a potential legal matter.

CONTACT PERSON FOR MORE INFORMATION: Richard R. Janati, Administrator of the Commission, at 717–787–2163.

Richard R. Janati,

Administrator.

[FR Doc. 07–5589 Filed 11–7–07; 8:45 am]

BILLING CODE 0000–00–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: U.S. Census Bureau.

Title: Annual Capital Expenditures Survey.

Form Number(s): ACE–1(S), ACE–1(M), ACE–1(L), ACE–2.

OMB Control Number: 0607–0782.

Type of Request: Revision of a currently approved collection.

Burden Hours: 132,900.

Number of Respondents: 61,000.

Average Hours per Response: 2 hours and 10 minutes.

Needs and Uses: A major concern of economic policymakers is the adequacy of investment in plant and equipment. The data on the amount of business expenditures for new plant and equipment and measures of the stock of existing facilities are critical to evaluating productivity growth, the ability of U.S. business to compete with foreign business, changes in industrial capacity, and overall economic performance. The ACES survey is the sole source of detailed comprehensive statistics on investment in buildings and other structures, machinery, and equipment by private nonfarm businesses in the United States.

Data users tell us that they need comprehensive and consistent data on investment by all private nonfarm businesses, by industry, by kind of investment, i.e., whether in new or used structures or equipment. The objectives of the ACES survey are:

(a) To provide estimates of capital expenditures for all private nonfarm sectors of the economy by 3-digit and selected 4-digit North American Industry Classification System (NAICS) levels;

(b) To base the survey on a probability sample that yields measures of the statistical reliability of the survey estimates;

(c) To develop a base survey to benchmark more frequent surveys on capital expenditures that do not have complete industry coverage;

(d) To produce annual enterprise-level data with the level of detail, coverage, and quality which previously was only available as part of the quinquennial economic census;

(e) To provide detail on capital expenditures for estimating the national income and product accounts, estimating the productivity of U.S. industries, evaluating fiscal and monetary policy, and conducting research using capital expenditures data; and

(f) To provide industry analysts with capital expenditures data for market analysis, economic forecasting, product development, and business planning.

This request is for a revision of a currently approved collection and will cover the 2007 through 2009 ACES (conducted in fiscal years 2008–2010). Changes from the previous ACES authorization are the collection of capital expenditures by type of structure and type of equipment in the 2008 ACES, and the incorporation of the 2007 North American Industry Classification System (NAICS) in the 2009 ACES.

Capital expenditures by type of structure and type of equipment were last collected from employer companies in the 2003 ACES. These data, collected together once every five years, will again be collected in the 2008 ACES. The data are critical to evaluating the comprehensiveness of capital expenditures statistics in years detailed data on types of structures and equipment are not collected. The detailed structures data will provide a 5-year benchmark for estimates of new construction put in place. The detailed equipment data will provide a periodic measure of expenditures by type of equipment and assist in evaluating estimates of the private equipment and software components of nonresidential fixed investment.

Through the 2008 ACES, data will be based on the 2002 NAICS. Beginning with the 2009 ACES, however, we will collect and publish data based on the 2007 NAICS. Industries in the survey will comprise 3-digit and 4-digit 2007 NAICS codes.

To collect data, the Census Bureau will rely primarily on mail out/mail back survey forms. Employer companies will be mailed one of three forms based on the diversity of their operations, i.e., the number of industries in which they have payroll. All employer forms will have the 3-digit or selected 4-digit NAICS industries imprinted on the form to minimize the need for industry self coding.

Companies that operate in only one industry will receive an ACE–1(S) form. These companies will not be asked to report capital expenditures by industry, thus eliminating the need for industry

self coding. Companies that operate in more than one but less than nine industries will receive an ACE–1(M) form. Companies that operate in nine or more industries will receive an ACE–1(L) form.

All ACE–1 forms request sales and receipts information to calculate industry investment to sales ratios and to assist in verifying that consolidated company data are being reported. Asset and depreciation information, also collected, assists in measuring changes in the Nation's capital stock estimates.

Capital expenditures data are also collected annually from a small sample of nonemployer enterprises using Form ACE–2. This collection is intended to better represent the total capital expenditures activity of all firms.

The ACES is an integral part of the Federal Government's effort to improve the quality and usefulness of National economic statistics. Federal agencies, including the Census Bureau, use these data to improve and supplement ongoing statistical programs.

The Census Bureau uses the data to improve the quality of monthly economic indicators of investment. The Bureau's Value of New Construction Put in Place survey currently uses the ACES data to benchmark its industrial buildings data. The Bureau of Economic Analysis (BEA) uses the data in refining and evaluating annual estimates of investment in structures and equipment in the national income and product accounts, compiling annual input-output tables, and computing gross domestic product by industry. The Federal Reserve Board uses the data to improve estimates of investment indicators for monetary policy. The Bureau of Labor Statistics uses the data to improve estimates of capital stocks for productivity analysis. In addition, industry analysts use the data for market analysis, economic forecasting, product development, and business planning.

Affected Public: Business or other for profit organizations; Not-for-profit institutions.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. Sections 182, 224, & 225.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

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

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202) 395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: November 2, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–21932 Filed 11–7–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

AGENCY: National Telecommunications and Information Administration (NTIA).

Title: Certification for Retailers to Accept and Redeem Coupons for the Purchase of a Digital-to-Analog Converter Box.

OMB Approval Number: 0660–0020.

Agency Form Number: DTV–1.

Type of Request: Emergency submission.

Burden Hours: 2,000.

Average Time per Response: 30 minutes.

Number of Respondents: 4,000.

Needs and Uses: The National Telecommunications and Information Administration (NTIA) proposes to add additional questions to the retailer certification form for the digital-to-analog converter box coupon program. In March 2007, NTIA published a Final Rule that outlined the parameters of the coupon program for consumers, retailers, and manufacturers.[1] As part of that rulemaking, NTIA discussed its information requirements for consumers, manufacturers and retailers.[2] NTIA received approval from OMB on its information collection certification for retailers, but has determined that additional information is needed to ensure that the program is run efficiently.

The additional information required from retailers will ensure, among other things, that: (1) Retailers are timely reimbursed; (2) there is consumer information regarding the availability of converter boxes; (3) retailers are complying with program regulations; (4) there is information available as to the geographic location of converter boxes; and (5) the program is able to minimize waste, fraud, and abuse.

An agreement will be on a retailer Web site that will enable retailers to provide the information previously approved by OMB as part of the information collection. This agreement, which is also available to retailers in a hard copy format, also requires additional information from retailers.

Affected Public: Business and other for-profit organizations.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jasmeet K. Seehra, (202) 395–3123.

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

Written comments and recommendations for the proposed information collection should be sent by November 14, 2007 to Jasmeet K. Seehra, OMB Desk Officer, FAX number (202) 395–5167 or via the Internet at *Jasmeet_K._Seehra@omb.eop.gov*.

Dated: November 5, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–21944 Filed 11–7–07; 8:45 am]

BILLING CODE 3510–60–P

[1] See Rules to Implement and Administer a Coupon Program for Digital-to-Analog Converter Boxes (Final Rule), 72 FR 12097 (March 15, 2007).

[2] Id. at p. 12113.

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: U.S. Census Bureau.

Title: Information and Communication Technology Survey.

Form Number(s): ICT–1(S), ICT–1(M), ICT–1(L).

OMB Control Number: 0607–0909.

Type of Request: Extension of a currently approved collection.

Burden Hours: 80,040.

Number of Respondents: 46,000.

Average Hours per Response: 1 hour and 45 minutes.

Needs and Uses: Economic policymakers are concerned about the

lack of available data related to e-business infrastructure investment. Such data are critical for evaluating productivity growth, changes in industrial capacity, and current economic developments. Rapid advances in Information and Communication Technology (ICT) equipment have resulted in these assets having short useful lives and being replaced much more quickly than other types of equipment. Companies are expensing the full cost of such assets during the current annual period rather than capitalizing the value of such assets and expensing the cost over two or more years. In some cases this is due not only to the short useful life of the asset, but also to the fact that companies have varying dollar levels for capitalization.

The Annual Capital Expenditures Survey (ACES) (OMB Project 0607–0782) currently collects summary data on business capital expenditures annually and detailed data on types of structures and equipment every five years. The fact that the ACES program does not include non-capitalized expenditures for e-business infrastructure and infrequently collects detailed data on types of structures and equipment creates serious data gaps. To fill these gaps and as a supplement to the ACES survey, the Census Bureau created the Information and Communication Technology Survey (ICTS). The ICTS uses the ACES sampling, follow-up and estimation methodologies including mailing to the same employer companies.

Data users tell us that they need comprehensive and consistent data on investment by all private nonfarm businesses in capitalized and non-capitalized ICT equipment and software. The objectives of the ICTS are:

(a) To provide estimates of capitalized and non-capitalized ICT equipment expenditures for all private nonfarm sectors of the economy at 3-digit and selected 4-digit North American Industry Classification System (NAICS) levels;

(b) To base the survey on a probability sample that yields measures of statistical reliability of the survey estimates;

(c) To establish an annual enterprise level data series with the level of detail, coverage and quality which was previously unavailable;

(d) To provide detail data on capitalized and non-capitalized ICT expenditures for estimating the national income and product accounts, estimating the productivity of U.S. industries, evaluating fiscal and monetary policy, and conducting research using capitalized and non-capitalized expenditures data; and

(e) To provide industry analysts with necessary data for market analysis, economic forecasting, product development, and business planning.

This request is for a continuation of a currently approved collection covering the 2007–2009 ICTS (conducted in fiscal years 2008–2010). The only change from the previous ICTS is the incorporation of the 2007 North American Industry Classification System (NAICS) into the 2009 ICTS. For both the 2007 and 2008 ICTS, data will be collected and published based on the 2002 NAICS. Beginning with the 2009 ICTS, however, we will collect and publish data based on the 2007 NAICS. Industries will comprise 3-digit and selected 4-digit NAICS codes.

The annual ICTS survey collects data on two categories of non-capitalized expenses (purchases; and operating leases and rental payments), for four types of information and communication technology equipment and software (computers and peripheral equipment; ICT equipment, excluding computers and peripherals; electromedical and electrotherapeutic apparatus; and computer software, including payroll associated with software development). The survey also collects capital expenditures data on the four types of ICT equipment and software cited above. Only nonfarm, non-governmental companies, organizations, and associations operating in the United States are included in this survey.

To collect data, the Census Bureau will rely primarily on mail out/mail back survey forms. Employer companies will be mailed one of three forms based on their diversity of operations, i.e. the number of industries in which they have payroll. All employer forms will have the 3-digit or selected 4-digit NAICS industries imprinted on the form to minimize the need for industry self coding. Companies will be asked to report data for industries in which they operate and incurred capitalized and non-capitalized expenditures.

Companies that operate in only one industry will receive an ICT–1(S) form. These companies will not be asked to report ICT expenditures by industry, this will eliminate the need for industry self coding. Companies that operate in more than one, but less than nine industries will receive an ICT–1(M) form. Companies that operate in nine or more industries will receive an ICT–1(L) form.

The ICTS is an important part of the Federal Government's effort to improve and supplement ongoing statistical programs. The Bureau of Economic Analysis (BEA), Federal Reserve Board, Bureau of Labor Statistics and industry analysts use these data to evaluate productivity and economic growth prospects. In addition, the ICTS provides improved source data significant to BEA's estimate of the investment component of Gross Domestic Product, capital stock estimates, and capital flow tables. Other Federal agencies, private industry organizations, and academic researchers use the survey results for analyzing and studying: Past and current economic performance; Short-term economic forecasts; Productivity; Long-term economic growth; Tax policy; Capacity utilization; Business fixed capital stocks and capital formation; International competitiveness and trade policy; Market research; and Financial analysis.

Affected Public: Business or other for-profit organizations; Not-for-profit institutions.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. Sections 182, 224 & 225.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266.

Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: November 2, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–21947 Filed 11–7–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket Nos. 04–BIS–15]

In the Matters of: S.P. Equipamentos de Protecao ao Trabalho Ltda., Rua Visconde de Inhauma, 386–Saude 04146–030 Sao Paulo, Brazil, Respondent; Decision and Order on Petition to Set Aside Default Order

On February 26, 2007, the Acting Under Secretary of Commerce for

Industry and Security issued a Final Decision and Order, pursuant to his authority under Section 766.22 of the Export Administration Regulations (hereinafter ''Regulations''), in which he affirmed the findings of fact and conclusions of law as recommended by an Administrative Law Judge (ALJ) that Respondent was in default on an administrative proceedings initiated against it under the Regulations.

Respondent has petitioned me to set aside the default order using my authority under Section 366.7(b) of the Regulations. For the reasons stated below, I grant the Petition.

The relevant facts in this matter are as follows. In a charging letter filed on September 13, 2004, the Bureau of Industry and Security (''BIS'') alleged that Respondent committed two violations of the Regulations,[1] issued under the Export Administration Act of 1979, as amended (50 U.S.C. app 2401–2420 (2000)).[2]

On September 13, 2004, BIS mailed the notice of issuance of the charging letter by registered to the Respondent at its last known address. The file indicates that the notice of issuance of a charging letter was received by the Respondent on or about September 24, 2004, and counsel, who no longer represents the Respondent, filed a Notice of Appearance on February 7, 2005. Respondent, or its former counsel, did not file an answer to the charging letter with the ALJ, as required by Section 766.6 of the Regulations, but there is evidence in the file that the opposing counsel engaged in settlement negotiations regarding these charges for about one year before BIS filed a Motion for Default Order on or about November 9, 2006. The former counsel for the Respondent states in a declaration to accompany this Petition that counsel did not receive notice of the BIS decision to file a Motion for Default Order, nor was counsel served with the motion that was filed.

On January 31, 2007, based on the record before him, the ALJ issued a recommended decision in which he found that the Respondent was in default. On February 26, 2007, the Acting Under Secretary for Industry and Security issued a Final Decision and Order affirming the ALJ's recommended decision, and imposing a ten-year denial of Respondent's export privileges.

On September 7, 2007, Respondent filed its Petition asserting among other things, that good cause exists to set aside the default. On October 24, 2007, BIS filed a response to the Petition in which it did not oppose the finding that goop cause exists to set aside the default.

The Regulations provide me with the authority to set aside a default order. Section 766.7(b)(1) of the Regulations states: ''[U]pon petition filed by a respondent against whom a default order has been issued, which petition is accompanied by an answer meeting the requirements of § 766.6(b) of this part, the Under Secretary may, after giving all parties an opportunity to comment, and for good cause shown, set aside the default and vacate the order entered thereon and remand the matter to the administrative law judge for further proceedings.''

The Petition and its supporting materials justify a finding that good cause exists to grant this Petition and there is no opposition to this finding.

Accordingly, I find good cause has been shown to set aside the Final Decision and Order, dated February 26, 2007, and the Order is hereby vacated and this matter is remanded to the ALJ for further proceedings.

This Order, which constitutes the final agency action on this Petition, is effective immediately.

Dated: November 5, 2007.

Mario Mancuso,

Under Secretary for Industry and Security

[FR Doc. 07–5590 Filed 11–7–07; 8:45 am]

BILLING CODE 3510–DT–M

[1] The violations charged occurred in 2002. The Regulations governing the violations at issue are found in the 2002 version of the Code of Federal Regulations (15 CFR parts 730–774 (2002)). The 2007 Regulations establish the procedures that apply to this matter.

[2] 50 U.S.C. app. §§ 2401–2420 (2000)). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2007 (72 FR 46137 (Aug. 16, 2007)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA'').

DEPARTMENT OF COMMERCE

International Trade Administration

The President's Export Council: Meeting of the President's Export Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an Open Meeting.

SUMMARY: The President's Export Council (PEC) will hold a full Council meeting to discuss topics related to export expansion. The meeting will include discussion of trade priorities and initiatives, PEC subcommittee activity, and proposed letters of recommendation to the President. The PEC was established on December 20, 1973, and reconstituted May 4, 1979, to advise the President on matters relating to U.S. trade. It was most recently renewed by Executive Order 13446.

Date: December 4, 2007.

Time: 10 a.m. (EST).

Location: U.S. Department of Commerce, Room 4830, 1401 Constitution Avenue, NW., Washington, DC, 20230. Because of building security, all non-government attendees must pre-register. Please RSVP to the PEC Executive Secretariat no later than November 30, 2007, to J. Marc Chittum, President's Export Council, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone (202) 482–1124, or e-mail *Marc.Chittum@mail.doc.gov.*

This program will be physically accessible to people with disabilities. Seating is limited and will be on a first come, first served basis. Requests for sign language interpretation, other auxiliary aids, or pre-registration, should be submitted no later than June 1, 2007, to J. Marc Chittum, President's Export Council, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone (202) 482–1124, or e-mail *Marc.Chittum@mail.doc.gov.*

FOR FURTHER INFORMATION, CONTACT: The President's Export Council Executive Secretariat, Room 4043, Washington, DC, 20230 (Phone: 202–482–1124), or visit the PEC Web site, *http://www.trade.gov/pec.*

Dated: November 1, 2007.

J. Marc Chittum,

Executive Secretary, President's Export Council.

[FR Doc. E7–21921 Filed 11–7–07; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southwest Region Gear Identification Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information

collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before January 7, 2008.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Walter Ikehara, (808) 944–2275, or *Walter.Ikehara@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Pacific Islands Region portion of Office of Management and Budget (OMB) Control Number 0648–0361 will be merged into OMB Control Number 0648–0360, and the title will be changed to Pacific Islands Region Vessel and Gear Identification Requirements.

Regulations at 50 CFR 665.16 require that all U.S. vessels with Federal permits fishing for Western Pacific fishery management unit species display the vessel's official number on both sides of the deckhouse or hull and on an appropriate weather deck. The regulations at 50 CFR 300.35 require that vessels fishing under the South Pacific Tuna Treaty must display their international radio call sign on the hull, the deck, and on the sides of auxiliary equipment such as skiffs and helicopters. The numbers must be a specific size at specified locations. The display of the identifying numbers aids in fishery law enforcement.

Western Pacific fisheries regulations at 50 CFR 665.24, 665.47 and 665.606 require that certain fishing gear must be marked. In the pelagic longline fisheries, the vessel operator must ensure that the official number of the vessel is affixed to every longline buoy and float. In the crustacean fisheries (Permit Area 1, Northwestern Hawaiian Islands) each trap and float must be marked with the vessel's identification number. In the coral reef ecosystem fisheries, the vessel number must be affixed to all fish and crab traps. The marking of gear links fishing or other activity to the vessel, aids law enforcement, and is valuable in actions concerning the damage, loss of gear, and civil proceedings.

II. Method of Collection

Third party disclosure.

III. Data

OMB Number: 0648–0360.

Form Number: None.

Type of Review: Regular submission.

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

Estimated Number of Respondents: 311.

Estimated Time per Response: 45 minutes per Western Pacific fishing vessel; one hour and 15 minutes per South Pacific purse seine vessel; 2 minutes per gear marking.

Estimated Total Annual Burden Hours: 1,148.

Estimated Total Annual Cost to Public: $34,210.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 1, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–21945 Filed 11–7–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Billfish Tagging Report

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before January 7, 2008.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Suzanne Kohin, (858) 546–7104 or *Suzanne.Kohin@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Oceanic and Atmospheric Administration's Southwest Fisheries Science Center operates a billfish tagging program. Tagging supplies are provided to volunteers. When they catch and tag a fish they submit a brief report on the fish tagged and the location of the tagging. The information obtained is used in conjunction with tag returns to determine billfish migration patterns, mortality rates, and similar information useful in the management of the billfish fisheries.

II. Method of Collection

A paper form the size of a postcard is used.

III. Data

OMB Number: 0648–0009.

Form Number: NOAA Form 88–162.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,250.

Estimated Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 104.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the

burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 1, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–21946 Filed 11–7–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Individual Fishing Quotas for Pacific Halibut and Sablefish in the Alaska Fisheries

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before January 7, 2008.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to Patsy A. Bearden, (907) 586–7008 or *patsy.bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

National Marine Fisheries Service, Alaska Region (NMFS) seeks to renew a collection of information for the continued management of the Individual Fishing Quota (IFQ) Program for fixed-gear Pacific halibut and sablefish fisheries off Alaska as well as the Western Alaska Community Development Quota Program (CDQ) halibut fishery. The IFQ program allocates annual total catch limits for the halibut and sablefish fisheries among individual fishermen. The CDQ halibut program allocates annual total catch limits for the halibut fishery among individual CDQ fishermen. Fishermen are assigned Quota Shares (QS) for the fisheries, and then annually receive an IFQ and/or CDQ. The applications and reporting are required to manage and track the program.

II. Method of Collection

Paper applications and reports, electronic reports, and telephone calls are required from participants, and methods of submittal include Internet and fax transmission of paper forms.

III. Data

OMB Number: 0648–0272.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,877.

Estimated Time per Response: 2 hours for Eligibility to Receive QS/IFQ Application; 30 minutes for IFQ/CDQ Hired Master Permit Application; 30 minutes for IFQ/CDQ Registered Buyer Permit Application; 30 minutes for Application for Replacement of Certificates, Permits, or Licenses Application; 200 hours for Application to Become a Community Quota Entity (CQE); 10 hours for Community Petition to Form Governing Body; 2 hours for Transfer of QS/IFQ Application; 2 hours for Transfer of QS/IFQ by Sweep-up Application; 2 hours for Transfer of QS/IFQ to or from a CQE Application; 30 minutes for Approval of Transfer from Governing Body; 2 hours for QS Holder—Identification of Ownership Interest; 40 hours for CQE Annual Report; 4 hours for Letter of Appeal; 30 minutes for QS/IFQ Beneficiary Designation Form; 30 minutes for Annual Updates on the Status of Corporations and Partnerships QS; 6 minutes for IFQ Administrative Waiver; 12 minutes for Prior Notice of IFQ Landing; 15 minutes for Departure Report; 12 minutes for Transshipment Authorization; and 6 minutes for Dockside Sales Receipt.

Estimated Total Annual Burden Hours: 10,578.

Estimated Total Annual Cost to Public: $24,000 for miscellaneous costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 1, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–21949 Filed 11–7–07; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR Agreement)

November 2, 2007.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA-DR Agreement.

EFFECTIVE DATE: November 8, 2007.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain three-thread circular knit fleece fabrics, as specified below, are not available in commercial quantities in a timely manner in the CAFTA-DR region. The product will be added to the list in Annex 3.25 of the CAFTA-DR in unrestricted quantities.

FOR FURTHER INFORMATION CONTACT: Richard Stetson, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-2582.

FOR FURTHER INFORMATION ON-LINE: http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf.Reference number: 36.2007.09.20.Fabric.Alston&Birdfor PerryManufacturing

SUPPLEMENTARYINFORMATION:

Authority: Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA-DR Act); the Statement of Administrative Action (SAA), accompanying the CAFTA-DR Act; Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

BACKGROUND:

The CAFTA-DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA-DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. Articles that otherwise meet the rule of origin to qualify for preferential treatment are not disqualified because they contain one of the products on the Annex 3.25 list.

The CAFTA-DR Agreement provides that the list in Annex 3.25 may be modified pursuant to Article 3.25(4)-(5) when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. See also section 203(o)(4)(C) of the CAFTA-DR Act.

The CAFTA-DR Act requires the President to establish procedures governing the submission of a request and providing an opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA-DR Act for modifying the Annex 3.25 list. On March 21, 2007, CITA published final procedures it would follow in considering requests to modify the Annex 3.25 list (72 FR 13256).

On September 20, 2007, the Chairman of CITA received a request from Alston & Bird, LLP on behalf of Perry Manufacturing Company for certain three-thread circular knit fleece fabrics, of the specifications detailed below. On September 24, 2007, CITA notified interested parties of, and posted on its website, the accepted request and asked that interested entities provide, by October 4, 2007, a response advising of its objection to the request or its ability to supply the subject product, and rebuttals to responses by October 11, 2007.

On October 1, 2007, Texpasa, S.A. (''Texpasa'') advised CITA of its objection to the request, explaining its ability to supply the fabrics listed in the request. On October 3, 2007, Elasticos Centro Americanos y Textiles (''Elcatex'') advised CITA of its objection to the request by submitting a response with an offer to supply certain fabrics.

In its rebuttal submitted on October 10, 2007, Perry asserted that neither Texpasa's nor Elcatex'responses were sufficient. In the case of Texpasa, Perry claimed that it was concerned that Tepasa cannot supply the required quantity of fabric. With respect to Elcatex, Perry stated that the fabric Elcatex offered to supply did not meet Perry's specifications. As a result, Perry asserted that Elcatex could not supply the fabrics in question.

On October 15, 2007, in accordance with Section 203(o)(4)(C)(iv) of the CAFTA-DR Implementation Act and section 8(c)(4) of CITA's procedures, because there was insufficient information to make a determination after 30 days, CITA extended the period for making a determination by 14 U.S. business days.

On October 23 and 24, 2007, respectively, Texpasa and Elcatex advised CITA that they were withdrawing their responses to Perry's request.

In accordance with Section 203(o)(4)(C)(iii)(II) of the CAFTA-DR Act, and its procedures, as the two entities who objected to the request both withdrew their objections, and because no other interested entity submitted a response advising CITA of its objection to the request or its ability to supply the subject product, CITA has determined to add the specified fabrics to the list in Annex 3.25 of the CAFTA-DR Agreement.

The subject fabrics are added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities. A revised list has been published on-line.

Specifications:

HTS Subheading:	6001.21.0000
Fabric #1:	
Fiber Content:	72 to 78 percent cotton, 22 to 28 percent polyester
Yarn:	Face Yarn - Single ply, ring spun cotton. Metric yarn number: 41 to 48; English yarn number: 24 to 28 Tie Yarn - Polyester filament of 49 to 51denier Fleece yarn - Single ply staple of 57 to 63 percent cotton and 37 to 43 percent polyester. Metric yarnnumber: 24 to 30; English yarn number 14 to 18.
Gauge:	20 to 24
Knit Type:	Three-thread circular knit
Weight:	Metric - 285 to 300 grams per square meter; English - 8.42 to 9.75 ounces per square yard.
Width:	Metric - 172 to 183 centimeters; English - 68 to 72 inches.
Finish:	Napped on the technical back; bleached, yarn dyed, or piece dyed.
Performance Criteria:	Not more than 5 percent vertical and horizontal shrinkage and not more than 4 percent vertical torque.
Fabric #2:	
Fiber Content:	77 to 83 percent cotton, 17 to 23 percent polyester
Yarn:	Face Yarn - Single ply, ring spun cotton. Metric yarn number: 47 to 54; English yarn number: 28 to 32 Tie Yarn - Polyester filament of 49 to 51denier Fleece yarn - Single ply staple of 67 to 73 percent cotton and 27 to 33 percent polyester. Metric yarn number: 24 to 30; English yarn number 14 to 18.
Gauge:	20 to 24
Knit Type:	Three-thread circular knit
Weight:	Metric - 266 to 308 grams per square meter; English - 7.85 to 9.08 ounces per square yard.
Width:	Metric - 146 to 183 centimeters; English - 58 to 72 inches.
Finish:	Napped on the technical back; bleached, yarn dyed, or piece dyed.
Performance Criteria:	Not more than 5 percent vertical and horizontal shrinkage and not more than 4 percent vertical torque.

R. Matthew Priest,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E7–21950 Filed 11–7–07; 8:45 am]

BILLING CODE 3510–DS

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday November 13, 2007.

ADDRESSES: The meeting will be held at the IT Services Group-QNA, 4100 N. Fairfax Drive, Suite 800, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Aimee Steussy, IT Services Group-QNA, 4100 N. Fairfax Drive, Suite 800, Arlington, VA 22203, 703–284–8357.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition, Technology and Logistics, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development efforts in electronics and photonics with a focus on benefits to national defense. The reviews may form the basis for research and development programs initiated by the Military Departments and Defense Agencies to be conducted by industry, universities or in government laboratories. The agenda for this meeting will include programs on molecular electronics, microelectronics, electro-optics, and electronic materials.

In accordance with section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. 2), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: October 31, 2007.

L.M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–5588 Filed 11–7–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 10, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 5, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Projects with Industry Annual Reporting Form.

Frequency: Annually.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 72.

Burden Hours: 6,480.

Abstract: This collection will be used to measure the effectiveness of the Projects With Industry (PWI) Program in meeting its purpose, statutory requirements and address concerns raised as a result of the PART. The proposed revisions to the existing data collection package were recommended in order to; (1) Respond to OMB PART recommendations to collect job retention and earnings information that is consistent with the common measures for federal job training programs; (2) include demographic and other descriptive data on the individuals served by the program; and (3) consolidate the two existing reporting requirements thereby reducing the number of reports submitted by PWI grantees from two to one annually. The information collected will be aggregated in order to provide information to Congress, Office of Management and Budget, policy makers and the public.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3454. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–21939 Filed 11–7–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Closed Meeting of the National Advisory Council on Indian Education

AGENCY: U.S. Department of Education, National Advisory Council on Indian Education (NACIE).

ACTION: Notice of Closed Teleconference Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming teleconference meeting of the National Advisory Council on Indian Education (the Council) and is intended to notify the general public of the meeting. This notice also describes the functions of the Council. Notice of the Council's meetings is required under section 10(a)(2) of the Federal Advisory Committee Act and by the Council's charter.

Agenda: The purpose of the meeting will be for the Council to conduct a review of the applications for the vacant position of Director of the Office of Indian Education and to make their recommendation to the Department. This notice is appearing in the **Federal Register** less than 15 days before the date of the meeting due to scheduling difficulties within the agency and with the Council.

Date and Time: Nov. 15, 2007; 1 p.m. to 3 p.m. EST.

Location: The Department of Education will provide a 1–800–call in number for all NACIE members.

FOR FURTHER INFORMATION CONTACT: Lana Shaughnessy, Group Leader, Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: 202–205–2528. Fax: 202–260–7779.

SUPPLEMENTARY INFORMATION: The Council advises the Secretary of Education on the funding and administration (including the development of regulations, and administrative policies and practices) of any program over which the Secretary has jurisdiction and includes Indian children or adults as participants or programs that may benefit Indian children or adults, including any program established under Title VII, Part A of the ESEA. The Council submitted to the Congress June 30 a report on the activities of the Council that included recommendations the Council considers appropriate for the improvement of Federal education programs that include Indian children or adults as participants or that may benefit Indian children or adults, and recommendations concerning the funding of any such program.

Records are kept of all Council proceedings and are available for public inspection at the Office of Indian Education, United States Department of Education, Room 5C140, 400 Maryland Avenue, SW., Washington, DC 20202.

Kerri L. Briggs,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 07–5591 Filed 11–7–07; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Notice of Availability of the Draft Environmental Impact Statement for the Mesaba Energy Project

AGENCY: Department of Energy.

ACTION: Notice of Availability and public hearings.

SUMMARY: The U.S. Department of Energy (DOE) announces the availability of the Draft Environmental Impact Statement for the Mesaba Energy Project (DOE/EIS–0382D) for public comment, as well as the dates, locations and times for public hearings. The draft environmental impact statement (EIS) analyzes the potential environmental consequences of DOE's proposed action to provide a total of $36 million in co-funding, through a financial assistance cooperative agreement, for the design and one-year operational demonstration of a coal-based, Integrated Gasification Combined Cycle (IGCC) electric generating facility on the Iron Range of northern Minnesota. DOE may also provide a loan guarantee pursuant to the Energy Policy Act of 2005 to guarantee a portion of private sector financing for the project; however, this loan guarantee is not part of DOE's proposed action. The facility would be demonstrated through a cooperative agreement between DOE and Excelsior Energy Inc. (Excelsior) under the Clean Coal Power Initiative (CCPI) program.

DATES: DOE invites the public to comment on the draft EIS during the public comment period, which ends January 11, 2008. DOE will consider all comments postmarked or received during the public comment period in preparing the Final EIS and will consider late comments to the extent practicable.

DOE will conduct two public hearings to obtain comments on the draft EIS. The meetings will be held at the Taconite Community Center, 26 Haynes Street, Taconite, Minnesota, on Tuesday, November 27, 2007, beginning at 7 p.m., and at Hoyt Lakes Arena, 106 Kennedy Memorial Drive, Hoyt Lakes, Minnesota, on Wednesday, November 28, 2007, beginning at 7 p.m. An informational session will be held at each location from 4 p.m. to 7 p.m. preceding each meeting on the dates above. See the **SUPPLEMENTARY INFORMATION** section for details on the meeting process.

ADDRESSES: Requests for information about this draft EIS, or to receive a copy of the draft EIS, should be directed to: Mr. Richard A. Hargis, Jr., NEPA Document Manager, M/S 922–178C, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, Pittsburgh, PA 15236–0940. Requests may also be submitted by telephone: 412–386–6065; toll free number: 888–322–7436 ext. 6065; fax: 412–386–4604; or electronic mail: *richard.hargis@netl.doe.gov*.

The draft EIS will be available at: *http://www.eh.doe.gov/nepa/*. Copies of the draft EIS are also available for review at the locations listed in the **SUPPLEMENTARY INFORMATION** section of this Notice. Written comments on the draft EIS can be submitted by mail, fax, or electronic mail to Mr. Richard A. Hargis, Jr., as indicated above. Oral comments on the draft EIS will be accepted only during the public hearings scheduled for the dates and locations provided in the **DATES** section of this Notice.

FOR FURTHER INFORMATION, CONTACT: For further information regarding the proposed project or the draft EIS, please contact Mr. Richard A. Hargis, Jr., (see **ADDRESSES**). For general information on the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0103; *Telephone:* 202–586–4600, or leave a toll-free message at: 800–472–2756.

SUPPLEMENTARY INFORMATION:

Description of Alternatives and Scope of the EIS

DOE's Proposed Action is to provide a total of $36 million in co-funding, through a cooperative agreement with Excelsior under the CCPI Program, for the design and one-year operational demonstration testing period for Phase I of the proposed two-phased Mesaba Energy Project. The first phase would be a nominal 606 megawatt electricity (MWe) IGCC power plant with an estimated cost of $2.16 billion. Phase II, which would be an identical, co-located 606 MWe plant, would be privately financed and not involve co-funding by DOE. The project would demonstrate the commercial-readiness of the Conoco-Phillips E-Gas ™ gasification technology, including advanced gasification and air separation systems, feedstock flexibility, improved

environmental performance, and improved thermal efficiency. Although DOE's proposed action would be applicable to Phase I only, the draft EIS considers the combined impacts of both phases as connected actions.

DOE prepared this draft EIS in accordance with the National Environmental Policy Act, of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality regulations that implement the procedural provisions of NEPA (40 CFR parts 1500–1508), and the DOE procedures implementing NEPA (10 CFR part 1021). Because the proposed facility is considered a Large Electric Power Generating Plant, the Project is subject to the Minnesota Power Plant Siting Act, which requires the preparation of a state-equivalent EIS. The EIS requirements under NEPA and the Act are substantially similar, and DOE has prepared this draft EIS in cooperation with the Minnesota Department of Commerce to fulfill the requirements of both laws. Federal cooperating agencies for the EIS include the U.S. Army Corps of Engineers, St. Paul District, and the U.S. Department of Agriculture, Forest Service, Superior National Forest, Laurentian District. Because the proposed Project may affect floodplains and wetlands in northern Minnesota, the draft EIS includes a floodplain and wetlands assessment in accordance with DOE regulations for Compliance with Floodplain and Wetlands Environmental Review Requirements (10 CFR part 1022).

DOE analyzed two main alternatives in the draft EIS—the Proposed Action (including two alternative sites for the project) and the No Action Alternative. Under the Proposed Action, DOE would provide cost-shared funding to Excelsior for the design and one-year demonstration of a coal-based, IGCC electric generating facility to be located in the Taconite Tax Relief Area as defined in Minnesota Statutes Section 273.134. DOE has entered into a cooperative agreement with Excelsior, which was a successful applicant in Round 2 of the CCPI program, to demonstrate the Project. Excelsior is an independent energy development company based in Minnetonka, Minnesota, that ultimately would be responsible for the siting, design, construction, demonstration, and operation of the Project and related components. Until the NEPA process is complete, no funds would be provided for project activities that could either have an adverse impact on the environment or limit the choice of reasonable alternatives available to DOE. Pursuant to the Energy Policy Act of 2005, DOE may also provide a loan guarantee for a portion of the private-sector financing for the Project; however, this loan guarantee is not part of DOE's proposed action.

The Minnesota Power Plant Siting Act is intended to ensure that power plants and high voltage transmission lines are routed in an orderly manner compatible with environmental preservation and the efficient use of resources. The Minnesota Public Utilities Commission oversees permitting in accordance with the Act. State rules established for the Act require the applicant for a site permit to identify at least two sites for the power plant—a preferred site and an alternative site. Excelsior identified the West Range site (Taconite, Itasca County, Minnesota) as its preferred site and the East Range site (Hoyt Lakes, St. Louis County, Minnesota) as its alternative site. Although DOE has not participated in the identification or selection of sites, the potential environmental impacts of locating the project at either site are evaluated in the draft EIS. The final decision on which site would be permitted, if any, will be made by the Minnesota Public Utilities Commission in accordance with the Minnesota Power Plant Siting Act.

For the No Action Alternative, DOE would not provide cost-shared funding for the Project beyond that required to complete the NEPA process. In this case, the remaining funding withheld from the Project may be made available for other current or future CCPI projects.

Without DOE funding, it is not likely that the Mesaba Energy Project would be built, although it is possible that Excelsior could still elect to construct and operate the proposed power plant provided that it could replace the Federal financing component and obtain the required permits from state and Federal agencies. However, without DOE participation, it is possible that the proposed project would be canceled. Therefore, for purposes of analysis in the draft EIS, the No Action Alternative is assumed to be equivalent to a ''No Build'' Alternative, meaning that environmental conditions would remain in the status quo (no new construction, resource utilization, emissions, discharges, or wastes generated). The No Action Alternative would not contribute to the goal of the CCPI program, which is to accelerate commercial deployment of advanced technologies that provide the United States with clean, reliable, and affordable energy.

The draft EIS analyzes the environmental consequences that may result from the proposed action at each of the two alternative sites, as well as the no action alternative. Potential impacts identified during the scoping process and analyzed in the draft EIS relate to the following: aesthetics; air quality and climate; geology and soils; groundwater and surface water resources; floodplains and wetlands; biological resources; cultural resources; land use; socioeconomics; environmental justice; utility systems; community services; transportation and traffic; materials and waste management; human health and safety; and noise.

Availability of the Draft EIS

Copies of the draft EIS have been distributed to Members of Congress; Federal, Native American tribal government, state, and local officials; and agencies, organizations and individuals who may be interested or affected. The draft EIS will be available on the Internet at: *http://www.eh.doe.gov/nepa/*. Copies of the draft EIS are available for public review at the Bovey Public Library, 402 2nd Street, Bovey, Minnesota; City of Taconite Community Center, 28 Haynes Street, Taconite, Minnesota; Grand Rapids Public Library, 140 NE., 2nd Street Grand Rapids, Minnesota; the Hibbing Public Library, 2020 East 5th Avenue, Hibbing, Minnesota; and the Hoyt Lakes Public Library, 206 Kennedy Memorial Drive, Hoyt Lakes, Minnesota. Additional copies also can be requested (see **ADDRESSES**).

Public Meetings

DOE will conduct a public hearing near each of the two alternative sites, in conjunction with the Minnesota Department of Commerce, to obtain comments on the draft EIS. Requests to speak at the public hearings can be made by contacting Mr. Richard A. Hargis, Jr., as indicated in the **ADDRESSES** section above. Requests to speak that have not been submitted prior to the hearing will be accepted in the order in which they are received at the hearing. Speakers are encouraged to provide a written version of their oral comments for the record. Each speaker will be allowed approximately five minutes to present comments. Those speakers who want more than five minutes should indicate the length of time desired in their request. Depending on the number of speakers, DOE may need to limit all speakers to five minutes initially and provide additional opportunities as time permits. Comments will be recorded by a court reporter and will become part of the public hearing record. Oral and written comments will be given equal consideration.

Each hearing will begin with an informational session at approximately 4 p.m. DOE will then begin each meeting's formal session at 7 p.m. with an overview of the project, followed by oral statements by the scheduled speakers. Speakers may be asked questions to help ensure that DOE fully understands the comments. A presiding officer will establish the order of speakers and provide any additional procedures necessary to conduct the meetings.

All meetings will be accessible to people with disabilities. Any individual with a disability requiring special assistance, such as sign language interpreter, or a translator, should contact Mr. Richard A. Hargis, Jr., the NEPA Document Manager, (see **ADDRESSES**) at least 48 hours in advance of the meeting so that arrangements can be made.

Meeting Schedule

West Range Site—Taconite

Date: Tuesday, November 27, 2007.

Place: Taconite Community Center, 26 Haynes Street, Taconite, Minnesota.

East Range Site—Hoyt Lakes

Date: Wednesday, November 28, 2007.

Place: Hoyt Lakes Arena, 106 Kennedy Memorial Drive, Hoyt Lakes, Minnesota.

Issued in Washington, DC, on November 2, 2007.

Mark J. Matarrese,

Director, Office of Environment, Security, Safety and Health, Office of Fossil Energy.

[FR Doc. E7–21959 Filed 11–7–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–12–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Application

November 1, 2007.

Take notice that on October 30, 2007, Southern Star Central Gas Pipeline, Inc. (Southern Star), 4700 State Highway 56, Owensboro, Kentucky 42301, filed in Docket No. CP08–12–000, an application pursuant to section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations, for an order permitting and approving the abandonment by reclaim of two 660-horsepower White Superior compressor units located in Johnson County, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Southern Star states that due to the abandonment of the Craig storage field as authorized by order of the Commission in Docket No. CP98–280–000 (85 FERC ¶61,184) the compressor engines are no longer required to provide the storage field compression service for which they were originally installed. Southern Star stated in the aforementioned application that the compressor engines at the Craig station were being evaluated at that time for use elsewhere on its pipeline system.

Southern Star further states that one compressor engine will be removed from the Craig compressor station, refurbished and installed at the South Welda storage field as booster compression. Southern Star has requested authorization for said engine installation at South Welda storage field in Docket No. CP08–4–000, which is currently pending before the Commission. The other compressor engine will be removed and warehoused at Southern Star's Welda compressor station. The existing Craig compressor building will remain in place to be used as a warehouse facility for pipe, equipment and supplies.

Any questions regarding this application should be directed to David N. Roberts, Manager, Regulatory Affairs, at (270) 852–4654.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link at *http://www.ferc.gov*. The Commission strongly encourages intervenors to file electronically. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comment Date: November 23, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–21919 Filed 11–7–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER07–1232–000; ER07–1232–001]

UniSource Energy Development Company; Notice of Issuance of Order

November 1, 2007.

UniSource Energy Development Company (UniSource) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. UniSource also requested waivers of various Commission regulations. In particular, UniSource requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by UniSource.

On October 31, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by UniSource, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is November 30, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, UniSource is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of UniSource, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Unisource's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–21917 Filed 11–7–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

November 2, 2007.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP07–35–001.
Applicants: Chandeleur Pipeline Company.
Description: Chandeleur Pipe Line Co. submits Second Revised Sheet 64 to FERC Gas Tariff, Second Revised Volume 1, to be effective 12/1/07.
Filed Date: 10/31/2007.
Accession Number: 20071102–0098.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 13, 2007.

Docket Numbers: RP97–288–032.
Applicants: Transwestern Pipeline Company.
Description: Transwestern Pipeline Company LLC submits its Third Revised Sheet 6 *et al.* to its FERC Gas Tariff, Third Revised Volume 1, to become effective 12/1/07.
Filed Date: 10/31/2007.
Accession Number: 20071102–0100.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 13, 2007.

Docket Numbers: RP98–18–029.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Iroquois Gas Transmission System submits First Revised Sheet 6F *et al.* to its FERC Gas Tariff, First Revised Volume 1.
Filed Date: 11/01/2007.
Accession Number: 20071102–0105.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 13, 2007.

Docket Numbers: RP08–51–000.
Applicants: Dominion Transmission, Inc.
Description: Dominion Transmission Inc submits its Fifth Revised Sheet 12 *et al.* to its FERC Gas Tariff, Second Revised Volume 1A, effective 12/1/07.
Filed Date: 11/01/2007.
Accession Number: 20071102–0106.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 13, 2007.

Docket Numbers: RP08–52–000.
Applicants: Southern Natural Gas Company.
Description: Southern Natural Gas Company submits Third Revised Sheet 238 *et al.* to its FERC Gas Tariff, pursuant to Section 4 of the Natural Gas Act.
Filed Date: 11/01/2007.
Accession Number: 20071102–0107.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 13, 2007.

Docket Numbers: RP08–53–000.
Applicants: Colorado Interstate Gas Company.
Description: Colorado Interstate Gas Company submits report describing its recent declaration of an Operational Flow Order.
Filed Date: 11/01/2007.
Accession Number: 20071102–0109.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 13, 2007.

Docket Numbers: RP08–54–000.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas Company submits its Substitute 25 Revised Sheet 63 *et al.* to its FERC Gas Tariff, Fifth Revised Volume 1, to become 11/1/07.
Filed Date: 11/01/2007.
Accession Number: 20071102–0108.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 13, 2007.

Docket Numbers: RP08–55–000.
Applicants: High Island Offshore System, L.L.C.
Description: High Island Offshore System LLC submits Tenth Revised Sheet 2 *et al.* to its FERC Gas Tariff, Third Revised Volume 1.
Filed Date: 11/01/2007.
Accession Number: 20071102–0110.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 13, 2007.

Docket Numbers: RP08–56–000.
Applicants: Williston Basin Interstate Pipeline Co.
Description: Williston Basin Interstate Pipeline Company submits Fifteenth Revised Sheet 375 to FERC Gas Tariff, Second Revised Volume 1, to become effective 11/1/07.
Filed Date: 11/01/2007.
Accession Number: 20071102–0104.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 13, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Acting Deputy Secretary.

[FR Doc. E7–21900 Filed 11–7–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P–349–134; P–2407–121]

Alabama Power Company; Notice of Application for Temporary Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 1, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for drought-based temporary variance of the Martin Project rule curve and minimum flow releases at the Yates and Thurlow Project.

b. *Project Nos.:* 349–134 and 2407–121.

c. *Date Filed:* October 23, 2007.

d. *Applicant:* Alabama Power Company.

e. *Name of Projects:* Martin Hydroelectric Project (P–349) and Yates and Thurlow Hydroelectric Project (P–2407).

f. *Location:* The Martin Dam Project is located on the Tallapoosa River in the counties of Coosa, Elmore and Tallapoosa, Alabama. The Yates and Thurlow Project is located on the Tallapoosa River in the counties of Tallapoosa and Elmore Counties, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Jim Crew, Alabama Power Company, P.O. Box 2641, Birmingham, Alabama 35291, Tel: (205) 257–4265.

i. *FERC Contact:* Ms. Andrea Claros, (202) 502–8171; e-mail: *andrea.claros@ferc.gov.*

j. *Deadline for filing comments, motions to intervene and protests:* November 14, 2007.

Please include the project numbers (P–349–134 and P–2407–121) on any comments or motions filed. All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper, see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-filing'' link. The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Alabama Power is requesting a drought-based temporary variance to the Martin Project rule curve. The rule curve variance would be from November 20, 2007 to May 1, 2008, and would include: (1) A winter pool elevation 3 feet higher than normal, at elevation 483 feet instead of elevation 480 feet; (2) maintaining the winter pool elevation earlier than normal, on November 20th rather than January 1st; (3) initiating the filling process earlier than normal, beginning January 15th instead of February 15th; and (4) reaching and maintaining summer pool elevation earlier than normal, on April 1st rather than May 1st. In association with the Martin rule curve variance, the minimum flows from the Thurlow reservoir (P–2407) would be temporarily modified as follows until May 1, 2008: (1) Discharge would be no less than 350 cubic feet per second (cfs) until the Martin Reservoir elevation reaches the existing rule curve; (2) when the reservoir elevation is at or above the existing rule curve but below the temporary rule curve, Alabama Power would discharge the greater of 350 cfs or inflow at the upstream Heflin gage; and (3) when Martin Reservoir elevation is at or above the temporary rule curve, Alabama Power would discharge no less than 1200 cfs from Thurlow.

l. *Location of the Application:* The filing is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426 or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docsfiling/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov;* for TTY, call (202) 502–8659. A copy is also

available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filing must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–21916 Filed 11–7–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12932–000]

FFP Project 47, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 30, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12932–000.

c. *Date filed:* August 6, 2007.

d. *Applicant:* FFP Project 47, LLC.

e. *Name of Project:* Williams Point Project.

f. *Location:* The project would be located on the Mississippi River in New Madrid County, Missouri and Lake County, Tennessee. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Dan Irvin, FFP Project 47, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12932–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project consists of: (1) 3,550 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 71 megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The FFP Project 47, LLC, project would have an average annual generation of 310.98 gigawatt-hours and be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work

proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''COMPETING APPLICATION'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–21918 Filed 11–7–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2007–0572; FRL–8493–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Information Collection in Support of EPA's Stewardship Program for Nanoscale Materials; EPA ICR No. 2250.01, OMB Control No. 2070–NEW

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before December 10, 2007.

ADDRESSES: Submit your comments, referencing docket ID Number EPA–HQ–OPPT–2007–0572 to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *oppt.ncic@epa.gov*, or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Mail Code: 7407T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mailcode: 7408–M, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 12, 2007 (72 FR 38079), EPA sought comments on the proposed new ICR pursuant to 5 CFR 1320.8(d). EPA received four comments during the comment period, which are addressed in the ICR. Any additional comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OPPT–2007–0572, which is available for online viewing at *http://www.regulations.gov*, or in person inspection at the OPPT Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Pollution Prevention and Toxics Docket is 202–566–0280.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: Information Collection in Support of EPA's Stewardship Program for Nanoscale Materials.

ICR numbers: EPA ICR No. 2250.01, OMB Control No. 2070–NEW.

ICR Status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, 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.

Abstract: EPA will initiate a voluntary information collection to assemble all known or reasonably ascertainable information from manufacturers, importers, and processors of nanoscale materials who are participating in the voluntary Stewardship Program for Nanoscale Materials. EPA will also collaborate with participating manufacturers, importers, and processors of nanoscale materials, and other stakeholders in an effort to generate more detailed information of certain specific nanoscale materials. Under this second effort OPPT and program participants will work together to generate data and analyses that will more fully characterize certain nanoscale materials and to increase understanding of the environmental health and safety implications of manufactured nanoscale materials.

Responses to this collection of information are voluntary. This data collection will facilitate and support EPA's voluntary Stewardship Program for Nanoscale Materials and complement EPA's new and existing chemical programs under TSCA. These data will also help provide a firmer scientific foundation for regulatory decisions by encouraging the development of key scientific information and appropriate risk management practices for nanoscale chemical substances.

Burden Statement: The annual public burden for this collection of information is estimated to average about 154 hours per response for the Basic NMSP, and 2,500 hours for the In-Depth NMSP, based on 240 responses for the Basic NMSP and 15 responses for the In-Depth NMSP over the three year approval period. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers, importers, and processors of nanoscale materials who are participating in the voluntary Stewardship Program for Nanoscale Materials.

Estimated No. of Respondents: 615.

Frequency of Collection: On occasion.

Estimated Total Annual Hour Burden: 24,844 hours.

Estimated Total Annual Labor Costs: $1,315,240.

Changes in Burden Estimates: This is a new information collection request. The burden associated with responses to this new information collection reflects an increase of 24,844 hours in the total estimated respondent burden from that currently in the OMB inventory. This increase represents a program change.

Dated: November 2, 2007.

Joseph A. Sierra,

Acting Director, Collection Strategies Division.

[FR Doc. E7–21935 Filed 11–7–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8494–1]

Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods: Designation of Two New Equivalent Methods

AGENCY: Environmental Protection Agency.

ACTION: Notice of the designation of two new equivalent methods for monitoring ambient air quality.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR part 53, two new equivalent methods: One for measuring concentrations of ozone (O_3) in the ambient air and one for measuring concentrations of sulfur dioxide (SO_2) in the ambient air.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hunike, Human Exposure and Atmospheric Sciences Division (MD–D205–03), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. Phone: (919) 541–3737, e-mail: *Hunike.Elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR part 53, the EPA evaluates various methods for monitoring the concentrations of those ambient air pollutants for which EPA has established National Ambient Air Quality Standards (NAAQSs) as set forth in 40 CFR part 50. Monitoring methods that are determined to meet specific requirements for adequacy are designated by the EPA as either reference methods or equivalent methods (as applicable), thereby permitting their use under 40 CFR part 58 by States and other agencies for determining attainment of the NAAQSs.

The EPA hereby announces the designation of two new equivalent methods for measuring concentrations of O_3 and SO_2 in the ambient air. These designations are made under the provisions of 40 CFR part 53, as amended on December 18, 2006 (71 FR 61271).

The new equivalent method for O_3 is an automated method that utilizes a measurement principle based on non-dispersive ultraviolet absorption photometry. The newly designated equivalent method for O_3 is identified as follows:

EQOA–1107–169, ''DKK–TOA Corporation Model GUX–313 E Ambient O_3 Analyzer,'' operated at any environmental temperature in the range of 20 °C to 30 °C on any of the following measurement ranges: 0–0.1 ppm, 0–0.2 ppm and 0–0.5 ppm.

An application for an equivalent method determination for the candidate method was received by the EPA on July 12, 2007. The sampler is commercially available from the applicant, DKK–TOA Corporation, 29–10, 1-Chome, Takadanobaba, Shinjuku-ku, Tokyo 169–8648, Japan (*http://www.toadkk.co.jp*).

The new equivalent method is an automated method (analyzer) that utilizes a measurement principle based on ultraviolet fluorescence. The newly designated equivalent method for SO_2 is identified as follows:

EQSA–1107–168, ''DKK–TOA Corporation Model GFS–312 E Ambient SO_2 Analyzer,'' operated at any environmental temperature in the range of 20 °C to 30 °C on any of the following measurement ranges: 0–0.1 ppm, 0–0.2 ppm and 0–0.5 ppm.

An application for an equivalent method determination for the candidate method was received by the EPA on September 18, 2007. The sampler is commercially available from the applicant, DKK–TOA Corporation, 29–10, 1-Chome, Takadanobaba, Shinjuku-ku, Tokyo 169–8648, Japan (*http://www.toadkk.co.jp*).

Test analyzers representative of each of these methods have been tested in accordance with the applicable test procedures specified in 40 CFR part 53 (as amended on December 18, 2006). After reviewing the results of those tests

and other information submitted by the applicant in the application, EPA has determined, in accordance with part 53, that these methods should be designated as equivalent methods. The information submitted by the applicant in the application will be kept on file, either at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 or in an approved archive storage facility, and will be available for inspection (with advance notice) to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As designated equivalent methods, these methods are acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any specifications and limitations (*e.g.*, configuration or operational settings) specified in the applicable designation method description (see the identifications of the method above).

Use of the method should also be in general accordance with the guidance and recommendations of applicable sections of the ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I,'' EPA/600/R–94/038a and ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, Part 1,'' EPA–454/R–98–004 (available at *http://www.epa.gov/ttn/amtic/qabook.html*). Vendor modifications of a designated equivalent method used for purposes of part 58 are permitted only with prior approval of the EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under section 2.8 (Modifications of Methods by Users) of Appendix C to 40 CFR part 58.

In general, a method designation applies to any sampler or analyzer which is identical to the sampler or analyzer described in the application for designation. In some cases, similar samplers or analyzers manufactured prior to the designation may be upgraded or converted (*e.g.*, by minor modification or by substitution of the approved operation or instruction manual) so as to be identical to the designated method and thus achieve designated status. The manufacturer should be consulted to determine the feasibility of such upgrading or conversion.

Part 53 requires that sellers of designated reference or equivalent method analyzers or samplers comply with certain conditions. These conditions are specified in 40 CFR 53.9 and are summarized below:

(a) A copy of the approved operation or instruction manual must accompany the sampler or analyzer when it is delivered to the ultimate purchaser.

(b) The sampler or analyzer must not generate any unreasonable hazard to operators or to the environment.

(c) The sampler or analyzer must function within the limits of the applicable performance specifications given in 40 CFR parts 50 and 53 for at least one year after delivery when maintained and operated in accordance with the operation or instruction manual.

(d) Any sampler or analyzer offered for sale as part of a reference or equivalent method must bear a label or sticker indicating that it has been designated as part of a reference or equivalent method in accordance with Part 53 and showing its designated method identification number.

(e) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(f) An applicant who offers samplers or analyzers for sale as part of a reference or equivalent method is required to maintain a list of ultimate purchasers of such samplers or analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the method has been canceled or if adjustment of the sampler or analyzer is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(g) An applicant who modifies a sampler or analyzer previously designated as part of a reference or equivalent method is not permitted to sell the sampler or analyzer (as modified) as part of a reference or equivalent method (although it may be sold without such representation), nor to attach a designation label or sticker to the sampler or analyzer (as modified) under the provisions described above, until the applicant has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified, or until the applicant has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the sampler or analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD–E205–01), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this new equivalent method is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR part 58. Questions concerning the commercial availability or technical aspects of the method should be directed to the applicant.

Jewel F. Morris,

Acting Director, National Exposure Research Laboratory.

[FR Doc. E7–21937 Filed 11–7–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8493–8]

Science Advisory Board Staff Office; Notification of a Public Advisory Committee Meeting (Teleconference) of the EPA Clean Air Scientific Advisory Committee (CASAC); Particulate Matter Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public teleconference of the Clean Air Scientific Advisory Committee (CASAC) Particulate Matter (PM) Review Panel (CASAC Panel) to conduct a consultation on EPA's *Draft Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter* (Draft Integrated Plan for Review of the PM NAAQS, October 16, 2007).

DATES: The teleconference meeting will be held on Friday, November 30, 2007, from 1 p.m. to 5 p.m. (Eastern Time).

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to obtain the teleconference call-in number and access code; submit a written or brief oral statement (three minutes or less); or receive further information concerning this teleconference meeting, must contact Mr. Fred Butterfield, Designated Federal Officer (DFO). Mr. Butterfield may be contacted at the EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or via telephone/voice mail: (202) 343–9994;

fax: (202) 233–0643; or e-mail at: *butterfield.fred@epa.gov.* General information concerning the CASAC or the EPA SAB can be found on the EPA Web Site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: *Background:* The CASAC, which is comprised of seven members appointed by the EPA Administrator, was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee. The CASAC provides advice, information and recommendations on the scientific and technical aspects of issues related to air quality criteria and NAAQS under sections 108 and 109 of the Act. The CASAC is chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The CASAC Review Panel consists of the seven members of the chartered CASAC supplemented by subject-matter-experts. The CASAC Panel provides advice and recommendations to EPA concerning particulate matter in ambient air relevant to the Agency's review of the primary (human health-based) and secondary (welfare-based) PM NAAQS. The Panel complies with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the NAAQS for the six ''criteria'' air pollutants, including airborne PM. EPA's National Center for Environmental Assessment in Research Triangle Park, NC (NCEA–RTP), a component of the Agency's Office of Research and Development (ORD), and the Agency's Office of Air Quality Planning and Standards (OAQPS), within the Office of Air and Radiation (OAR), have jointly developed the Draft Integrated Plan for Review of the PM NAAQS, as the first step in EPA's five-year, statutorily-mandated review cycle of airborne particulate matter. As stated in the draft integrated review plan, the purpose of this document is to communicate the plan for reviewing the air quality criteria for PM associated with human health and welfare effects and the primary and secondary standards for PM.

On March 8, 2007, the SAB Staff Office announced the formation of the CASAC PM Review Panel in the **Federal Register** (72 FR 10527) and sought public nominations for nationally-recognized experts in various scientific and technical disciplines to supplement the expertise of the statutory CASAC. The SAB Staff Director announced the establishment of this CASAC Panel on October 23, 2007. The purpose of this public teleconference meeting, which is the first meeting of the new CASAC PM Review Panel, is to conduct a consultation on the Agency's draft integrated plans for the review of the NAAQS for particulate matter. The SAB Staff Office has developed the consultation as a mechanism to provide early input and advice to EPA on technical issues that should be considered in the development of regulations, guidelines, or technical guidance before the Agency has taken a position.

Availability of Meeting Materials: The Draft Integrated Plan for Review of the PM NAAQS is posted on the Agency's Technology Transfer Network (TTN) Web site at: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_cr_pd.html*, in the ''Documents from Current Review'' section under ''Planning Documents'' on this Web page. A copy of the draft agenda and other materials for this CASAC teleconference will be posted on the SAB Web site at: *http://www.epa.gov/sab/panels/casac_pm_review_panel_2007-.html* prior to the meeting.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the CASAC PM Review Panel to consider during the advisory process. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact Mr. Butterfield, DFO, in writing (preferably via e-mail), by November 26, 2007, at the contact information noted above, to be placed on the list of public speakers for this meeting. *Written Statements:* Written statements should be received in the SAB Staff Office by November 26, 2007, so that the information may be made available to the CASAC Panel for its consideration prior to this teleconference. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature (optional), and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Butterfield at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: November 2, 2007.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E7–21933 Filed 11–7–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8493–7]

Notice of Public Workshop to Discuss Management of Underground Injection of Carbon Dioxide for Geologic Sequestration Under the Safe Drinking Water Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of public workshop.

SUMMARY: The Environmental Protection Agency (EPA) is holding a public workshop to discuss the development of proposed regulations for the underground injection of carbon dioxide for geologic sequestration under the Safe Drinking Water Act (SDWA). SDWA requires EPA to protect underground sources of drinking water from contamination due to underground injection activities. The Underground Injection Control Program works with States and Tribes to oversee underground injection activities and prevent endangerment of drinking water sources. This public workshop will provide an opportunity for dialogue with representatives from industry, government, public interest groups, and the general public on geologic sequestration of carbon dioxide. The Agency plans to hold a second workshop in early 2008.

DATES: This public workshop will be held from 12 p.m. to 5:30 p.m., Eastern time, on Monday, December 3, 2007, and from 8:30 a.m. to 4 p.m. on Tuesday, December 4, 2007. To RSVP for the workshop, please contact Kate Zimmer at RESOLVE at *kzimmer@resolv.org.* Please RSVP by November 21, 2007.

ADDRESSES: The workshop will be held at the Hotel Washington. The hotel is located at the corner of Pennsylvania Ave. and 15th St., NW., two blocks from the Metro Center Station. The hotel's telephone number is (202) 638–5900.

FOR FURTHER INFORMATION CONTACT: For general information about the workshop, please contact Mary Rose (Molly) Bayer by phone at (202) 564–1981, by e-mail at *bayer.maryrose@epa.gov* , or by mail at: U.S. Environmental Protection Agency,

Mail Code 4606M, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The purpose of this workshop is to share information about EPA's rulemaking process, provide an opportunity for dialogue between EPA and stakeholders on geologic sequestration of carbon dioxide under the Safe Drinking Water Act, and identify key questions and considerations that will help inform a regulatory framework. A second two-day workshop is being planned for early 2008 and notification will be posted in a separate FR Notice.

Special Accommodations:

For information on access or services for individuals with disabilities, please contact Mary Rose (Molly) Bayer at (202) 564–1981 or *bayer.maryrose@epa.gov.* To request accommodation of a disability, please contact Mary Rose Bayer, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: November 2, 2007.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. E7–21931 Filed 11–7–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested

October 30, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 10, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via Internet at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167 and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC or via Internet at *Cathy.Williams@fcc.gov* or *PRA@fcc.gov.*

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB control number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.''

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0466.

Title: Station Identification Sections 73.1201, 74.783 and 74.1283.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, Local and Tribal Government.

Number of Respondents: 4,200.

Estimated Time per Response: 10 minutes to 1 hour.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement; On occasion reporting requirement.

Total Annual Burden: 6,566 hours.

Total Annual Costs: None.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: On May 31, 2007, the Commission released the Second Report and Order, Digital Audio Broadcasting (DAB) Systems and Their Impact on the Terrestrial Radio Broadcast Service (''Second Order''), FCC 07–33, MM Docket 99–325. Provisions of the Second Order require station identification requirements for Digital Audio Broadcasting (DAB) stations to facilitate public participation in the regulatory process. Both AM and FM stations with DAB operations will be required to make station identification announcements at the beginning and end of each time of operation, as well as hourly, for each programming stream.

47 CFR 73.1201(a) requires television broadcast licensees to make broadcast station identification announcements at the beginning and ending of each time of operation, and hourly, as close to the hour as feasible, at a natural break in program offerings. Television and Class A television broadcast stations may make these announcements visually or aurally.

47 CFR 73.1201(b)(1) requires that official station identification shall consist of the station's call letters immediately followed by the community or communities specified in its license as the station's location; Provided that the name of the licensee, the station's frequency, the station's channel number, as stated on the station's license, and/or the station's network affiliation may be inserted between the call letters and station location. DTV stations, or DAB Stations, choosing to include the station's channel number in the station identification must use the station's major channel number and may distinguish multicast program streams. For example, a DTV station with major channel number 26 may use 26.1 to identify an HDTV program service and 26.2 to identify an SDTV program service. A radio station operating in DAB hybrid mode or extended hybrid mode shall identify its digital signal, including any free multicast audio programming streams, in a manner that appropriately alerts its audience to the fact that it is listening to a digital audio broadcast. No other insertion between the station's call letters and the community or communities specified in its license is permissible.

47 CFR 74.783(e) permits any low power television (LPTV) station to request a four-letter call sign after receiving its construction permit. All initial LPTV construction permits will continue to be issued with a five-character LPTV call sign. LPTV respondents are required to use the on-line electronic system. To enable these respondents to use this on-line system, the Commission eliminated the requirement that holders of LPTV construction permits submit with their call sign requests a certification that the station has been constructed, that physical construction is underway at the transmitter site, or that a firm equipment order has been placed.

47 CFR 74.783(b) requires licensees of television translators whose station identification is made by the television station whose signals are being rebroadcast by the translator, must secure agreement with this television licensee to keep in its file, and available to FCC personnel, the translator's call letters and location, giving the name, address and telephone number of the licensee or service representative to be contacted in the event of malfunction of the translator.

47 CFR 74.1283(c)(1) requires FM translator stations whose station identification is made by the primary station to furnish current information on the translator's call letters and location. This information is kept in the primary station's files. This information is used to contact the translator licensee in the event of malfunction of the translator.

OMB Control Number: 3060–1034.

Title: Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service Broadcast Station Annual Employment Report.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 710.

Estimated Time per Response: 2.0 hours.

Frequency of Response: On occasion reporting requirement.

Total annual burden: 1,420 hours.

Total Annual Costs: None.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: On May 31, 2007, the Commission released the Second Report and Order, Digital Audio Broadcasting (DAB) Systems and Their Impact on the Terrestrial Radio Broadcast Service (''Second Order''), FCC 07–33, MM Docket 99–325. Provisions of the Second Order require radio station licensees to provide information necessary for the implementation of interim hybrid digital operations. Implementation of hybrid digital operations is entirely voluntary.

47 CFR 73.404(b) states in situations where interference to other stations is anticipated or actually occurs, AM licensees may, upon notification to the Commission, reduce the power of the primary DAB sidebands by up to 6 dB. Any greater reduction of sideband power requires prior authority from the Commission via the filing of a request for special temporary authority or an informal letter request for modification of license.

47 CFR 73.404(e) states licensees which include commercial and noncommercial AM and FM radio stations must provide notification to the Commission in Washington, DC, within 10 days of commencing IBOC digital operation. The notification must include the following information:

(1) Call sign and facility identification number of the station;

(2) Date on which in-band, on channel (IBOC) operation commenced;

(3) Certification that the IBOC DAB facilities conform to permissible hybrid specifications;

(4) Name and telephone number of a technical representative the Commission can call in the event of interference;

(5) Certification that the analog effective radiated power remains as authorized;

(6) Transmitter power output; if separate analog and digital transmitters are used, the power output for each transmitter;

(7) If applicable, any reduction in an AM station's primary digital carriers;

(8) If applicable, the geographic coordinates, elevation data, and license file number of the auxiliary antenna employed by an FM station as a separate digital antenna;

(9) If applicable, for FM systems employing interleaved antenna bays, a certification that adequate filtering and/or isolation equipment has been installed to prevent spurious emissions in excess of the limits specified in § 73.317;

(10) A certification that the operation will not cause human exposure to levels of radio frequency radiation in excess of the limits specified in § 1.1310 of the Commission's rules and is therefore categorically excluded from environmental processing pursuant to § 1.1306(b). Any station that cannot certify compliance must submit an environmental assessment (''EA'') pursuant to § 1.1311 and may not commence IBOC operation until such EA is ruled upon by the Commission.

Implementation of the notification will eliminate both the need for the FCC staff to issue a Special Temporary Authority (STA) to the broadcaster and for the broadcaster to file and pay the initial and any subsequent filing fees.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–21775 Filed 11–7–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

October 22, 2007.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact, Terry Conway, Federal Communications Commission, 445 12th Street, SW., Washington DC 20554, (202) 418–0950 or via the Internet at *Terry.Conway@fcc.gov*.

OMB Control No.: 3060–0779.

Expiration Date: 9/30/10.

Effective Date: 9/24/07.

Title: Amendment of Part 90 of the Commission's Rules to Provide for Use of the 220 MHz Band by the Private Land Mobile Radio Service (PLMRS), PR Docket No. 89–552.

Form No.: N/A.

Estimated Annual Burden: 2,313 responses; 23,433 total annual burden hours; 2–20 hours per respondent; and $657,500 annual costs.

Needs and Uses: This collection includes rules to govern the future operation and licensing of the 220–222 MHz band (220 MHz service). In establishing this licensing plan, the FCC's goal is to establish a flexible regulatory framework that allows for efficient licensing of the 220 MHz service, eliminates unnecessary regulatory burdens, and enhances the competitive potential of the 220 MHz service in the mobile service marketplace. However, as with any

licensing and operational plan for a radio service, a certain number of regulatory and information collection and burdens are necessary to verify licensee compliance with FCC rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–21778 Filed 11–7–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 21, 2007.

A. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. The 2007 Voting Trust Agreement, and its trustees, Albert Charles Kelly, Jr. and Peter John Kelly, both of Bristow, Oklahoma; Shawn Trevor Kelly, Edmond, Oklahoma; Paul Harrison Cornell, Tulsa, Oklahoma; and Allison Asbury Kelly, Okemah, Oklahoma, all to acquire voting shares of Citizens Bankshares, Inc., and thereby indirectly acquire voting shares of Citizens State Bank, both of Okemah, Oklahoma.

Board of Governors of the Federal Reserve System, November 1, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–21913 Filed 11–7–07; 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 November 30, 2007.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. Palomar Enterprises, LLC; to become a bank holding company by acquiring 18.3 percent of the voting shares of Farmers & Merchants Bank of Long Beach, both of Long Beach, California.

Board of Governors of the Federal Reserve System, November 1, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.E7–21914 Filed 11–7–07; 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 December 3, 2007.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Metro Bancshares, Inc.; to become a bank holding company by acquiring 100 percent of the voting shares of Metro Bank (in organization), both of Douglasville, Georgia.

Board of Governors of the Federal Reserve System, November 5, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.E7–21929 Filed 11–7–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Provision of Services in Interstate Child Support.

Enforcement: Standard Forms.

OMB No.: 0970–0085.

Description: Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,

amended 42 USC 666 to require State and Territory Child Support Enforcement (CSE) IV–D agencies to enact the Uniform Interstate Family Support Act (UIFSA) into State and Territory law by January 1, 1998. Section 311(b) of UIFSA requires States and Territories to use standard interstate forms. 45 CFR 303.7 also requires CSE IV–D agencies to transmit child support case information on standard interstate forms when referring cases to other States and Territories for processing. These forms are expiring in January 2008 and the Administration for Children and Families is taking this opportunity to make some revisions as requested by States and Territories during the 60-day comment period.

Respondents: State and Territory agencies administering the Child Support Enforcement program under title IV–D of the Social Security Act.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Transmittal 1	54	19,278	.25	260,253
Transmittal 2	54	14,458	.08	62,459
Transmittal 3	54	964	.08	4,164
Uniform Petition	54	9,639	.08	41,640
General Testimony	54	11,567	.33	206,124
Affidavit Paternity	54	4,819	.17	44,238
Locate Data Sheet	54	375	.08	1,620
Notice of Controlling Order	54	964	.08	4,164
Registration Statement	54	8,675	.08	37,476

Estimate Total Annual Burden Hours: 662,138.

Additional Information: Copies of the proposed collection may be obtained 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. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Office for the Administration for Children and Families.

Dated: November 1, 2007.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 07–5576 Filed 11–7–07; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Availability of the Biennial Report to Congress on the Status of Children in Head Start Programs

AGENCY: Administration for Children and Families (ACF), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Administration for Children and Families announces publication of the Biennial Report to the Congress on the Status of Children in Head Start Programs, Fiscal Year 2005. The report is mandated under Section 650 of the Head Start Act, as amended, which requires the Secretary of Health and Human Services to submit a report to the Congress at least once during every two-year period on the status of children in Head Start programs. During fiscal year 2005 more than 906,000 children were enrolled in Head Start programs including 62,000 children in Early Head Start programs serving children between birth and three years of age.

EFFECTIVE DATES: November 8, 2007.

ADDRESSES: Persons wishing to receive a copy of the Biennial Report to Congress on the Status of Children in Head Start Programs, Fiscal Year 2005 may contact the Head Start Publication Center on 866–763–6481. Copies of the report may also be obtained by accessing the Office of Head Start Web site at *http://www.acf.hhs.gov/programs/ohs*.

FOR FURTHER INFORMATION CONTACT: Patricia E. Brown, Acting Director, Office of Head Start, 1250 Maryland Avenue, SW., 8th floor, Washington, DC 20024.

SUPPLEMENTARY INFORMATION: The Head Start and Early Head Start programs are authorized under the Head Start Act (42 U.S.C. 9801 *et seq.*). Head Start is a national program providing comprehensive developmental services to low-income preschool children, primarily age three to age of compulsory school attendance, and their families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. Section 650 of the Head Start Act requires that the Secretary publish a Biennial Report of the Status of Children in Head Start Programs. The fiscal year 2005 Biennial Report provides information about children enrolled in the program and the services they receive. During fiscal year 2005 more than 906,000 were enrolled in Head Start programs. Head Start operated 49,000 classrooms in more than 19,000 Head Start centers at an average annual cost per child of $7,287. Over 1,300,000 volunteers contributed their services to Head Start programs.

Dated: October 25, 2007.

Patricia E. Brown,

Acting Director, Office of Head Start.

[FR Doc. 07–5577 Filed 11–7–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HOMELAND SECURITY

National Communications System

[Docket No. NCS–2007–0005]

National Security Telecommunications Advisory Committee

AGENCY: National Communications System, DHS.

ACTION: Notice of Cancellation of the Federal Advisory Committee Teleconference Meeting of the President's National Security Telecommunications Advisory Committee (NSTAC).

SUMMARY: The meeting of the President's National Security Telecommunications Advisory Committee (NSTAC) scheduled for November 8, 2007 from 2 p.m. to 3 p.m. is cancelled. Notice of this meeting was published in the October 12, 2007, **Federal Register** at 58110–58111.

FOR FURTHER INFORMATION CONTACT: Ms. Sue Daage, Industry Operations Branch at NPPD/NCS/Mail Stop 8510, DHS/245 Murray Lane, Bldg. 410, Washington, DC 20528–8510. *Telephone:* (703) 235–5526, *e-mail: Sue.Daage@dhs.gov.*

SUPPLEMENTARY INFORMATION: NSTAC advises the President on issues and problems related to implementing national security and emergency preparedness telecommunications policy. Notice of cancellation os this meeting is given under the Federal Advisory Committee Act (FACA), Pub. L. 92–463, as amended, 5 U.S.C. App.

Sallie McDonald,

Director, National Communications System.

[FR Doc. 07–5592 Filed 11–7–07; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5147–C–01]

Capacity Building for Community Development and Affordable Housing Grants; Technical Correction and Extension of Application Deadline

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability (NOFA); technical correction and notice of extension of application deadline.

SUMMARY: On September 18, 2007, HUD published a NOFA for Capacity Building for Community Development and Affordable Housing Grants. To clarify the scope of eligible applicants, HUD has decided to publish this technical correction. Additionally, to permit eligible applicants sufficient time to prepare their applications for assistance, HUD has also determined to extend the deadline.

DATES: The application deadline date for the Capacity Building for Community Development and Affordable Housing Grants competition is January 11, 2008 at 11:59:59 p.m.

FOR FURTHER INFORMATION CONTACT: Karen Daly, Director, Office of Policy Development and Coordination, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7240, Washington, DC 20410–7000; telephone 202–708–1817 (this is not a toll-free number). Persons with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Income Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: On September 18, 2007 (72 FR 53255), HUD published in the **Federal Register** its FY2007 Capacity Building for Community Development and Affordable Housing NOFA. The Capacity Building for Community Development and Affordable Housing NOFA makes approximately $29,590,000 available to carry out the eligible activities related to affordable housing and community development for the capacity building program. As noted in the September 18, 2007, **Federal Register** publication, this competition is limited to the four organizations identified in section 4 of the HUD Demonstration Act of 1993. HUD included a list of the four eligible organizations but failed to provide sufficient specific information to eliminate questions regarding eligibility. To eliminate any confusion, HUD is publishing this correction to specifically identify the four eligible applicants. Accordingly, the only applicants eligible for this competition are the following four organizations located at the following addresses:

Enterprise Community Partners, Inc., 10227 Wincopin Circle, Suite 500, Columbia, MD 21044.

Local Initiatives Support Corporation, 501 Seventh Avenue, 7th Floor, New York, NY 10018.

Habitat for Humanity International, 121 Habitat Street, Americus, GA 31709.

YouthBuild USA, 58 Day Street, Somerville, MA 02144.

Affiliates and local offices of these organizations and their community partners are not eligible to compete either directly or independently for capacity building grants under this notice, but rather may seek funding from the above organizations that are awarded through this competition.

In order to avoid any difficulties that might arise from the questions regarding the scope of eligible applicants, HUD has determined to extend the application deadline date for the Capacity Building for Community Development and Affordable Housing Grants competition to January 11, 2008 at 11:59:59 p.m. Extending the deadline date will also permit applicants to have an additional time to obtain assistance from the *Grants.gov* desk help at 800–518–GRANTS (this is a toll free number). Potential applicants are advised that the provisions of the Capacity Building for Community Development and Affordable Housing Grants NOFA that discuss timely receipt of applications continue to apply. Specifically, section IV.A. of the Capacity Building for Community Development and Affordable Housing Grants NOFA (72 FR 52356) provides that all applications must be received and validated by *Grants.gov*; or received no later than 11:59:59 on the deadline date. In order to ensure timely receipt, HUD strongly recommends applicants submit their electronic applications 48–72 hours prior to the deadline to ensure the application validation is processed prior to the deadline.

Dated: November 2, 2007.

Nelson R. Bregón,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. E7–21890 Filed 11–7–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–1020–PG; HAG 08–0004]

Meeting Notice for the John Day/Snake Resource Advisory Council

AGENCY: Bureau of Land Management (BLM), Vale District, Interior.

ACTION: Meeting Notice for the John Day/Snake Resource Advisory Council.

SUMMARY: The John Day/Snake Resource Advisory Council (JDSRAC) meeting is scheduled for December 4, 2007, in Pendleton, Oregon.

The John Day/Snake Resource Advisory Council meeting is scheduled for December 4, 2007. The meeting will take place at the Red Lion Inn, 304 SE. Nye Avenue, Pendleton, OR from 8 a.m. to 4 p.m. The meeting may include such

topics as Forest and Resource Management Planning, Salmon Recovery, Transportation Planning, and other matters as may reasonably come before the council.

The meeting is open to the public. Public comment is scheduled for 1 p.m. to 1:15 p.m. (Pacific Time) December 4, 2007. For a copy of the information to be distributed to the Council members, please submit a written request to the Vale District Office 10 days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the John Day/Snake Resource Advisory Council may be obtained from Mark Wilkening, Public Affairs Officer, Vale District Office, 100 Oregon Street, Vale, Oregon 97918, (541) 473–6218 or e-mail *mark_wilkening@blm.gov*.

Dated: October 15, 2007.

Larry Frazier,

Acting District Manager.

[FR Doc. E7–21973 Filed 11–7–07; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

List of Programs Eligible for Inclusion in Fiscal Year 2008 Funding Agreements to be Negotiated with Self-Governance Tribes

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: This notice lists programs or portions of programs that are eligible for inclusion in Fiscal Year 2008 funding agreements with self-governance tribes and lists programmatic targets pursuant to section 405(c)(4) of the Tribal Self-Governance Act.

DATES: This notice expires on September 30, 2008.

ADDRESSES: Inquiries or comments regarding this notice may be directed to Mr. Richard Ives, Director, Native American and International Affairs Office, Bureau of Reclamation (96–43200), 1849 C Street, NW., Mail Stop 7060–MIB, Washington, DC 20240; telephone 202–513–0625; fax 202–513–0311.

SUPPLEMENTARY INFORMATION:

I. Background

Title II of the Indian Self-Determination Act Amendments of 1994 (Pub. L. 103–413, the ''Tribal Self-Governance Act'' or the ''Act'') instituted a permanent self-governance program at the Department of the Interior (DOI). Under the self-governance program certain programs, services, functions, and activities, or portions thereof, in DOI bureaus other than the Bureau of Indian Affairs (BIA) are eligible to be planned, conducted, consolidated, and administered by a self-governance tribal government.

Under section 405(c) of the Act, the Secretary of the Interior is required to publish annually: (1) A list of non-BIA programs, services, functions, and activities, or portions thereof, that are eligible for inclusion in agreements negotiated under the self-governance program; and (2) programmatic targets for these bureaus.

Under the Act, two categories of non-BIA programs are eligible for self-governance funding agreements:

(1) Under section 403(b)(2) of the Act, any non-BIA program, service, function or activity that is administered by DOI that is ''otherwise available to Indian tribes or Indians,'' can be administered by a tribal government through a self-governance funding agreement. The Department interprets this provision to authorize the inclusion of programs eligible for self-determination contracts under Title I of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, as amended). Section 403(b)(2) also specifies ''nothing in this subsection may be construed to provide any tribe with a preference with respect to the opportunity of the tribe to administer programs, services, functions and activities, or portions thereof, unless such preference is otherwise provided by law.''

(2) Under section 403(c) of the Act, the Secretary may include other programs, services, functions, and activities or portions thereof that are of ''special geographic, historical, or cultural significance'' to a self-governance tribe.

Under section 403(k) of the Act, funding agreements cannot include programs, services, functions, or activities that are inherently Federal or where the statute establishing the existing program does not authorize the type of participation sought by the tribe. However, a tribe (or tribes) need not be identified in the authorizing statutes in order for a program or element to be included in a self-governance funding agreement. While general legal and policy guidance regarding what constitutes an inherently Federal function exists, we will determine whether a specific function is inherently Federal on a case-by-case basis considering the totality of circumstances.

II. Eligible non-BIA Programs of the Bureau of Reclamation.

The mission of the Bureau of Reclamation (Reclamation) is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public. To this end, most of the Reclamation's activities involve the construction, operation and maintenance, and management of water resources projects and associated facilities, as well as research and development related to its responsibilities. Reclamation water resources projects provide water for municipal, residential, agricultural, and industrial water supplies; hydroelectric power generation; flood control; outdoor recreation; and enhancement of fish and wildlife habitats.

Components of the following water resource projects listed below may be eligible for inclusion in a self-governance funding agreement. This list was developed with consideration of the proximity of identified self-governance tribes to Reclamation projects.

1. Klamath Project, California and Oregon.
2. Trinity River Fishery, California.
3. Central Arizona Project, Arizona and New Mexico.
4. Rocky Boy's/North Central Montana Regional Water System, Montana.
5. Indian Water Rights Settlement Projects, as Congressionally authorized.

Reclamation also has some programs (e.g., drought relief) under which funding may be provided for specific tribal projects which qualify under the applicable program criteria, subject to available funding. When such projects are for the benefit of self-governance tribes, the projects, or portions thereof, may be eligible for inclusion in self-governance funding agreements.

Upon the request of a self-governance tribe, Reclamation will also consider for inclusion in funding agreements, other programs or activities which Reclamation determines to be eligible under Section 403(b)(2) or 403(c) of the Act.

III. Programmatic Targets

During Fiscal Year 2008, upon request of a self-governance tribe, Reclamation will negotiate funding agreements for its eligible programs beyond those already negotiated.

Dated: October 23, 2007.

Kameran L. Onley,

Assistant Deputy Secretary.

[FR Doc. E7–21906 Filed 11–7–07; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–07–023]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: November 14, 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. Nos. 731–TA–929–931 (Review) (Silicomanganese from India, Kazakhstan, and Venezuela)—briefing and vote. (The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before November 28, 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.

By order of the Commission.

Issued: November 5, 2007.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E7–21957 Filed 11–7–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on November 1, 2007, a proposed ''Agreement and Order Regarding Modification of the Consent Decree with Respect to TESI'' in *U.S.* v. *Acadia Woods Add. #2 Sewer Co.,* Civil Action No. 6:98–0687, was lodged with the United States District Court for the Western District of Louisiana.

In this action, the United States sought injunctive relief and civil penalties under the Clean Water Act (''CWA''), 33 U.S.C. 1251 *et seq.,* in connection with sewage treatment plants (''STPs'') in Louisiana owned and operated by Johnson Properties, Inc. On December 21, 2000, the ''Consent Decree with Respect to TESI'' was entered (''the 2000 Consent Decree''). On December 23, 2000, Total Environmental Solutions, Inc. (''TESI'') purchased the STPs at issue in the civil action. The 2000 Consent Decree provided a plan and schedule whereby TESI would bring the STPs it purchased into compliance with the CWA. The proposed Agreement and Order Regarding Modification of the Consent Decree with Respect to TESI modifies the plan and schedule whereby TESI would bring the STPs it purchased into compliance with the CWA. The proposed Agreement and Order Regarding Modification of the Consent Decree with Respect to TESI also modifies the stipulated penalties provisions of the 2000 Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Agreement and Order Regarding Modification of the Consent Decree with Respect to TESI. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *U.S.* v. *Acadia Woods Add. #2 Sewer Co.,* D.J. Ref. 90–5–1–1–4375.

The Agreement and Order Regarding Modification of the Consent Decree with Respect to TESI may be examined at the Office of the United States Attorney, Western District of Louisiana, 800 Lafayette Street, Suite 2200, Lafayette, LA 70501, and at U.S. EPS Region, Region 6, 1445 Ross Avenue, Dallas, TX 75202. During the public comment period, the Agreement and Order Regarding Modification of the Consent Decree with Respect to TESI may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Agreement and Order Regarding Modification of the Consent Decree with Respect to TESI may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $12.75 (25 cents per page reproduction cost). If the request is made by e-mail or fax, please forward a check in the appropriate amount to the Consent Decree Library at the stated address. The check should be payable to the ''United States Treasury.''

Thomas A. Mariani, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–5580 Filed 11–7–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Two Consent Decrees

Notice is hereby given that on October 23, 2007, two proposed Consent Decrees were lodged with the United States District Court for the Central District of California. One Consent Decree was lodged in the case *United States* v. *Andruss Family Trust, et al.*, Civil Action No. 2:07–cv–06873 FMC (C.D. Cal.), and another Consent Decree was lodged in the case *United States* v. *Abercrombie, et al.,* Civil Action No. 2:07–cv–06870 ABC (C.D. Cal.).

In both cases the United States of America (''United States''), on behalf of the Administrator of the United States Environmental Protection Agency (''EPA''), and the California Department of Toxic Substances Control (''Department''), filed a complaint pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9607, seeking reimbursement of response costs incurred or to be incurred for response actions taken in connection with the release or threatened release of hazardous substances at the South El Monte Operable Unit of the San Gabriel Valley Area 1 Superfund Site in South El Monte, Los Angeles County, California (the ''South El Monte O.U.'').

Under the proposed Consent Decree in *Abercrombie*, 26 potentially responsible parties with respect to the South El Monte O.U. will pay a total of about $3.2 million (collectively). The settlement amounts are based on each settling defendant's ability to pay. In exchange for the payment, the plaintiffs covenant not to sue each settling defendant under Section 106 or 107 of CERCLA with respect to the South El Monte O.U.

Under the proposed Consent Decree in *Andruss*, there are 13 settling defendants. In exchange for prior payments of over $5.8 million that have been made by these 13 settling defendants in reimbursement of costs incurred with respect to the interim remedy for the South El Monte O.U., the plaintiffs covenant not to sue each

settling defendant under Section 106 or 107 of CERCLA with respect to the interim remedy for volatile organic compounds. In addition, 10 of these 13 parties will also pay $3,350,000 to EPA and $100,000 to DTSC. In exchange the plaintiffs covenant not to sue the 10 settling defendants under Section 106 or 107 of CERCLA with respect to the interim remedy for perchlorate.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to either or both of these cases: *United States* v. *Andruss Family Trust, et al.*, (C.D. Cal.), D.J. Ref. 90-11-2-09121/3; or *United States* v. *Abercrombie, et al.*, (C.D. Cal.), D.J. Ref. 90-11-2-09121/2.

The proposed Consent Decrees may be examined at the Office of the United States Attorney, 450 Golden Gate Avenue, San Francisco, California 94102. During the public comment period, the Consent Decrees may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent__Decrees.html.* A copy of the proposed Consent Decrees may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov),* fax no. (202) 514–0097, phone confirmation no. (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check payable to the ''U.S. Treasury'' or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address, in the following amounts (25 cents per page reproduction cost): $13.75 for the Consent Decree in *Abercrombie* or $9.75 for the Consent Decree in *Andruss* (without attachments).

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–5582 Filed 11–7–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decrees

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that three (3) proposed Consent Decrees in *United States* v. *Sea Bay Development Corp., et al.,* No. 2:06–cv–624 (E.D. Va.), were lodged with the United States District Court for the Eastern District of Virginia, Norfolk Division, on October 26, 2007.

The proposed Consent Decrees concern a complaint filed by the United States against Sea Bay Development Corp., Beechtree Park, Inc., Green Sea Farms, LLC, Elwood H. Perry, Frank T. Williams' Farms, Inc., and Ferrell's Backhoe Service, Inc., to obtain injunctive relief from and to impose civil penalties against the Defendants for allegedly violating Section 301(a) of the Clean Water Act (CWA), 33 U.S.C. 1311(a), by discharging dredged or fill material and/or controlling and directing the discharge of dredged or fill material into waters of the United States without a permit at an approximately 1,560-acre property located in Chesapeake, Virginia.

The proposed Consent Decrees resolve all allegations against the Defendants. The proposed Consent Decree for Elwood H. Perry and Ferrell's Backhoe Service, Inc., requires payment to the United States of a civil penalty in the amount of $65,000.00. The proposed Consent Decree for Frank T. Williams' Farms, Inc., requires payment to the United States of a civil penalty in the amount of $35,000.00. The proposed Consent Decree for Sea Bay Development Corp., Beechtree Park, Inc., and Green Sea Farms, LLC, requires restoration and mitigation on a portion of the property consisting of approximately 873 acres of wetlands, and the preservation in perpetuity of that portion under a conservation easement or deed restriction. In addition, that Consent Decree allows the discharge of dredged or fill material in the remainder of the property, subject to certain limitations.

The Department of Justice will accept written comments relating to these proposed Consent Decrees for thirty (30) days from the date of publication of this Notice. Please address comments to Kenneth C. Amaditz, Trial Attorney, Environmental Defense Section, P.O. Box 23986, Washington, DC 20026, and refer to *United States* v. *Sea Bay Development Corp, et al.,* DJ # 90–5–1–1–05061.

The proposed consent Decrees may be examined at the Clerk's Office, United States District Court for the Eastern District of Virginia, Norfolk Division. In addition, the proposed Consent Decrees may be viewed at *http://www.usdoj.gov/enrd/Consent_Decrees.html.*

Russell M. Young,

Assistant Chief, Environmental Defense Section, Environmental & Natural Resources Division, U.S. Department of Justice.

[FR Doc. 07–5579 Filed 11–07–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on October 26, 2007, a proposed Settlement Agreement Regarding the Tri-State Mining District Sites was filed with the United States Bankruptcy Court for the Southern District of Texas in *In re ASARCO LLC, et al.*, Case No. 05–21207 (Bankr. S.D. Tex.). The Tri-State Mining District Sites consist of the Tar Creek Superfund Site, in Ottawa County, Oklahoma, the Cherokee County Superfund Site in Cherokee County, Kansas, the Oronogo-Duenweg Lead Mining Belt (Jasper County) Superfund Site in Jasper County, Missouri, and the Newton County Mine Tailings Superfund Site in Newton County, Missouri. The proposed Settlement Agreement entered into among the United States on behalf of the Environmental Protection Agency and the Department of Interior, and the States of Kansas, Missouri and Oklahoma, and ASARCO LLC (''Asarco'') provides that the United States shall have total allowed general unsecured claims of $144,000,000 for past and future response costs and natural resource damages for the Tri-State Mining District sites, and that the States of Kansas, Missouri and Oklahoma shall have allowed general unsecured claims of $3,250,000, $3,250,000, and $7,500,000 respectively. The proposed Settlement Agreement resolves the United States' past and future response cost and natural resource damage claims at the Tri-State Mining District Sites.

The Department of Justice will accept comments relating to the proposed Settlement Agreement for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and mailed either electronically to *pubcomment-ees.enrd@usdoj.gov* or in hard copy to

P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. Comments should refer to *In re Asarco LLC*, Case No. 05–21207 (Bankr. S.D. Tex.), and DJ Ref. No. 90–11–3–08633.

The proposed Settlement Agreement may be examined at: (1) The Office of the United States Attorney for the Southern District of Texas, 800 North Shoreline Blvd, #500, Corpus Christi, TX 78476–2001; (2) the Region 6 Office of the United States Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202; and (3) the Region 7 Office of the United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, KS 66101. During the comment period, the proposed Settlement Agreement may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decree.html.* A copy of the proposed Settlement Agreement may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please refer to the referenced case and D.J. Reference No. 90–11–3–08633, and enclose a check in the amount of $4.25 for the Settlement Agreement (21 pages at 25 cents per page reproduction costs), made payable to the U.S. Treasury.

Robert E. Maher, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–5581 Filed 11–7–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. *Abitibi-Consolidated, Inc. and Bowater Incorporated; Proposed Final Judgment and Competitive Impact Statement*

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a Complaint, proposed Final Judgment, Asset Preservation Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *Abitibi-Consolidated, Inc. and Bowater Incorporated,* Civ. Action No. 1:07CV01912. On October 23, 2007, the United States filed a Complaint alleging that the proposed merger between Abitibi-Consolidated Inc. (''Abitibi'') and Bowater Incorporated would violate section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that the acquisition would substantially reduce competition for the production, distribution, and sale of newsprint in the United States. Specifically, the Complaint alleges that the merger would enhance the merged firm's ability and incentive to reduce their combined newsprint output and anticompetitively raise newsprint prices in the United States. The proposed Final Judgment, also filed on October 23, 2007, requires the parties to divest Abitibi's Snowflake, Arizona newsprint mill. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and the remedies available to private litigants who may have been injured by the alleged violation.

Copies of the Complaint, proposed Final Judgment, Asset Preservation Stipulation and Order, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, 325 Seventh Street, NW., Suite 215, Washington, DC 20530 (202–514–2481), on the Internet at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee.

Public comment is invited within sixty (60) days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Joseph Miller, Assistant Chief, Litigation I Section, Antitrust Division, Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20530 (202–307–0001).

J. Robert Kramer II,

Director of Operations, Antitrust Division.

The United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 4000, Washington, DC 20530, Plaintiff, v. Abitibi-Consolidated Inc., 1155 Metcalfe Street, Suite 800, Montréal, QC H3B 5H2, Canada, and Bowater Incorporated, 55 E. Camperdown Way, Greenville, SC 29601, Defendants; Case No.:_____.

Case: 1:07-cv-01912, Assigned To: Collyer, Rosemary M., Assign. Date: 10/23/2007, Description: Antitrust.

Complaint

The United States of America, acting under the direction of the Acting Attorney General of the United States, brings this civil action to enjoin the proposed merger of Defendants Abitibi-Consolidated Inc. (''Abitibi'') and Bowater Incorporated (''Bowater''). The United States alleges as follows:

I. Nature of the Action

1. On January 29, 2007, Abitibi and Bowater announced plans to merge into a new company to be called AbitibiBowater Inc. in a transaction valued at $1.6 billion.

2. Abitibi and Bowater are the two largest newsprint producers in North America. The combination of these two firms will create a newsprint producer three times larger than the next largest North American newsprint producer. After the merger, the combined firm will have the incentive and ability to withdraw capacity and raise newsprint prices in the North American newsprint market.

3. Unless the proposed transaction is enjoined, Defendants' merger will substantially lessen competition in the production and sale of newsprint, in violation of section 7 of the Clayton Act, 15 U.S.C. 18.

II. Jurisdiction and Venue

4. The United States brings this action under section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain Defendants from violating section 7 of the Clayton Act, 15 U.S.C. 18.

5. Both Defendants produce and sell newsprint in the flow of interstate commerce. Defendants' production and sale of newsprint substantially affect interstate commerce. This Court has subject matter jurisdiction over this action pursuant to section 15 of the Clayton Act, 15 U.S.C. 25 and 28 U.S.C. 1331, 1337(a), and 1345.

6. Defendants have consented to venue and personal jurisdiction in this judicial district.

III. Defendants to the Proposed Transaction

7. Abitibi, the largest newsprint supplier in North America, is a Canadian corporation with its principal place of business in Montréal, Quebec, Canada. Abitibi produces and sells newsprint to customers around the world. Abitibi owns and operates, either solely or with other firms, eleven paper mills in the United States and Canada that currently produce newsprint, as well as one mill in the United Kingdom. In 2006, Abitibi's total sales were approximately $4.85 billion, including

approximately $1.7 billion in aggregate North American newsprint sales.

8. Bowater, the second-largest newsprint supplier in North America, is incorporated in Delaware with its principal place of business in Greenville, South Carolina. Bowater owns and operates, either solely or with other firms, eight paper mills in the United States and Canada that currently produce newsprint, as well as one mill in South Korea. In 2006, Bowater's total sales were approximately $3.53 billion, including approximately $1.1 billion in aggregate North American newsprint sales.

IV. Trade and Commerce

A. The Relevant Market

1. Product Market: Newsprint

9. Newsprint is the lowest grade of uncoated groundwood paper (i.e., paper manufactured from mechanically processed pulp). In 2006, approximately 9.745 million metric tonnes of newsprint were sold in North America. Newspaper publishers purchase more than 80 percent of the available newsprint supply to print newspapers. Some newsprint also is used in the production of direct mail and newspaper inserts.

10. Newspaper publishers have no close substitutes for newsprint to use for printing newspapers. Newsprint is generally the least expensive paper grade. In addition, publishers' newspaper presses are optimized for newsprint and cannot be modified to use other paper grades without incurring significant costs.

11. Newsprint used for other purposes constitutes only a small share of total sales. While a small but significant increase in the price of newsprint may cause some customers for these other uses to switch to other grades of groundwood paper or otherwise reduce their consumption of newsprint, those losses would not be sufficient to make such a price increase unprofitable.

12. For these reasons, demand for newsprint is highly inelastic with respect to changes in price. Accordingly, the production and sale of newsprint is a distinct line of commerce and a relevant product market within the meaning of the Clayton Act.

2. Geographic Market: North America

13. The relevant geographic market for the sale of newsprint is no smaller than the United States and Canada (''North America''). Newsprint can be transported within the United States and Canada at a sufficiently low cost and in such a timely and reliable manner that an attempt to increase price anticompetitively in any smaller region of the United States or North America would prove unprofitable. In the event of such an attempted price increase, customers could readily and economically shift their purchases to newsprint producers throughout North America.

14. The relevant geographic market is no broader than North America. Foreign imports account for approximately two percent of North American newsprint consumption. Transportation costs of importing newsprint are relatively high, and customers are concerned about the reliability of foreign newsprint supply. Consequently, a small but significant increase in the price of newsprint will not likely cause customers to purchase sufficient volumes of additional newsprint from outside of North America to make such a price increase unprofitable.

15. Accordingly, North America is a relevant geographic market within the meaning of the Clayton Act.

B. Anticompetitive Effects

16. The proposed transaction likely will substantially reduce competition in the North American newsprint market. Abitibi and Bowater are the two largest producers of newsprint in North America and compete directly against one another to produce and sell newsprint. Abitibi and Bowater currently own approximately 25 percent and 16 percent of capacity, respectively, which will result in a post-merger share of over 40 percent.

17. Demand for newsprint in the North American market has declined over the last several years at a rate of approximately 5 to 10 percent per year because of a significant decline in demand for newspapers. As a result, North American newsprint producers have closed, idled, or converted some of their newsprint capacity. This decline in the demand for newsprint is projected to continue, and the resulting excess newsprint capacity will likely lead Defendants and their competitors to close, idle, or convert more newsprint mills.

18. But for the merger, following the anticipated demand-based reductions in capacity, neither Abitibi nor Bowater acting alone would be of sufficient size to profitably increase the price of newsprint by reducing its own output through strategically closing, idling, or converting its capacity.

19. The proposed transaction would combine Defendants' large share of newsprint capacity, thereby expanding the quantity of newsprint sales over which the merged firm would benefit from a price increase. This would provide the merged firm with an incentive to close capacity sooner than it otherwise would to raise prices and profit from the higher margins on its remaining capacity.

C. Neither Supply Responses Nor Entry Will Defeat an Exercise of Market Power

20. Neither the combined firm's North American competitors, nor producers from outside of the North American market, can, individually or collectively, increase their newsprint sales to North American customers to make a price increase by the merged firm unprofitable. Additionally, entry by a new competitor would not be timely, likely, or sufficient to defeat an exercise of market power by the merged firm. The merged firm will therefore have both the incentive and the ability to impose an anticompetitive price increase.

21. While some North American newsprint competitors currently have some limited excess capacity, that capacity will be reduced by the closure or conversion of unprofitable newsprint mills or machines in response to falling demand for newsprint. Once this newsprint capacity exits the market, the merged firm then will be able profitably to exercise market power.

22. North American newsprint competitors would not defeat an anticompetitive price increase by restarting their closed or idled newsprint capacity in response to such a price increase. The increased revenue from restarting a machine or mill would not outweigh the start-up costs, particularly in a declining market.

23. Producers currently manufacturing other coated and uncoated grades of paper are not likely to switch to producing newsprint in response to a price increase. Declining demand for newsprint has caused several producers to invest substantial capital to convert machines that had previously been producing newsprint to machines that produce grades of paper that return higher margins. These producers would not find it profitable to switch back to newsprint to defeat an exercise of market power by the merged firm.

24. North American newsprint producers currently export some of their newsprint. Some of these newsprint exports likely would be directed back to the North American market in response to a price increase. However, this repatriation of newsprint will be insufficient, even in combination with other competitive responses, to discipline an exercise of market power by the combined firm. Abitibi and Bowater collectively produce over 65

percent of the newsprint exported from North America and would have no incentive to repatriate such exports. In addition, most of the remaining exports by North American producers are sold pursuant to long-term sales arrangements and relationships and therefore are unlikely to be repatriated in response to a price increase in North America.

25. Successful entry into the manufacturing and distribution of newsprint is difficult, time consuming, and costly. New entry requires investing hundreds of millions of dollars in equipment and facilities, extensive environmental permitting, and the establishment of a reliable distribution system and work force. Particularly given that demand for newsprint is declining in North America, a new entrant would not find it profitable to build a new newsprint mill in response to a price increase, and could not do so within two years.

26. Accordingly, neither entry nor industry supply responses to a price increase for newsprint in North America will deter the likely exercise of market power by the combined firm.

V. Violation Alleged

27. The likely effect of the proposed merger of Abitibi and Bowater may be substantially to lessen competition in interstate trade and commerce in violation of section 7 of the Clayton Act, 15 U.S.C. section 18.

28. Unless restrained, the proposed transaction likely will have the following effects, among others:

(a) Competition likely will be lessened substantially in the production and sale of newsprint in North America;

(b) actual and potential competition between Abitibi and Bowater in the production and sale of newsprint in North America will be eliminated; and

(c) prices charged for newsprint in North America likely will increase.

VI. Requested Relief

31. The United States requests that:

(a) The proposed transaction be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. 18;

(b) Defendants and all persons acting on their behalf be permanently enjoined and restrained from consummating the proposed transaction or from entering into or carrying out any contract, agreement, understanding, or plan, the effect of which would be to combine the businesses or assets of Defendants;

(c) Plaintiff be awarded its costs for this action; and

(d) Plaintiff receive such other and further relief as the Court may deem just and proper.

Respectfully submitted.

Deborah A. Garza (DC Bar No. 395259),
Acting Assistant Attorney General, Antitrust Division.

James J. O'Connell (DC Bar No. 464109),
Acting Deputy Assistant Attorney General, Antitrust Division.

J. Robert Kramer II,
Director of Operations, Antitrust Division.

Joseph Miller (DC Bar No. 439965),
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Dated: October 23, 2007.

The United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Abitibi-Consolidated Inc.* and *Bowater Incorporated, Defendants;* Case No.:_____, Judge:_____, Deck Type: Antitrust, Date Stamp:_____.

Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on October 23, 2007, and Plaintiff and Defendants, Abitibi-Consolidated Inc. (''Abitibi'') and Bowater Incorporated (''Bowater''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by Defendants to assure that competition is not substantially lessened;

And whereas, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, Defendants have represented to the United States that the divestitures required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged, and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under section 7 of the Clayton Act, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' means the entity or entities to whom Defendants divest some or all of the Divestiture Assets.

B. ''Abitibi'' means Defendant Abitibi-Consolidated Inc., a Canadian corporation with its headquarters in Montréal, Quebec, Canada, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Bowater'' means Defendant Bowater Incorporated, a Delaware corporation with its headquarters in Greenville, South Carolina, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''Newsprint'' means the lowest grade of uncoated groundwood paper (i.e., paper manufactured from mechanically processed pulp), regardless of its basis weight. It is primarily used in the production of newspaper, but also used in some advertising inserts, comic books, trade publications, and direct mail, among other end-use products.

E. ''Divestiture Assets'' means:

(1) Abitibi's Snowflake, Arizona newsprint mill, located at Spur 277 North, Snowflake, Arizona 85937;

(2) All tangible assets used in the mill listed in section II(E)(1), including all assets relating to research and development activities, manufacturing equipment, tooling and fixed assets, real property (leased or owned), personal property, inventory, newsprint reserves, office furniture, materials, supplies, docking facilities, on- or off-site warehouses or storage facilities relating to the mill, Apache Railway Company assets; all licenses, permits and authorizations issued by any governmental organization relating to the mill; all contracts, agreements, leases (including renewal rights), commitments, certifications, and understandings relating to the mill, including supply agreements; all customer lists, contracts, accounts, and

credit records relating to the mill; all interests in, and contracts relating to, power generation; all repair and performance records and all other records relating to the mill; and

(3) all tangible assets used in the development, production, servicing, distribution, and sales of products manufactured by the mill listed in section II(E)(1), including but not limited to all contractual rights, patents, licenses and sublicenses, intellectual property, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information provided to the employees, customers, suppliers, agents or licensees, and all research data concerning historic and current research and development efforts relating to the mill, including, but not limited to designs of experiments, and the results of successful and unsuccessful designs and experiments.

III. Applicability

A. This Final Judgment applies to Defendants, as defined above, and all other persons in active concert or participation with Defendants who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with section IV and V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets that include the Divestiture Assets, they shall require, as a condition of the sale or other disposition, that the purchaser agrees to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer of the assets divested pursuant to this Final Judgment.

IV. Divestitures

A. Defendants are ordered and directed, within 120 calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In accomplishing the divestitures ordered by the Final Judgment, Defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Unless the United States otherwise consents in writing, Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets that customarily are provided in a due diligence process except such information or documents subject to the attorney-client or work-product privilege. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Unless the United States otherwise consents in writing, Defendants shall provide the Acquirer and the United States information relating to personnel involved in production, operations, and sales at the Divestiture Assets to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any employee of the Divestiture Assets whose primary responsibility is production, operations, or sales at the Divestiture.

D. Unless the United States otherwise consents in writing, Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, and other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to the Acquirer of the Divestiture Assets that each asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

G. At the option of the Acquirer, Defendants shall enter into a fiber supply contract for old newsprint (ONP) sufficient to meet 25% of the Acquirer's needs for a period of up to three (3) years from the date of the divestiture. The terms and conditions of any such contract must be reasonably related to market conditions for old newsprint and the purchase price shall be set at the prevailing market price.

H. At the option of the purchaser and upon approval by the United States, in its sole discretion, Defendants may enter into a transition services agreement based upon commercial terms and conditions. Such an agreement may not exceed twelve (12) months from the date of the Divestiture. Transition services may include information technology support, information technology licensing, computer operations and data processing support, logistics support, and such other services as are reasonably necessary to operate the Divestiture Assets.

1. For the period from the date of the filing of the Complaint in this matter until one (1) year after the sale of the Divestiture Assets, Defendants shall make available and deliver to the Divestiture Assets within seven (7) business days the spare ceramic center roll from Abitibi's Thorold, Ontario newsprint mill if: (a) the Acquirer or the person identified in Section V(K), whomever is in control of the Divestiture Assets at the time, determines that the Divestiture Assets' PM 3 machine requires a new ceramic center roll and (b) the Divestiture Assets' permanent spare ceramic center roll, which has already been ordered, has not been delivered. If Defendants become obligated to deliver the spare ceramic center roll, then they may identify a suitable alternative ceramic center roll and request permission from the United States, in its sole discretion, to deliver the alternative center roll to the Divestiture Assets in place of the Thorold center roll. Such permission must be in writing. In any event, Defendants must deliver the Thorold center roll or an approved substitute to the Divestiture Assets within seven (7) business days of being notified of the need for the Thorold roll. Defendants will no longer be obligated to provide a ceramic center roll to the Divestiture Assets if either of the ceramic center rolls in Thorold's PM 6 or PM 7 machines break before the Divestiture Assets require a new ceramic center roll.

J. Defendants shall warrant to the Acquirer that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of the Divestiture Assets, and that following the sale of the Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other

permits relating to the operation of the Divestiture Assets.

K. Unless the United States otherwise consents in writing, any divestiture pursuant to section IV, or by trustee appointed pursuant to section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as a viable, ongoing business engaged in producing, distributing, and selling newsprint, that the Divestiture Assets will remain viable, and that the divestiture of such asset will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to section IV or section V of this Final Judgment,

(1) Shall be made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) to compete effectively in the production, distribution, and sale of newsprint; and

(2) Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between Acquirer and Defendants gives Defendants the ability to unreasonably raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively in the production, distribution, and sale of newsprint.

V. Appointment of Trustee To Effect Divestitures

A. If Defendants have not divested the Divestiture Assets within the time period specified in section IV(A), Defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of section IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to paragraph V(D) of this Final Judgment, the trustee may hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objection by Defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under section VI.

D. The trustee shall serve at the cost and expense of Defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the Divestiture Assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestiture; (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished; and (3) the trustee's recommendations. To the extent such report contains information that the trustee deems confidential, such report shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States, who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice, or within

twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer, any third party, or the trustee, whichever is later, the United States shall provide written notice to Defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendant's limited right to object to the sale under section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under section IV or section V shall not be consummated. Upon objection by Defendants under paragraph V(C), a divestiture proposed under section V shall not be consummated unless approved by the Court.

VII. Asset Preservation

Until the divestiture required by this Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Asset Preservation Stipulation and Order entered by this Court. Defendants shall take not action that would jeopardize the divestiture ordered by this Court.

VIII Affidavits

A. Within twenty (20) calendar days of filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until divestitures have been completed under section VI or V, Defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with section VI or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during the period. Each such affidavit shall also include a description to the efforts Defendants have take to solicit buyers for the Divestiture Assets, and to provide required information to any prospective Acquirer, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitations on the information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B.. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps they have implemented on an ongoing basis to comply with section VII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

IX. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) Access during Defendants' office hours to inspect and copy, or at the United States's option, to require Defendants to provide electronic or hard copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

X. Notification of Future Transactions

A. Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the ''HSR Act''), Defendants shall not, without notifying the United States, directly or indirectly acquire any assets or any interest, including any financial, security, loan, equity, or management interest, in any of Defendants' jointly-owned newsprint mills or machines if the value of such acquisition exceeds $2,000,000. Defendants are exempted from this notice provision if either (1) from the date of the filing of the Complaint in this matter, the acquisition accounts for less than a 5% change in any interest and does not change control in any of Defendants' jointly-owned mills or machines, or (2) the acquisition is the direct result of an asset swap between one of Defendants' jointly-owned mills or machines to another of Defendants' mills or machines of the same character, and (3) such transaction is not otherwise subject to the requirements of the HSR Act. This notification requirement shall run for a period of ten (10) years from the entry of this Final Judgment.

Provided, however, that the following transactions shall be exempt from the notice requirement: (1) Defendants further investing in a pre-existing jointly-owned mill or machine on a pro-rata basis with Defendants' partner(s); and (2) loans (including guarantees and security interests on loans) for the following purposes, provided that they do not enable any distribution from the joint venture to Defendants or Defendants' joint venture partner(s) that

would not have otherwise occurred: (i) Capital expenditures relating to pre-existing jointly-owned mills or machines, (ii) working capital transactions of the same character that Defendants have engaged in over the past ten (10) years; (iii) debt repayment or refinancing which does not impact equity share or the relative effective return between Defendants and their partner(s); and (iv) mergers or acquisitions other than those relating to newsprint mills or machines.

B. Such notification shall be provided to the United States in the same format as, and per the instructions relating to, the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 9 of the instructions must be provided only about newsprint, and the required filing fee under the HSR Act shall be waived. Notification shall be provided at least thirty (30) days prior to acquiring any such assets or interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. This section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this section shall be resolved in favor of filing notice.

XI. No Reacquisition

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the court, entry of this Final Judgment is in the public interest.

Date:_____

Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge.

The United States District Court for the District of Columbia

United States of America, Plaintiff, v. Abitibi-Consolidated Inc. and Bowater Incorporated, Defendants; Case No.:_____.

Case: 1:07–cv–01912, Assigned To: Collyer, Rosemary M., Assign Date: 10/23/2007, Description: Antitrust.

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Defendants Abitibi-Consolidated Inc. (''Abitibi'') and Bowater Incorporated (''Bowater'') entered into a merger agreement, dated January 29, 2007, pursuant to which Defendants would merge to create a new company, AbitibiBowater Inc. The United States filed a civil antitrust complaint on October 23, 2007, seeking to enjoin the proposed merger. The Complaint alleges that the likely effect of the merger would be to lessen competition substantially in the production and distribution of newsprint in North America in violation of section 7 of the Clayton Act, 15 U.S.C. 18. This loss of competition likely would result in higher newsprint prices in the United States. At the same time the Complaint was filed, the United States also filed an Asset Preservation Stipulation and Order (''Stipulation'') and a proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the merger.

Under the proposed Final Judgment, which is explained more fully in section III, Defendants are required to divest Abitibi's Snowflake, Arizona, newsprint mill, which has approximately 375,000 metric tonnes of newsprint manufacturing capacity. Until the mill is sold and operated under the new ownership, Defendants must take certain steps to ensure that the mill and its accompanying assets, as defined in the proposed Final Judgment (hereafter, the ''Divestiture Assets''), are operated as ongoing, economically viable, and competitive assets.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. Defendants and the Proposed Transaction

Abitibi and Bowater both produce, distribute, and sell newsprint and other groundwood paper throughout the world. Defendants also produce other pulp and wood-related products, operate sawmills, and own or lease timberlands throughout the United States and Canada.

Abitibi is a Canadian company with its headquarters in Montréal, Quebec, Canada. In 2006, Abitibi reported total sales of approximately $4.85 billion. Its North American newsprint sales were approximately $1.7 billion. Abitibi is the largest newsprint producer in North America. It owns approximately 25 percent of North American capacity.

Bowater is incorporated in Delaware, and has its headquarters in Greenville, South Carolina. In 2006, Bowater reported total sales of approximately $3.53 billion. Its North American newsprint sales were approximately $1.1 billion. Bowater is the second largest newsprint producer in North America. It owns approximately 16 percent of North American capacity.

Defendants publicly announced their proposed transaction on January 29, 2007. The new company, AbitibiBowater Inc., will be headquartered in Montréal, Quebec, Canada, but it will be incorporated in Delaware and listed on both NYSE and Toronto stock exchanges.

B. The Competitive Effects of the Transaction on the Newsprint Market

1. Newsprint is the Relevant Product Market

The Complaint alleges that the production, distribution, and sale of newsprint is a relevant product market within the meaning of section 7 of the

Clayton Act. Newspapers are printed on newsprint. Newsprint is an uncoated groundwood paper made by a mechanical pulping process without the use of chemical additives, such as bleach. Newsprint can also be made, partly or entirely, from recovered fiber, such as old newsprint and old magazines. Because of the production process and lack of additives, newsprint is the lowest quality and generally least expensive grade of groundwood paper.[2]

Newspaper publishers, who buy more than 80 percent of all newsprint sold in the United States, have no close substitutes to use for printing newspapers because of newsprint's price and physical characteristics, such as its strength and opacity. In addition, because publishers' newsprint presses are optimized to use newsprint, switching to another grade of paper would be costly.

Newsprint used for other purposes, primarily the production of direct mail and newspaper inserts, constitutes only a small share of total newsprint sales. If newsprint prices were to increase by a small but significant amount, some customers for these other uses might switch to other grades of groundwood paper or otherwise reduce their consumption of newsprint. Those losses, however, would not be sufficient to make such a price increase unprofitable.[3] For these reasons, demand for newsprint is highly inelastic to changes in price. Accordingly, the production, distribution, and sale of newsprint is a line of commerce and a relevant product market.

2. Relevant Geographic Market: North America

The Complaint alleges that the relevant geographic market is no smaller than the United States and Canada (''North America'').[4] Newsprint can be transported within the United States and Canada at a sufficiently low cost and in such a timely and reliable manner that an attempt to increase price in any smaller region of the United States or North America would prove unprofitable. In the event of such an attempted price increase, customers could readily and economically shift their purchases to newsprint producers throughout North America. In addition, national newspaper buying groups, which account for over 70 percent of all newsprint purchases throughout the United States, create a North American pricing structure. Price differences across regions within the United States have been small and short-lived, as supply has shifted rapidly to restore parity marketwide.

The Complaint also alleges that the relevant geographic market is no broader than North America. Newsprint mills located in Canada and the United States account for approximately 98 percent of North American newsprint consumption. Transportation costs of importing newsprint are high, and customers are concerned about the reliability of foreign newsprint supply. Consequently, a small but significant increase in the price of newsprint will not likely cause customers to purchase sufficient volumes of additional newsprint from outside North America to make such a price increase unprofitable. Accordingly, North America is a relevant geographic market.

3. Anticompetitive Effects of the Merger

The Complaint alleges that the proposed merger likely will substantially reduce competition to supply newsprint in the United States. Abitibi and Bowater are the two largest North American newsprint producers, and they directly compete against one another to produce and sell newsprint. Abitibi and Bowater currently own approximately 25 percent and 16 percent of North American newsprint capacity, respectively, which will result in a post-merger share of over 40 percent.[5]

North American newsprint demand has declined over the last several years at a rate of approximately 5 to 10 percent per year because of a significant decline in demand for newspapers. As a result, North American newsprint producers have closed or idled capacity and converted some of their newsprint machines to produce other grades of paper. This decline in demand for newsprint is projected to continue, and the resulting excess newsprint capacity likely will lead Defendants and their competitors to close, idle, or convert more newsprint mills.

But for the merger, neither Defendant acting alone would be of sufficient size to profitably increase the price of newsprint by reducing its own output through strategically closing, idling, or converting its capacity.

The combination enhances Defendants' incentives to exercise market power because the merged firm will control a greater base of capacity over which the merged firm would benefit from an increase in newsprint prices after strategically closing, idling, or converting some of its capacity. Without Snowflake's capacity, the merged firm would not be of sufficient size to be able to recoup the losses from such strategic closures through increases in prices on its remaining newsprint production. The divestiture of Snowflake would adequately address the likelihood that the proposed merger substantially would reduce competition for newsprint in the United States.

4. Neither Supply Responses Nor Entry Will Defeat the Exercise of Market Power

Neither the combined firm's North American producers, nor competitors from outside of the North American market, can, individually or collectively, increase their newsprint sales to North American customers to make a price increase by the merged firm unprofitable. Entry by a new competitor would not be timely, likely, or sufficient to defeat an exercise of market power by the merged firm. The merged firm will therefore have both the incentive and the ability to impose an anticompetitive price increase.

While North American newsprint competitors currently have some limited excess capacity, that capacity will be reduced by the closure or conversion of unprofitable newsprint mills or machines in response to falling demand for newsprint. Once this capacity exits the market, the merged firm then will be able profitably to exercise market power.

North American newsprint competitors would not defeat an anticompetitive price increase by restarting their closed or idled capacity. The increased revenue from restarting a closed mill or machine would not

[2] There are two primary newsprint basis weights, 30 pound (48.8 gsm) and 27.7 pound (45 gsm), the lighter of which has a higher yield. The differences between the two weights are not material to product market definition because prices for each basis weight track each other, newspaper publishers can use either weight in their presses, and newsprint manufacturers can produce either weight on the same newsprint machines without incurring switching costs.

[3] Defendants also produce higher-grade groundwood paper and would be able to recapture some of the revenue lost from newsprint in these other groundwood grades.

[4] The United States did not fully investigate whether Mexico should be included in the North American market because the inclusion or exclusion of Mexico does not change the analysis. Mexico is not a significant producer of newsprint, it does not export significant amounts of newsprint to the United States, and the industry does not consider Mexico to be part of the North American market.

[5] The 40 percent market share represents the merged firm's newsprint capacity over which it would be able to profit from an anticompetitive price increase. This share does not include approximately nine percent of North American newsprint capacity attributable to Abitibi and Bowater through joint-venture relationships and a sales management contract. This volume is not relevant to the competitive effects analysis because, under the structure of these arrangements, Defendants would not be able to benefit from a price increase on this capacity.

outweigh the start-up costs, particularly in a declining market.

North American producers with the capacity to make higher-grade groundwood paper are not likely to switch production from those grades into newsprint production in response to a price increase. Declining demand for newsprint has caused several producers to invest substantial capital to convert newsprint machines to produce more profitable value-added grades of paper. These producers would not find it profitable to switch from producing higher grades back to newsprint to defeat an exercise of market power by the merged firm.

Some North American producers export a portion of their newsprint capacity. Some of these newsprint exports likely would be directed back to the North American market in response to a price increase. However, this repatriation of newsprint will be insufficient, even in combination with other competitive responses, to discipline an exercise of market power by the combined firm. Abitibi and Bowater collectively produce 65 percent of North American newsprint exports, and would have no incentive to repatriate their exports to defeat a price increase. In addition, most of the remaining exports by North American producers are sold pursuant to long-term sales arrangements and relationships and, therefore, are unlikely to be repatriated in response to a price increase.

Greenfield entry is highly unlikely. A new North American newsprint mill or machine would cost in excess of a hundred million dollars. Particularly given that demand for newsprint is declining in North America, a new entrant would not find it profitable to build a new newsprint mill in response to a price increase, and could not do so within two years.

Accordingly, expansion, repatriation, and entry would not be timely, likely, or sufficient to deter an anticompetitive price increase by the merged firm.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment provides for the divestiture of Abitibi's Snowflake, Arizona, newsprint mill to a buyer acceptable to the United States, in its sole discretion, to preserve competition for newsprint in the United States. Snowflake is located in northeastern Arizona. In 2006, Snowflake produced over 330,000 metric tonnes of newsprint on two machines. Snowflake is one of the most efficient and profitable newsprint mills in North America. Plans to improve the Snowflake mill's efficiency in coming years with investments in energy and machinery are already underway. Snowflake's size and cost position ensure that its divestiture to a competitor of the merged firm will preserve competition in the North American newsprint market.

As part of its investigation, the United States considered market shares, costs of production, the extent of industry excess capacity, and future reductions in newsprint demand in analyzing whether the merger would cause an anticompetitive increase in newsprint prices. As discussed in Section II.B.3, if Defendants were allowed to merge without a divestiture, the merged firm would be able to close its capacity strategically, allowing the merged firm to raise newsprint prices and recoup its lost profits on its combined output. Divesting Snowflake, however, will reduce the capacity over which the merged firm could profit to a level at which it would not have the ability to close capacity strategically.

Snowflake uses 100 percent recycled fiber and Abitibi currently supplies the snowflake mill with approximately 25 to 30 percent of its fiber requirements. At the option of the Acquirer, the proposed Final Judgment requires Defendants to enter into a supply contract for up to 25 percent of Snowflake's old newsprint requirements at the prevailing market price for up to three years from the date of the divestiture. Similarly, at the option of the Acquirer, and upon the approval of the United States, the proposed Final Judgment also requires Defendants to provide certain transition services for up to twelve (12) months as part of the divestiture.

In merger cases where the United States seeks a divestiture remedy, it requires completion of the divestiture within the shortest time period reasonable under the circumstances. Section IV of the proposed Final Judgment requires Defendants to complete the divestiture within 120 days after the filing of the Complaint in this matter. The assets must be divested in such a way as to satisfy the United States in its sole discretion that the operations can and will be operated by the purchaser as a viable, ongoing business than can compete effectively in the relevant market. The United States, in its sole discretion, may grant one or more extensions of time, not to exceed sixty (60) calendar days in total. Defendants must use their best efforts to accomplish the divestiture as expeditiously as possible.

If Defendants do not accomplish the divestiture within the period prescribed in the proposed Final Judgment, a trustee shall be appointed by the Court upon the application of the United States. If a trustee is appointed, the proposed Final Judgment provides that Defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. If the divestiture has not been accomplished at the end of the six months, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

Finally, the proposed Final Judgment sets forth the process for and the circumstances when Defendants must notify the United States of the acquisition of any mill or machine or any interest in a mill or machine, if the value of such exceeds $2,000,000, that is currently jointly-owned by either Abitibi or Bowater with any third party. This notification requirement applies to certain transactions not otherwise subject to the reporting and waiting period requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and runs for ten years from entry of the Final Judgment. The provision is intended to ensure that any such acquisition does not undermine the benefits that the divestiture of the Snowflake mill will bring to the market.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

V. Procedures Available For Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**. All comments received during this period will be considered by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Joseph Miller, Assistant Chief, Litigation I Section, 1401 H St. NW., Suite 4000, Antitrust Division, United States Department of Justice, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed final Judgment, a full trial on the merits against Defendants. The United States could have continued the investigation and sought preliminary and permanent injunctions against Abitibi and Bowater's proposed merger. the United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition in the market identified by the United States and that such a remedy would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, uncertainty, and expense of a trial.

In developing this relief, the United States considered a number of divestiture alternatives and determined that the divestiture of the Snowflake mill, under the circumstances, was the best solution given the size and efficiency of the Snowflake mill. The analysis conducted by the United States indicates that the Snowflake mill is among the largest and most profitable mills in the United States. The location of the mill to be divested is not competitively significant because the evidence does not support the conclusion that the relevant geographic market is narrower than North America.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A)–(B); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1, 11 (D.D.C. 2007)(concluding that the 2004 amendments ''effected minimal changes'' to scope of review under Tunney Act, leaving review ''sharply proscribed by precedent and the nature of Tunney Act proceedings'').[6]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1458–62 (D.C. Cir. 1995). With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62. Courts have held that:

> [t]he balancing of competing social and political interest affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[7] In making its public interest determination, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations because this may only reflect underlying weakness in the government's case or concessions made during negotiation.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (''noting the need for courts to be deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effort of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Court approval of a consent decree requires a standard more flexible and less strict than that appropriate to court adoption of a litigated decree following

[6] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e)(2004), *with* 15 U.S.C. 16(e)(1)(2006).

[7] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is ''within the reaches of public interest.'' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982)(citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); see also *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Id.* at 1459–60. As this Court recently confirmed in *SBC Commc'ns*, courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). The language wrote into the statute what the Congress that enacted the Tunney Act in 1974 intended, as Senator Tunney then explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[8]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: October 23, 2007.

Respectfully submitted,

Karl D. Knutsen, Ryan Danks, Mitchell Glende, Seth A. Grossman, N. Christopher Hardee (DC Bar No. 458168), David Kelly, Ihan Kim, Rebecca A. Perlmutter,

Attorneys, U.S. Department of Justice, Antitrust Division, Litigation I Section, 1401 H Street, NW., Suite 4000, Washington, DC 20530, (202) 514–0976.

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[8] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.''); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.'').

DEPARTMENT OF LABOR

Bureau of International Labor Affairs, Request for Information on Efforts by Certain Countries To Eliminate the Worst Forms of Child Labor

AGENCY: The Bureau of International Labor Affairs, United States Department of Labor.

ACTION: Request for information on efforts by certain countries to eliminate the worst forms of child labor.

SUMMARY: This notice is a request for information for use by the Department of Labor in preparation of an annual report on certain trade beneficiary countries' implementation of international commitments to eliminate the worst forms of child labor. This will be the seventh such report by the Department of Labor under the Trade and Development Act of 2000 (TDA).

DATES: Submitters of information are requested to provide two (2) copies of their written submission to the Office of Child Labor, Forced Labor and Human Trafficking at the address below by 5 p.m., December 7, 2007.

ADDRESSES: Written submissions should be addressed to Tina McCarter at the Office of Child Labor, Forced Labor and Human Trafficking, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5317, Washington, DC 20210 or may be sent via e-mail to *mccarter.tina@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Tina McCarter or Charita Castro, Bureau of International Labor Affairs, Office of Child Labor, Forced Labor and Human Trafficking, at (202) 693–4843, fax: (202) 693–4830, or via e-mail to *mccarter-tina@dol.gov* or *castro.charita@dol.gov.* The Department of Labor's international child labor reports can be found on the Internet at *http://www.dol.gov/ILAB/media/reports/iclp/main.htm* or can be obtained from the Office of Child Labor, Forced Labor and Human Trafficking.

SUPPLEMENTARY INFORMATION: The Trade and Development Act of 2000 [Pub. L. 106–200] established a new eligibility criterion for receipt of trade benefits under the Generalized System of Preferences (GSP), Caribbean Basin Trade and Partnership Act (CBTPA), and Africa Growth and Opportunity Act (AGOA). The TDA amends the GSP reporting requirements of the Trade Act of 1974 (Section 504) [19 U.S.C. 2464] to require that the President's annual report on the status of internationally recognized worker rights include ''findings by the Secretary of Labor with respect to the beneficiary country's implementation of its international commitments to eliminate the worst forms of child labor.'' Title II of the TDA and the TDA Conference Report [Joint Explanatory Statement of the Committee of Conference, 106th Cong.2d.sess. (2000)] indicate that the same criterion applies for the receipt of benefits under CBTPA and AGOA, respectively.

In addition, the Andean Trade Preference Act (ATPA) as amended and expanded by the Andean Trade Promotion and Drug Eradication Act (ATPDEA) (Pub. L. 107–210, Title XXXI) includes as a criterion for receiving benefits ''[w]hether the country has implemented its commitments to eliminate the worst forms of child labor as defined in section 507(6) of the Trade Act of 1974.''

Scope of Report

Countries and non-independent countries and territories presently

eligible under the GSP and to be included in the report are:

Afghanistan, Albania, Algeria, Angola, Anguilla, Argentina, Armenia, Bangladesh, Belize, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, British Indian Ocean Territory, British Virgin Islands, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Christmas Island, Cocos Islands, Colombia, Comoros, Democratic Republic of the Congo, Republic of Congo, Cook Islands, Costa Rica, Cote d'Ivoire, Croatia, Djibouti, Dominica, Dominican Republic, East Timor, Ecuador, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Falkland Islands, Fiji, Gabon, the Gambia, Georgia, Ghana, Gibraltar, Grenada, Guinea, Guinea-Bissau, Guyana, Haiti, Heard Island and MacDonald Islands, India, Indonesia, Iraq, Jamaica, Jordan, Kazakhstan, Kenya, Kiribati, Kyrgyz Republic, Lebanon, Lesotho, Liberia, Macedonia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Moldova, Mongolia, Montenegro, Montserrat, Mozambique, Namibia, Nepal, Niger, Nigeria, Niue, Norfolk Island, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Pitcairn Island, Russia, Rwanda, Saint Helena, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tomé and Principe, Senegal, Serbia, Seychelles, Sierra Leone, Solomon Islands, Somalia, South Africa, Sri Lanka, Suriname, Swaziland, Tanzania, Thailand, Togo, Tokelau Island, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turks and Caicos Islands, Tuvalu, Uganda, Ukraine, Uruguay, Uzbekistan, Vanuatu, Venezuela, Wallis and Futuna, West Bank and Gaza Strip, Western Sahara, Republic of Yemen, Zambia, and Zimbabwe.

Countries eligible or potentially eligible for additional benefits under the AGOA and to be included in the report are: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Chad, Republic of Congo, Democratic Republic of the Congo, Djibouti, Ethiopia, Gabon, the Gambia, Ghana, Guinea, Guinea Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, South Africa, Swaziland, Tanzania, Uganda, and Zambia.

Countries potentially eligible for additional benefits under the CBTPA and to be included in the report are: Barbados, Belize, Costa Rica, Dominican Republic, Guyana, Haiti, Jamaica, Panama, Saint Lucia, and Trinidad and Tobago.

Countries potentially eligible for additional benefits under the ATPA/ATPDEA and to be included in the report are: Bolivia, Colombia, Ecuador, and Peru.

In addition, the following countries will be included in the report in view of Department of Labor Appropriations, 2006, Conference Report, H.R. Rep. 109–337 (2005): Bahrain, Chile, El Salvador, Guatemala, Honduras, Morocco, and Nicaragua.

Information Sought

The Department invites interested parties to submit written information relevant to the findings to be made by the Department of Labor under the TDA, for all listed countries. Information provided through public submission will be considered by the Department of Labor in preparing its findings. Materials submitted should be confined to the specific topic of the study. In particular, the Department's Bureau of International Labor Affairs is seeking written submissions on the following topics:

1. Whether the country has adequate laws and regulations proscribing the worst forms of child labor. Specifically, DOL is seeking the following information:

(a) What laws have been promulgated on child labor, such as minimum age(s) for employment or hazardous forms of work? Are there exceptions to these laws?

(b) What laws have been promulgated on the worst forms of child labor, such as forced child labor and trafficking or child prostitution and pornography? What is the country's minimum age for military recruitment?

(c) If the country has ratified Convention 182, has it developed a list of occupations considered to be worst forms of child labor, as called for in article 4 of the Convention?

2. Whether the country has adequate laws and regulations as well as formal institutional mechanisms for the implementation and enforcement of such laws and regulations; specifically:

(a) What legal remedies are available to government agencies that enforce child labor laws (criminal penalties, civil fines, etc.), and are they adequate to deter violations?

(b) To what extent are complaints investigated and violations addressed?

(c) What level of resources does the government devote to investigating child labor cases? How many inspectors does the government employ to address child labor? How many child labor investigations have been conducted over the past year? How many have resulted in penalties or convictions?

(d) Has the government provided training activities for officials charged with enforcing child labor laws?

3. Whether social programs exist in the country to prevent the engagement of children in the worst forms of child labor, and to assist in the removal of children engaged in the worst forms of child labor; specifically:

(a) What initiatives has the government supported specifically to prevent or withdrawn children from exploitive work situations, such as school scholarships conditioned on a child' withdrawal from child labor? (If possible, please provide information on funding levels for such initiatives.)

4. Whether the country has a comprehensive policy for the elimination of the worst forms of child labor; specifically:

(a) Does the country have a comprehensive policy or national program of action on child labor or any of its forms?

(b) Does the country specifically incorporate child labor in poverty reduction, development, educational or other social policies or programs, such as Poverty Reduction Strategy Papers, etc? If so, to what degree has the country implemented the policy and/or program of action and achieved its goals and objectives?

(c) Is education free in law and in practice? Is education compulsory in law and in practice?

Please note that although many anti-poverty programs may have indirect impacts on child labor, the TDA calls for governments to take specific actions to address the problem. Therefore, the DOL's report focuses on efforts that name child labor as an explicit objective, target group, or condition for participation in government policies and programs.

5. Whether the country is making continual progress toward eliminating the worst forms of child labor; specifically:

(a) In what sectors/work activities/goods are children involved and how has this changed over the past year? Information on age and gender of working children, disaggregated by industry/work activity/good, is appreciated.

(b) To what extent are children working in slavery or practices similar to slavery, such as debt bondage, serfdom, and forced or compulsory labor? Please indicate industries where this occurs and, if applicable, specific goods that such children produce.

(c) To what extent are children trafficked to work? Are children trafficked for commercial sex or for labor exploitation? Information on the

industries into which children are trafficked and the goods that they produce in this situation is appreciated. Are they trafficked across national borders or within the country (specify source, destination and transit countries/regions/communities, if possible).

Copies of any recent government surveys on child labor are most appreciated. In regard to education statistics and to ensure comparability across countries in the TDA report, DOL will generally rely on UNESCO Institute of Statistics data (*http://stats.uis.unesco.org/*).

DOL greatly appreciates submission of original sources. Information submitted may include reports, newspaper articles, or other materials. Governments that have ratified ILO Convention 182 are requested to submit copies of their most recent article 22 submissions under the Convention, especially those with information on types of work determined in accordance with Article 3(d) of the Convention.

Definition of Worst Forms of Child Labor

The term ''worst forms of child labor'' is defined in section 412(b) of the TDA as comprising:

''(A) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict;

(B) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(C) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in relevant international treaties; and

(D) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.''

The TDA Conference Report noted that the phrase, ''work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children'' is to be defined as in Article II of Recommendation No. 190, which accompanies ILO Convention No. 182. This includes

''(a) work which exposes children to physical, psychological, or sexual abuse;

(b) work underground, under water, at dangerous heights or in confined spaces;

(c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;

(d) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health;

(e) work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.''

The TDA Conference Report further indicated that this phrase be interpreted in a manner consistent with the intent of Article 4 of ILO Convention No. 182, which states that such work shall be determined by national laws or regulations or by the competent authority in the country involved.

This notice is a general solicitation of comments from the public.

Signed at Washington, DC this 5th day of November, 2007.

Charlotte Ponticelli,

Deputy Undersecretary, Bureau of International Labor Affairs.

[FR Doc. E7–21920 Filed 11–7–07; 8:45 am]

BILLING CODE 4510–28–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[(07–082)]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JE0000, Washington, DC 20546, (202) 358–1350, *Walter.Kit–1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

As required in Section 305(b) of the National Aeronautics and Space Act of 1958 and the NASA Supplement to the Federal Acquisition Regulation, NASA R&D contracts require contractor/recipient reporting of new technologies to NASA using NASA eNTRe system for electronic submissions and NASA Form 1679 for paper submissions.

II. Method of Collection

NASA will utilize a web-base on-line form to collect this information. Approximately 65 per cent of the responses will be collected electronically.

III. Data

Title: AST-Technology Utilization.

OMB Number: 2700–0009.

Type of Review: Regular.

Affected Public: Business or other for-profit and not-for profit institutions.

Estimated Number of Respondents: 830.

Estimated Time per Response: 1 hour for manual responses and 0.75 hour for electronic responses.

Estimated Total Annual Burden Hours: 1075.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Bobby German,

Deputy Chief Information Officer.

[FR Doc. E7–21948 Filed 11–7–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before December 10, 2007. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: requestschedule@nara.gov.

Fax: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Air Force, Agency-wide (N1–AFU–04–1, 9 items, 7 temporary items). Civil engineering records, including construction project case files and status reports, engineering specifications, and layout maps and architectural drawings of routine structures or projects. Proposed for permanent retention are recordkeeping copies of significant layout maps, architectural drawings of important structures or projects, and comprehensive plans at bases and installations. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

2. Department of the Army, Agency-wide (N1–AU–07–15, 4 items, 4 temporary items). Records relating to Army property accountability. Included are documents attesting to transfers of property accountability, waivers of property accountability requirements, and receipts acknowledging responsibility for Army property. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

3. Department of Defense, Defense Commissary Agency (N1–506–07–12, 3 items, 2 temporary items). Records pertaining to office management. Included are general correspondence files and documents designating postal workers as distribution clerks and control officers. Proposed for permanent retention are recordkeeping copies of internal agency publications such as directives. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

4. Department of Homeland Security, National Protection and Programs Directorate (N1–563–07–9, 1 item, 1 temporary item). Master file for an electronic information system which contains information used to prioritize restoration of telecommunications services to national security and emergency preparedness personnel after a crisis.

5. Department of Homeland Security, U.S. Citizenship and Immigration Services (N1–563–08–1, 10 items, 8 temporary items). Inputs, outputs, master files and documentation associated with an electronic information system used to collect, process, and track correspondence received from individuals and employers seeking assistance. Proposed for permanent retention in the form of outputs are annual reports to Congress and formal recommendations. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium, except for the master files.

6. Department of Homeland Security, United States Secret Service (N1–87–07–1, 23 items, 22 temporary items). Uniformed Division records, including Deputy Chief's general files, incident reports not involving protectees, briefing sheets, surveillance logs and reports, equipment logs, and alarm and intrusion detection reports. Proposed for permanent retention are recordkeeping copies of incident reports involving protectees.

7. Department of Justice, Bureau of Prisons (N1–129–07–15, 2 items, 2 temporary items). Staffing records and operating costs files used for budget purposes by the Administrative Division.

8. Department of Justice, Federal Bureau of Investigation (N1–65–07–19, 15 items, 15 temporary items). Records relating to the Human Resources Division's Student Loan Repayment Program system.

9. Department of Justice, Federal Bureau of Investigation (N1–65–07–20, 7 items, 7 temporary items). Inputs, outputs, master file, system documentation, audits, and system backups of the Counterterrorism Division analytical database.

10. Department of Justice, National Security Division (N1–60–07–5, 2 items, 1 temporary item). Case files relating to the Committee on Foreign Investment in the United States, chaired by the Department of the Treasury. Proposed for permanent retention are case files reviewed by the National Security Division.

11. Department of State, Bureau of Overseas Buildings Operations (N1–59–07–13, 1 item, 1 temporary item). Management Support Division renovation and reconfiguration project files. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

12. Department of Transportation, Federal Railroad Administration (N1–399–07–24, 3 items, 2 temporary items). Documents relating to the organization, mission, functions, relationships, and delegations of authority within the Federal Railroad Administration. Proposed for permanent retention are final copies of agency organization or reorganization plans and studies that were implemented.

13. Department of the Treasury, Bureau of the Public Debt (N1–53–08–1, 1 item, 1 temporary item). Copies of bulletins with supporting documents for the Office of Foreign Assets Control.

14. Department of the Treasury, Internal Revenue Service (N1–58–07–14, 17 items, 16 temporary items). Student records and course materials from the National Criminal Investigation Training Academy. Proposed for permanent retention are the original and master images in the training photographs collection.

15. Department of the Treasury, Internal Revenue Service (N1–58–07–15, 3 items, 3 temporary items). Electronic project files and working files of the Office of Program Evaluation and Risk Analysis related to strategic, budget, and program planning.

16. Department of the Treasury, United States Mint (N1–104–07–1, 3 items, 1 temporary item). Copies of correspondence initiated by and for the signature of the Mint's Director, Deputy Director, and high level Departmental officials. Proposed for permanent retention are official copes of correspondence maintained by the Executive Secretariat.

17. Board of Governors of the Federal Reserve System (N1–82–07–1, 9 items, 2 temporary items). Draft transcripts and preliminary audio records of oral history interviews. Proposed for permanent retention are other oral history records for the agency, including final transcripts of interviews, final recordings, statements of purpose and disclaimer, project interview agreements, policies and procedures, interview lists, and briefing packets. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

18. Consumer Product Safety Commission, Directorate for Epidemiology (N1–424–07–1, 3 items, 1 temporary item). Output data associated with an electronic information system used to collect information on deaths involving consumer products. Proposed for permanent retention are the master file and system documentation.

19. Federal Maritime Commission, Bureau of Enforcement (N1–358–07–4, 1 item, 1 temporary item). Master file for an electronic information system which provides an index to investigated companies and individuals and links these names to subject terms and associated paper case files.

20. Federal Maritime Commission, Bureau of Enforcement (N1–358–07–5, 1 item, 1 temporary item). Master file for an electronic information system which provides case management for investigations.

21. Federal Maritime Commission, Bureau of Enforcement (N1–358–07–6, 5 items, 5 temporary items). Records of investigative case files and related enforcement documentation, settlement agreement files, and formal proceedings docket files and reading files. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium. Paper copies of formal proceedings docket files and reading files were previously approved for disposal.

Dated: November 1, 2007.

Michael J. Kurtz,

Assistant Archivist for Records Services, Washington, DC.

[FR Doc. E7–21922 Filed 11–7–07; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on the Electronic Records Archives

AGENCY: National Archives and Records Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on the Electronic Records Archives (ACERA). The committee serves as a deliberative body to advise the Archivist of the United States, on technical, mission, and service issues related to the Electronic Records Archives (ERA). This includes, but is not limited to, advising and making recommendations to the Archivist on issues related to the development, implementation and use of the ERA system.

Date of Meeting: November 28–29, 2007.

Time of Meeting: 9 a.m.–4 p.m.

Place of Meeting: 700 Pennsylvania Avenue, NW.,Washington, DC 20408–0001. This meeting will be open to the public. However, due to space limitations and access procedures, the name and telephone number of individuals planning to attend must be submitted to the Electronic Records Archives Program at *era.program@nara.gov*.

SUPPLEMENTARY INFORMATION:

Agenda

- Opening Remarks.
- Approval of Minutes.
- Committee Updates.
- Activities Reports.
- Adjournment.

FOR FURTHER INFORMATION CONTACT: Lewis Bellardo, Deputy Archivist/Chief of Staff; (301) 837–1600.

Dated: November 2, 2007.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. E7–21923 Filed 11–7–07; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that nine meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506 as follows (ending times are approximate):

Learning in the Arts (application review): November 26–29, 2007 in Room 716. A portion of this meeting, from 2:45 p.m. to 3:45 p.m. on Wednesday, November 28th, will be open to the public for a policy discussion. The remainder of the meeting, from 9 a.m. to 5:30 p.m. on November 26th and 27th, from 9 a.m. to 2:45 p.m. and 3:45 p.m. to 5:30 p.m. on November 28th, and from 9 a.m. to 4:30 p.m. on November 29th, will be closed.

Media Arts/Arts on Radio and Television (application review): November 29–30, 2007 in Room 730. This meeting, from 9 a.m. to 5:30 p.m. on November 29th and from 9 a.m. to 3:30 p.m. on November 30th, will be closed.

Dance (application review): December 3–5, 2007 in Room 730. This meeting, from 9 a.m. to 6 p.m. on December 3rd and 4th and from 9 a.m. to 3:30 p.m. on December 5th, will be closed.

Folk and Traditional Arts (application review): December 3–5, 2007 in Room 716. A portion of this meeting, from 2 p.m. to 3 p.m. on Wednesday, December 5th, will be open to the public for a policy discussion. The remainder of the meeting, from 9 a.m. to 6:30 p.m. on December 3rd, from 9 a.m. to 6 p.m. on December 4th, and from 9 a.m. to 2 p.m. and 3 p.m. to 5:30 p.m. on December 5th, will be closed.

Local Arts Agencies (application review): December 6–7, 2007 in Room 730. This meeting, from 9a.m. to 5:30 p.m. on December 6th and from 9 a.m. to 1 p.m. on December 7th, will be closed.

Design (application review): December 7, 2007, in Room 714. This meeting, from 9 a.m. to 5:30 p.m., will be closed.

Presenting (application review): December 10–13, 2007 in Room 730. This meeting, from 9 a.m. to 5:30 p.m. on December 10th–12th and from 9 a.m. to 1:30 p.m. on December 13th, will be closed.

Museums (application review): December 11–13, 2007 in Room 716. This meeting, from 9 a.m. to 5:30 p.m. on December 11th and 12th and from 9 a.m. to 4:30 p.m. on December 13th, will be closed.

Literature (application review): December 12–14, 2007 in Room 714. A portion of this meeting, from 1 p.m. to 1:45 p.m. on Friday, December 14th, will be open to the public for a policy discussion. The remainder of the meeting, from 9 a.m. to 6 p.m. on December 12th and 13th and from 9 a.m. to 1 p.m. and 1:45 p.m. to 3 p.m. on December 14th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 21, 2007, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY-TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: November 1, 2007.

Kathy Plowitz-Worden,

Panel Coordinator.

[FR Doc. E7–21912 Filed 11–7–07; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446]

Luminant Generation Company LLC; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Luminant Generation Company LLC (the licensee) to withdraw its January 18, 2007, application, as supplemented by letter dated July 18, 2007, for proposed amendments to Facility Operating License Nos. NPF–87 and NPF–89, for Comanche Peak Steam Electric Station, Units 1 and 2, respectively, located in Somervell County, Texas.

The proposed amendment would have revised Technical Specification 3.8.1, ''AC [Alternating Current] Sources—Operating,'' by extending the allowable completion time associated with restoration of an inoperable offsite circuit (i.e., the startup transformer).

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 8, 2007 (72 FR 26178). However, by letter dated October 22, 2007, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated January 18, 2007, as supplemented by letter dated July 18, 2007, and the licensee's letter dated October 22, 2007, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically 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.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 2nd day of November, 2007.

For the Nuclear Regulatory Commission.

Balwant K. Singal,

Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–21926 Filed 11–7–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No.: 050–00312]

Notice of Availability of Final Environmental Assessment and Finding of No Significant Impact Related to the License Termination Plan for the Rancho Seco Nuclear Generating Station

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Availability and Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) is issuing an environmental assessment (EA) related to the license termination plan (LTP) for the Rancho Seco Nuclear Generating Station, dated April 12, 2006. The EA was developed as part of the NRC decision-making process on whether or not to approve the LTP that will result in subsequent release of the site from NRC licensing for unrestricted use of the site (as defined in Title 10 of the *Code of Federal Regulations* (10 CFR) 20.1402, ''Radiological Criteria for Unrestricted Use''). The scope of the EA is the determination of the adequacy of the radiation release criteria and the final status survey as presented in the LTP. The EA specifically examines potential impacts on land use, water resources, and human health from structures and/or residual materials that will be present at the site at the time the site is released and the license is terminated. The EA also identifies compliance with section 106 of the National Historic Preservation Act.

FOR FURTHER INFORMATION CONTACT: John Hickman, Project Manager, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Mail Stop T–8F5, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–3017; e-mail: *jbh@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Environmental Assessment

1.0 Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the request submitted by Sacramento Municipal Utility District (SMUD or the licensee) for approval of the license termination plan (LTP) for the Rancho Seco Nuclear Generating Station (Rancho Seco). Consistent with the decommissioning rule that appeared in the **Federal Register** on July 29, 1996 (61 FR 39278), the NRC has prepared this environmental assessment (EA) to determine the environmental effects from approval of the LTP and subsequent release of the site for unrestricted use (as defined in Title 10, section 20.1402, ''Radiological Criteria for Unrestricted Use,'' of the *Code of Federal Regulations* (10 CFR 20.1402)). As discussed in section 1.3, ''Scope,'' of this document, the primary scope of this EA is the determination of the adequacy of the radiation release criteria and the final status survey (FSS) presented in the LTP.

1.1 Background

Rancho Seco has a deactivated pressurized-water nuclear reactor and is located on a 2480-acre SMUD site in Sacramento County at 14440 Twin Cities Road, Herald, California. Rancho Seco was constructed between 1968 and 1974. In August 1974, the NRC licensed the reactor to operate commercially at 2772 megawatts thermal. After passage of a nonbinding referendum by the voters of Sacramento County in 1989, SMUD decided to permanently shut down Rancho Seco. In August 1989, SMUD notified the NRC that the plant was permanently shut down and informed the NRC of its intent to seek amendments to the Rancho Seco operating license and decommission the facility (NRC, 1989a). In May 1991, before the promulgation of the current requirements for decommissioning and license termination under 10 CFR 50.82, ''Termination of License,'' (published July 1996, 61 FR 39278), SMUD submitted a proposed Rancho Seco decommissioning plan (SMUD, 1991). In March 1995, the NRC issued an order that approved the plan and authorized decommissioning of the site (NRC, 1995). In February 1997, SMUD began active decommissioning of the site. In March 1997, SMUD submitted its postshutdown decommissioning activities report (PSDAR) (SMUD, 1997) pursuant to 10 CFR 50.82 requirements, superseding the original decommissioning plan. In August 2002, SMUD completed the transfer of all spent nuclear fuel to its independent spent fuel storage installation (ISFSI) licensed under 10 CFR Part 72, ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste'' (SMUD, 2006a).

In April 2006, SMUD submitted its LTP (SMUD, 2006a). The NRC sent SMUD two requests for additional information (RAI) on the LTP, with corresponding SMUD responses in November 2006 (SMUD, 2006d) and April 2007 (SMUD, 2007). In 2006, SMUD also submitted a revision to its historical site assessment (SMUD, 2006b) and a ground water monitoring report (SMUD, 2006c). SMUD is proposing to decontaminate the Rancho Seco site to meet 10 CFR 20.1402 requirements for unrestricted use. Photographs provided in SMUD's April 2007 response to NRC's RAI (SMUD, 2007) identify the permanent buildings and structures, as well as paved areas and 11 concrete pads of removed structures, that SMUD currently plans to leave in place at the site after license termination. These include the: diesel buildings, backup control center, nuclear services electrical building, auxiliary building, reactor containment building, spent fuel building, turbine building, switchyard control building, machine shop, ''B'' warehouse, personal access portal building, interim onsite storage building (IOSB), receiving warehouse, and an unfinished technical support building.

SMUD is also proposing that the NRC release the site from licensing for unrestricted use in two phases, with the 10 CFR Part 50 license terminated after completion of the second phase. Table 3–1 of the LTP identifies that, for the first phase, SMUD plans to complete the major decommissioning activities in early 2008. The first-phase release includes most of the site, except for the IOSB. The IOSB will remain on the 10 CFR Part 50 license, and SMUD plans to continue to store only low-level radioactive waste from the Rancho Seco site in the building until it finds a suitable waste disposal option (SMUD, 2006a). Further, IOSB operations will continue to include the maintenance program, the radiation protection plan for implementing the radiological controls program, the radiological environmental monitoring program, an emergency plan, and the SMUD radioactive waste procedure ''IOSB Building Operations'' (SMUD, 2007). After the first phase of site release, the remaining IOSB 10 CFR Part 50 licensed site footprint will be approximately 1.1 acres with a proposed new fence line around the licensed area. The IOSB is in

the vicinity of the 10 CFR Part 72 licensed ISFSI fence boundary. SMUD estimates the combined maximum dose to a worker between the ISFSI and IOSB fence lines, including the dose from material within the first-phase released area between the fence lines, to be 0.15 millisievert per year (mSv/yr) (15 millirems per year (mrem/yr)), which is below the 0.25 mSv/yr (25 mrem/yr) limit for license termination in 10 CFR 20.1402 (SMUD, 2007).

The NRC has completed several previous EAs during the period of Rancho Seco site decommissioning. Two EAs were related to license amendments addressing record keeping, and another EA was for an exemption and license amendment. The NRC completed a fourth EA in March 2005 for an amendment to the 10 CFR Part 72 ISFSI license, allowing ISFSI storage of greater-than-Class-C waste (defined in 10 CFR Part 72) that was generated and stored at the 10 CFR Part 50 licensed Rancho Seco site (NRC, 2005). The NRC staff reviewed these previous EAs as part of the development of this EA.

1.2 Need for the Proposed Action

As specified in 10 CFR 50.82, licensees of nuclear facilities may apply to the NRC to decommission a facility and terminate their license. These requirements outline a process to follow for eventual termination of the license, including the requirement that the NRC will approve the licensee's LTP provided that it meets the criteria in 10 CFR 50.82(a)(10). SMUD submitted the required LTP (SMUD, 2006a) before requesting license termination, as specified in 10 CFR 50.82(a)(9).

As part of the LTP review process the NRC determines: (1) Whether the procedures and activities planned for completing decommissioning (adequacy of radiation release criteria and the FSS) appear sufficient as described in the LTP; and (2) assuming these procedures and activities are implemented according to plan, whether the plan would demonstrate that the site is suitable for unrestricted use. Further, NRC determines whether additional planning, investigation, and/or other activities are necessary to support the decision on site release for unrestricted use and license termination. This EA describes the potential environmental effects (both radiological and nonradiological) from the decision to approve the SMUD LTP and to release the site from the NRC license for unrestricted use (pursuant to 10 CFR 20.1402) followed by termination of the license.

1.3 Scope

A significant rule change in 1996 (61 FR 39278) allows a licensee to perform major decommissioning activities after submitting a PSDAR. The 1996 rule change prohibits decommissioning activities that could result in significant environmental impacts which have not been previously reviewed. The licensee is also required to include a discussion of the reasons for concluding that the planned decommissioning activities are bound by previously issued environmental impact statements in the PSDAR. For the LTP, the scope of the NRC approval is identified in the final rule as follows:

> The Commission must consider: (1) The licensee's plan for assuring that adequate funds will be available for final site release, (2) radiation release criteria for license termination, and (3) the adequacy of the final survey required to verify that these release criteria have been met.

The NRC details its review of these three areas in the safety evaluation report (SER). The licensee's radiation release criteria and the adequacy of the site FSS are considered during the development of the EA. However, the EA does not discuss funding available for decommissioning activities conducted until site release, since funding does not result in environmental impacts.

In fulfilling its obligations under the National Environmental Policy Act (NEPA), the NRC evaluates the environmental impacts associated with approval of the LTP and subsequent termination of the license, as discussed above. The EA considers both radiological and non-radiological impacts. These impact evaluations will typically involve an assessment of the remaining buildings/structures and residual material present at the site at the time the site is released and the license is terminated. In the case of this EA, release of the site for unrestricted use and termination of the license will be completed in two phases (discussed in section 1.1, ''Background,'' of this document).

1.3.1 Issues Evaluated in Detail

Consistent with NEPA regulations and guidance to focus on environmental issues of concern, this EA examines resource areas that were selected because of their potential to be affected by license termination: Land use; water resources; and human health. Specifically, the EA considers potential impacts on these resources from structures and/or residual materials that will remain after the site is released for unrestricted use.

1.3.2 Issues Eliminated From Detailed Evaluation

For reasons cited in section 1.3 of this document, impacts to air quality, historical and cultural resources, ecological resources (including endangered and threatened species), socioeconomic factors, transportation, noise, visual and scenic quality, waste management, and accident analysis are not reasonably expected to be impacted by approval of license termination activities (i.e., adequacy of radiation release criteria and the FSS) and site release for unrestricted use. As discussed in section 1.3 of this document, financial assurance for decommissioning at the site is not related to the environment and will not be discussed in this EA.

Decommissioning activities are not evaluated in this EA. The NRC previously assessed decommissioning impacts in the generic environmental impact statement for decommissioning (NRC, 1988; NRC, 2002). As described in section 1.3 of this document, the PSDAR addresses environmental impacts from decommissioning activities. SMUD submitted its PSDAR in March 1997 (SMUD, 1997), along with a discussion of the environmental impacts from its decommissioning activities.

2.0 Alternatives, Including the Proposed Action

2.1 The Proposed Action

The proposed action is the NRC approval of the LTP for the Rancho Seco plant. Before approving the LTP, the NRC staff reviewed the LTP to ensure that the proposed license termination activities (i.e., adequacy of radiation release criteria and the FSS) ensure that: (1) Public health and safety will be protected; and (2) no significant impact on the quality of the human environment will result from the unrestricted release of the Rancho Seco site from NRC licensing. The LTP would also become part of the NRC license in a separate license amendment (Amendment Number 133), thereby including the LTP in the NRC inspection and enforcement programs at the Rancho Seco site. This license amendment would specify, among other things, that the licensee must seek NRC approval in order to make certain changes to the LTP.

As described in section 1.1 of this document, SMUD plans to complete decommissioning of Rancho Seco for unrestricted use (detailed in 10 CFR 20.1402 and section 3.4, ''Human Health,'' of this document). SMUD plans to request license termination in two

phases. During the first phase, the majority of the site is planned to be released from the 10 CFR Part 50 license. The remainder of the licensed site will continue to include the current IOSB for Class B and C radioactive waste (defined in 10 CFR Part 61, ''Licensing Requirements for Land Disposal of Radioactive Waste''), with the overall 10 CFR Part 50 licensed area considerably reduced in size. SMUD estimates that decommissioning of the IOSB and the remaining 10 CFR Part 50 licensed site will be completed by 2028 (LTP Section 3.3.6.2), when the remaining area will be reviewed by NRC for unrestricted release from the license and the license terminated (SMUD, 2006a).

In order to meet the NRC unrestricted release criteria, the licensee will divide areas of the site into survey units and sample/survey them in accordance with the LTP to verify that the derived concentration guideline levels (DCGLs) will be met and, consequently, demonstrate compliance with the NRC release criteria. Sections 3.1.1, ''Radiological Contamination''; 3.4, ''Human Health''; and 4.3, ''Human Health Impacts,'' of this document discuss the DCGLs.

2.2 No-Action Alternative

The NRC staff considered the no-action alternative relative to the SMUD request for approval of the LTP. Under the no-action alternative, the NRC would not approve the LTP and would neither apply the unrestricted use criteria nor terminate the Rancho Seco license. This alternative conflicts with the NRC 10 CFR 50.82 license termination requirements, which state that the Commission shall approve an LTP, by license amendment, if the LTP demonstrates that the remainder of the decommissioning activities, among other provisions, will not have a significant effect on the quality of the environment. Additionally, pursuant to this regulation, the NRC shall terminate the license after (1) the remaining dismantlement has been performed in accordance with the approved LTP, and (2) both the final radiation survey and associated documentation demonstrate compliance with decommissioning in 10 CFR Part 20, ''Standards for Protection Against Radiation,'' Subpart E, ''Radiological Criteria for License Termination.'' Therefore, the no-action alternative is eliminated from further consideration in this EA.

3.0 Affected Environment

3.1 Site Description

As described in the LTP (SMUD, 2006a) (e.g., sections 1.3.2, 6.2.1, and 8.5), Rancho Seco is located in the southeast part of Sacramento County, California, approximately 40 kilometers (km) (25 miles) southeast of Sacramento and 42 km (26 miles) north-northeast of Stockton. The populations of Sacramento and Stockton are approximately 445,000 and 490,000, respectively. The nearest population center of greater than 25,000 residents is Lodi, approximately 27 km (17 miles) south-southwest of the site, with approximately 57,000 people (U.S. Census Bureau, 2006).

The Rancho Seco site is located in the foothills of the Sierra Nevada Mountains, with the Sierra Nevada Mountains to the east and the coast range along the Pacific Ocean to the west. The site is an area of flat to lightly rolling terrain at an elevation of approximately 60 meters (200 feet) above mean sea level. To the east of the site, the land becomes more rolling, rising to an elevation of 180 meters (600 feet) at a distance of about 11 km (seven miles), and increasing in elevation toward the Sierra Nevada foothills (SMUD, 2006a).

The climate at Rancho Seco is described in the LTP as typical of the Great Central Valley of California. The rainy season occurs between October and May. More than two-thirds of the annual rainfall generally occurs from December through March. Incidents of severe weather, such as tornados and hurricanes, are infrequent (SMUD details its analysis in LTP Section 8.5) (SMUD, 2006a).

The soil consists of hard to very hard silts and silty clays with dense to very dense sands and gravel. There is no evidence of faulting beneath the site. The nearest fault system is approximately 16 km (ten miles) east of the site and has been inactive for more than 135 million years (SMUD, 2006a).

3.1.1 Radiological Contamination

Several areas within the industrial area have been identified as radiologically impacted (i.e., an NRC term defined in 10 CFR 50.2, ''Definitions,'' to indicate the potential for residual radioactivity in excess of natural background radiation levels) by the operation of the facility. These areas include the retention basin, tank farm, barrel farm, areas adjacent to the regenerative holdup tank area, storm drains, oily water separator, cooling tower basins, and turbine building drains and sumps. Several areas outside of the industrial area, identified as the non-industrial area, have historically had radionuclide concentrations detected above background levels (i.e., impacted, per 10 CFR part 50 terminology). These areas include the discharge canal sediment, discharge canal soil, depression area soil, and the storm drain outfall. In total, the 10 CFR part 50 defined radiologically impacted area is approximately 165 acres, outlined in LTP Figure 2–2 (SMUD, 2006a).

In general, the extent of radiological contamination at a site is determined through a process of site characterization that includes radiological surveys with detectors and measuring instruments as well as historical site assessment. Surveys determine the nature and extent of radioactive material contamination in buildings, plant systems and components, site grounds, and both surface and ground water. The process of characterizing the site is described in further detail in both LTP (Chapter 2) (SMUD, 2006a) and the NRC SER (''Site Characterization'' section) (NRC, 2007).

SMUD identified 26 site-specific radionuclides (Table 6–1 of the LTP) that are potentially present in soils, ground water, and structures. These radionuclides include fission and activation products that are typical for pressurized-water reactor plants and were identified using information in several NRC NUREG documents (listed in LTP section 6.3.1) and the ORIGEN computer code (using irradiated fuel assembly data). During this process, SMUD identified other radionuclides as potentially present at the site and eliminated them from further consideration. SMUD eliminated the radionuclides because, if present, they contribute less than 0.1 percent of the total activity at the site and the potential radiation dose contribution by the sum of these radionuclides is less than one percent of the total calculated radiation dose (detailed in LTP section 6.3.2).

Specifically, SMUD is using the 26 radionuclides to determine acceptable residual radioactivity levels and radiation dose levels at the site after release for unrestricted use. These radionucludes also are included in the NRC dose modeling to determine acceptance of the LTP. For example, all 26 radionuclides are assigned DCGLs for surfaces on buildings. Additionally, based on analysis of the highest level of soil contamination identified at the site before decommissioning (spent fuel cooler pad soil), the licensee developed DCGLs for the soil based on carbon-14, cobalt-60, nickel-63, strontium-90, cesium-134, and cesium-137. Further,

the 26 radionuclides form the basis for identifying specific radionuclides of interest for various other site media components (e.g., volumetric contamination and piping) at the site and for the development of the corresponding DCGLs (discussed in LTP Chapter 6).

Table 5–4D of the LTP shows all the structures that, before decommissioning, had radioactivity levels above the DCGL (SMUD, 2006d). Radiological sampling outside of the industrial area is detailed in the LTP. Specifically, during plant operation, the Oak Ridge National Laboratory evaluated the environmental impact of the authorized radioactive liquid effluent releases from Rancho Seco for the NRC in 1986 (NRC, 1986). This report and subsequent radiological sampling are discussed in LTP Chapter 2 and in a SMUD response to an NRC RAI (SMUD, 2006d).

3.1.2 Hazardous and Chemical Contamination

Decommissioning activities at the site are subject to Federal regulations, permits, licenses, notifications, approvals, and acknowledgments, including those for hazardous waste generation/disposition, handling and removal of asbestos, handling and removal of lead paint, and removal of underground storage tanks. For example, specific U.S. Environmental Protection Agency regulations (Title 40, ''Protection of the Environment,'' of the CFR) adhered to during decommissioning and operation of the site address the following requirements: 40 CFR part 61 (asbestos handling and removal); 40 CFR parts 122 through 125 (National Pollutant Discharge Elimination System); 40 CFR part 141 (safe drinking water); 40 CFR part 190 (radiation protection for nuclear power operations); 40 CFR parts 260 through 272 (Resource Conservation and Recovery Act); 40 CFR part 280 (underground storage tanks); 40 CFR part 761 (polychlorinated biphenyls); and 40 CFR parts 129 through 132 (Clean Water Act) (SMUD, 2007).

3.2 Land Use

The 10 CFR Part 50 licensed site is an approximately 87-acre, fence-enclosed industrial area containing the nuclear facility as well as an emergency backup data center and a SMUD backup control center that are used to support SMUD functions if disruptions occur with the headquarters facility. Additional structures within the industrial area are identified in the LTP (SMUD, 2006a) and the SMUD 2007 RAI response (SMUD, 2007), with key structures highlighted in the listing provided in section 4.1, ''Land Use Impacts.'' This site is located within an overall approximate 2480-acre area that is owned by SMUD (owner-controlled area). Land use within the owner-controlled area also includes: a solar power (photovoltaic) electrical generating station (50 acres); the 10 CFR part 72 licensed ISFSI (discussed in section 1.1 of this document; ten acres); Rancho Seco Lake and recreation area (560 acres, southeast of the industrial area); a gas-fired power plant (30 acres); a receiving warehouse; portions of a paved access road; and a residence (approximately 1.6 km (one mile) from the industrial area fence) (SMUD, 2006a; SMUD, 2007). A map of the Rancho Seco site is provided in LTP Figure 8–1, and the industrial area is detailed in LTP Figure 2–1. Aerial photographs of the industrial area before and after decommissioning are provided in the SMUD April 2007 RAI response letter (SMUD, 2007).

The land surrounding the Rancho Seco site, within a 24-kilometer (15-mile) radius, is identified by Sacramento County as remaining predominantly (70 percent) agricultural and grazing (beef cattle) for the future. Portions of the non-impacted area and impacted area (per 10 CFR part 50; discussed in Section 3.1.1 of this document) (e.g., the south storm drain outfall area and the liquid effluent pathway area) that are located within the owner-controlled area are open range lands that local ranchers lease for cattle grazing. At present, three large-scale commercial dairies operate in the vicinity, with the closest dairy located approximately 13 km (eight miles) northwest of the site. Further, domestic use dairy cows are present at a ranch (2480 acres) located approximately one-mile east of the site. Future buildup around the site is likely be limited. A new housing development is located approximately eight km (five miles) northwest of the site (two to five-acre plots). SMUD also identifies that there may be a future buildup of new residences to the west of the site (one to ten-acre plots) (SMUD, 2006a).

Rancho Seco Lake and park activities include picnicking, camping, boating, fishing, and swimming. A 75-acre wildlife compound and a seven-mile nature trail are also within the park. Other recreation areas in the relative vicinity of the site and their approximate distance from the site include a portion of Lake Camanche, 16 km (ten miles) southeast; three golf courses, 16 km (ten miles) east and approximately the same distance at locations to the southwest and north; and Lake Amador, 21 km (13 miles) east. Activities at the two lakes include boating, fishing, and camping. Additional reservoirs and lakes exist within 24 km (15 miles) of the site, including municipal reservoirs used for recreation (SMUD, 2006a; SMUD, 2007).

An overview diagram of the industrial area roads, rail, and pavement is provided in LTP Figure 2–33. LTP Figure 8–1 identifies transportation routes to and from the industrial area. State Route 104 is located just north of the site, connecting with State Routes 99 and 88 (to the west and east of the site, respectively) and the main access road to the industrial site and recreation area. Rail access is a spur that connects to the Union Pacific rail line (parallel to State Route 104).

3.3 Water Resources

Examination of water resources is divided into surface water and ground water. The sections that follow provide a summary of the characteristics of surface water and ground water resources at, and near, the Rancho Seco site.

3.3.1 Surface Water

Surface water in the vicinity of the site includes Clay Creek; unnamed tributaries to Clay Creek; Rancho Seco Reservoir, which was formed by damming Clay Creek in the southeast portion of the owner-controlled area with construction of the Rancho Seco plant; and an area of vernal pools and seasonal marshes. All these features are south or southeast of the industrial area. Clay Creek eventually discharges beyond the site boundaries into Hadselville Creek.

Runoff from the industrial area drains into an unnamed tributary of Clay Creek. Further, releases from the industrial area average 22,710 liters (6,000 gallons) per minute and discharge in the liquid effluent pathway downstream from the site retention basins into this creek. Most of these releases to the creek are conveyed to the site from the Folsom South Canal. Other sources of flow in this unnamed creek are releases from the Rancho Seco Reservoir and runoff in its catchment west of the dam and up gradient from the industrial area.

Since the investigation for the development of Rancho Seco in the 1960s, flooding has not occurred within the site boundaries from storm runoff. In addition, the industrial area is not within the 100-year flood plain. However, vernal pools and seasonal marshes develop west of the industrial area and in shallow surface depressions during and after the December to March rainy season (URS Corporation, 2006a).

3.3.2 Ground Water

Ground water at the Rancho Seco site is located within the Cosumnes Subbasin of the San Joaquin Valley Ground Water Basin (URS Corporation, 2006a). This subbasin has extensive unconsolidated and semiconsolidated sedimentary deposits, approximately 608 meters (2000 feet) thick, where most of this material below the water table is likely water-bearing deposits. The uppermost water-bearing unit (the saturated zone or unconfined water table) at this site is within the Mehrten Formation about 50 meters (165 feet) below ground surface (bgs). Additional water-bearing units are likely to exist in the deeper, older sedimentary deposits until the metamorphic bedrock is reached at about 608 meters (2000 feet) bgs. However, the actual thickness of the sedimentary rocks and their water-bearing status has not been verified because boreholes and wells on site do not extend below the Mehrten Formation (URS Corporation, 2006b).

The uppermost water-bearing unit within the Mehrten Formation holds the ground water that would most likely contain radionuclides from Rancho Seco operations if any are present. SMUD indicates that leaks, spills, and/or releases occurred during Rancho Seco operations and involved several areas including: spent fuel building; spent fuel cooler pad outside the spent fuel building; tank farm; retention basins; barrel farm; storm drains; turbine building drains and sumps; oily water separator; and regenerant holdup tank areas. The potential for radionuclide movement to the saturated ground water zone was significantly greater for leaks associated with the spent fuel building and spent fuel cooler pad than with the other structures and areas mentioned above. Further, remediation of soil at the spent fuel building and spent fuel cooler pad is complete. As a result of information collected during this process, SMUD reported that radionuclides from Rancho Seco operations were not observed at depths as far as 7.6 meters (25 feet) below grade for the spent fuel building (SMUD, 2006a).

The uppermost water-bearing unit yield is lower beneath the site than at other locations in the subbasin. The predominant lithologies of the water-bearing unit at the site are siltstones and claystones, and the hydraulic conductivity of these lithologies range from 1×10^7 to 1×10^4 centimeters per second (4×10^6 to 4×10^3 inches per second).

In 2005, SMUD installed four groups of monitoring wells (three wells per group) within and downgradient of the industrial area. These wells were all screened-in water-bearing units of the Mehrten Formation from about 50 to 103 meters (160 to 340 feet) bgs. Because one monitoring well was dewatered, SMUD installed a replacement monitoring well with a deeper screened interval in February 2006. SMUD performed four quarterly sampling events on these 12 monitoring wells and on three existing water supply wells during Summer and Fall 2005 and Winter and Spring 2006. The ground water samples from these wells was analyzed for potential radionuclides that may have resulted from operations at Rancho Seco. However, these radionuclide concentrations were not observed to be higher than typical background levels. Further, using these quarterly sampling events, SMUD developed potentiometric ground water surfaces and ground water flow directions for the industrial area and nearby areas (up gradient and down gradient). These ground water surfaces and regional ground water surfaces are delineated in figures within the reports developed for SMUD by the URS Corporation (URS Corporation, 2006a; URS Corporation, 2006b) and demonstrate that ground water is flowing toward the southwest.

There is extremely slow movement of the ground water and, consequently, the potential radionuclides from operations that may be in the ground water. The movement of potential radionuclides at the site in a downward direction to reach the saturated zone is estimated by SMUD to take 80 years (based on a vertical hydraulic conductivity of 2.0×10^4 centimeters per second (7.8×10^3 inches per second)). SMUD also estimates that the time for the ground water beneath the industrial area to travel to the current site boundary, a distance of 942 meters (3100 feet), is approximately 1500 years (based on a horizontal hydraulic conductivity of 2.0×10^4 centimeters per second (7.8×10^3 inches per second)) (URS Corporation, 2006a).

3.4 Human Health

Potential human health hazards associated with the Rancho Seco site range from potential exposure to very low levels of radioactivity in soils to elevated levels of radioactivity within the remaining facility and support structures and systems (e.g., remaining tunnels, lines, and sumps).

The intent of the final decommissioning activity at Rancho Seco is to reduce radiological contamination at the site to meet the NRC requirements for unrestricted release. After decommissioning activities are complete, license termination activities will verify the adequacy of the licensee's actions to meet the radiological release criteria (i.e., DCGLs) and the FSS. Unrestricted use of the site is appropriate if it meets the criteria in 10 CFR 20.1402 which specifies:

> A site will be considered acceptable for unrestricted use if the residual radioactivity that is distinguishable from background radiation results in a TEDE to an average member of the critical group that does not exceed 25 mrem (0.25 mSv) per year, including that from groundwater sources of drinking water, and that the residual radioactivity has been reduced to levels that are as low as is reasonably achievable (ALARA).

The licensee (in this case, SMUD) committed to developing DCGLs commensurate with release criteria in 10 CFR 20.1402. The licensee will then demonstrate through the FSS that residual radioactivity concentrations at the site are equal to or below the DCGLs.

The DCGLs in use at the Rancho Seco site were calculated using the RESRAD (Versions 6.22 and 6.3) and RESRAD–BUILD (Versions 3.22 and 3.3) computer codes for generating DCGLs. These mathematical models translate residual radioactivity into potential radiation doses to the public, based on selected land-use scenarios, exposure pathways, and identified critical groups. The purpose of calculating the dose to the critical group is to bound the individual dose to other possible exposure groups. The critical group is a relatively small group of individuals who, because of their habits, actions, and characteristics, could receive among the highest potential radiation doses to people at some time in the future. Because the calculation uses the hypothetical critical group as the dose receptor, it is unlikely that any individual would actually receive radiation doses in excess of that calculated for the average member of the critical group. Industrial workers are the critical group used for assessing potential doses at the Rancho Seco site (SMUD, 2006a).

4.0 Environmental Impacts

4.1 Land Use Impacts

Termination of the Rancho Seco license is not reasonably expected to result in any adverse impacts to the onsite and adjacent land use. Specifically, the agricultural, grazing, residential, and recreational land uses in adjacent areas are expected to continue. Existing Federal and State requirements would continue (LTP section 8.7), except for NRC licensing requirements. Additionally, local

government permits and approvals would continue, including the agreement with the County of Sacramento regarding the administration, operation, and maintenance of recreational facilities at Rancho Seco Lake.

Clean-up of hazardous materials at the site is expected to occur as a result of decommissioning. At present, SMUD has removed the underground storage tanks for diesel fuel and cleaned the remaining lines, and it does not plan to add future tanks to the site. SMUD will remove the hazardous material warehouse and its contents, except for the concrete pad (SMUD, 2007). Any hazardous materials remaining at the site or generated at the site after it is released from licensing would continue to be subject to the same regulatory requirements presently in place since Rancho Seco would be maintained as an industrial site.

SMUD Asset Protection would maintain access to the site as an industrial area. The public would not have free access to the site as SMUD would maintain security of the industrial area to comply with the Federal Energy Regulatory Commission and other agencies regulating electrical distribution systems.

Most of the site's infrastructure (*e.g.*, buildings, roads, and parking lots) would not change after the site is released from licensing. The switch yard, switch yard control building, and transmission lines would remain in operation. Additional structures and buildings that would remain after license termination include the following: backup control center; training and records building; diesel buildings; nuclear service electrical building; auxiliary building; reactor containment building; spent fuel building; turbine building; machine shop; ''B'' warehouse; personal access portal building; IOSB receiving warehouse; and an unfinished technical support building (SMUD, 2007).

4.2 Water Resources

Termination of the license for the Rancho Seco site, using the proposed plan, would not be expected to result in potentially significant and adverse impacts to either surface water or ground water. In addition to Federal and State of California requirements, specific State and local agency permits and approvals would continue to apply to water at the site, including the California Water Resources Board diversion permit; Central Valley Regional Water Quality Control Board waste discharge agreement; Federal Water Pollution Control Act water quality certification; and Army Corps of Engineers permits addressing the dredging, discharge, and deposit of materials into tributaries of navigable waters.

4.2.1 Surface Water

After decommissioning and license termination, there will be a slight decrease in the number of impervious areas on site where fill materials will replace a small area of decommissioned buildings and impervious materials. Storm water drainage that currently exists at the site through sheet flow runoff and point discharges will also decrease by a small amount because infiltration from precipitation will increase in these fill areas.

SMUD recently renewed its National Pollutant Discharge Elimination System permit and plans to maintain the same discharge volumes that it has generated since the reactor shutdown. Both the existing water supply system and the sewage system would remain in place (URS Corporation, 2006a).

4.2.2 Ground Water

The radiological results of the ground water monitoring program, where ground water samples were collected and analyzed every three months (described in section 3.3.2, ''Ground Water,'' of this document) demonstrate that radionuclides from operations, including tritium (a radionuclide that is easily transported in water), have not contaminated the uppermost water-bearing unit at this site (URS Corporation, 2006a).

4.3 Human Health Impacts

Compliance with the requirements of 10 CFR 20.1402 for unrestricted release would ensure that the residual radioactivity left at the site would not cause the TEDE to an average member of the critical group (industrial workers) to exceed 0.25 mSv/yr (25 mrem/yr). The licensee must also reduce residual radioactivity to ALARA levels (defined in 10 CFR Part 20).

SMUD is proposing DCGLs as acceptable levels of residual radioactivity that can be left at the site and comply with the unrestricted use criteria specified in 10 CFR Part 20, Subpart E. LTP Chapter 6 (SMUD, 2006a) documents the manner in which SMUD derived the DCGLs for the Rancho Seco site. As part of its decision on whether to approve the LTP, the NRC conducted an evaluation of the adequacy of the DCGLs to protect members of the public after the proposed site releases.

In derivations of the surface soil DCGLs, an industrial worker represents the average member of the critical group. The calculations assumed the worker is exposed to contaminated soil by exposure pathways, including: (1) Direct exposure; (2) inhalation of airborne radionuclides; (3) ingestion of contaminated soil; (4) drinking water from a contaminated well; and, (5) exposure to buried piping. For subsurface soil DCGLs, SMUD would apply the surface soil DCGLs to subsurface soil contamination. As detailed in LTP Section 6.6.2, subsurface contamination has been observed in discrete pockets. Further analysis (using peak of the mean dose results) demonstrates a decrease in dose with increasing depth of the discrete pockets of contamination beneath the soil. The LTP states that using the surface soil DCGL values is more conservative than developing higher DCGL values for discrete pockets of subsurface soil contamination. As stated in LTP Section 6.6.2.6.3, the subsurface soil DCGL values would be nonconservative if the subsurface soil contamination is excavated later and spread on the surface, becoming surface soil contamination. Table 6–5 of the LTP lists DCGLs that would be used for residual radioactivity in soil.

Buried piping DCGLs are based on the assumption that the buried piping disintegrates instantaneously on license termination, allowing better evaluation of exposure to the piping contents. As such, the disintegrated media is subsurface soil and the media volume is assumed to be equal to the piping volume. The calculations assumed soil contamination to be uniformly mixed within the volume. Therefore, SMUD would apply soil DCGLs to buried piping.

The industrial worker is considered to represent the average member of the critical group for deriving the building surface DCGLs. The building occupancy scenario is used to evaluate potential exposure to fixed and removable surface radioactivity within structures that will be left on the site after license termination. The worker is assumed to be exposed to penetrating radiation from surface sources, inhalation of resuspended surface contamination, and inadvertent ingestion of surface contamination. Table 6–9 of the LTP lists the DCGL values used for residual radioactivity that remains on existing building surfaces. In addition, SMUD determined that volumetric DCGL values were needed, since some structures may be potentially contaminated from neutron activation. Volumetric contamination may also exist as a result of the migration of surface contamination into materials of

construction. Table 6–10 of the LTP lists the proposed DCGL values for activated and volumetrically contaminated bulk material.

In deriving the DCGLs for embedded piping, SMUD assumed a scenario in which an industrial worker is exposed to residual radioactivity from a location within the concrete-encased piping (*i.e.*, embedded) as well as from contaminated surfaces of the building. SMUD considers the potential dose from embedded piping to be additive along with the potential dose to the worker from residual radioactivity from building surfaces. LTP Section 6.6.7 states that the licensee will reduce surface DCGLs by the dose contribution from embedded piping to ensure compliance with the dose criterion. However, to preclude the additional dose contribution from embedded piping, SMUD has committed to grout any piping that has residual contamination above the NRC screening levels.

For the containment building, most of the interior concrete will be removed, leaving only the carbon steel liner plate. Therefore, SMUD determined that the industrial worker scenario used to derive the structural surface DCGLs is an unrealistic scenario for application to the interior surface of the containment building. SMUD developed two sets of DCGLs for the containment building to determine the most limiting scenario in this case: (1) An industrial worker building inspection scenario; and, (2) a building renovation/demolition scenario.

SMUD determined that the building renovation/demolition scenario was more limiting than the industrial worker building inspection scenario. In LTP Section 6.6.5.4, SMUD states that it would impose a more conservative approach through application of structural surface DCGLs, derived in LTP Section 6.6.3, to the reasonably accessible surfaces of the containment building. SMUD would apply the renovation/demolition DCGLs listed in Table 6–12 of the LTP to the containment building dome surfaces. SMUD considered worker safety during remediation and FSS activities in selecting the application of the containment building DCGLs.

Two additional exposure scenarios that SMUD analyzed were (1) a resident farmer scenario (in place of the industrial use scenario) and (2) grazing cattle adjacent to the industrial area. The calculated total dose for a resident farmer scenario within the currently licensed site (industrial area) exceeds the unrestricted use limit of 0.25 mSv/yr (25 mrem/yr) for approximately 30 years following the first phase of release and license termination. LTP Section 6.8.2.4 describes this information and the reason it is unlikely that the current impacted area for the NRC-licensed industrial site would transfer from industrial use to the public during the next 30 years. Hence, the resident farmer is not a reasonably foreseeable scenario and would not be considered for compliance with 10 CFR Part 20 criteria (NRC, 2006a). Further, the grazing cattle scenario (LTP Section 6.8.3) analyzes the dose impact of maintaining an industrial worker scenario within the industrial area while allowing cattle grazing in the areas outside of the industrial area and consumption of meat from the cattle by an offsite member of the public. The calculation identified a maximum potential dose (peak of the mean) of approximately 0.05 mSv/yr (5.13 mrem/yr).

As discussed in Section 1.1 of this document, the Rancho Seco site would be released from NRC licensing for unrestricted use in two phases. The approach identified in the LTP, using DCGLs to establish cleanup levels that meet the Subpart E criteria and demonstrating compliance with the DCGLs using a FSS, would be applied during both phases.

The NRC staff evaluated the appropriateness of the postulated exposure scenarios and the methodology used for deriving the DCGLs. The staff has concluded that any potential radiation exposures from residual radioactivity that would be present after license termination has not been underestimated by SMUD and that such exposure levels are protective of the general public.

The SMUD plan would use a series of surveys and the FSS to demonstrate compliance with the radiological release criteria consistent with the Multi-Agency Radiation Survey and Site Investigation Manual (NRC, 2000). As identified in previous sections of this document, planning for the FSS involves an iterative process that requires appropriate site characterization (on the basis of the potential residual radionuclide concentration levels relative to the DCGLs) and formal planning. SMUD has committed to an integrated design that would address the selection of appropriate survey and laboratory instrumentation and procedures, including a statistically-based measurement and sampling plan for collecting and evaluating the data needed for the FSS. The staff has determined that the sampling strategy and survey data evaluation methodology presented in the LTP are adequate. Provided that the DCGLs are demonstrated through FSS, there would be no anticipated adverse impacts to human health from approval of license termination, as described in the final rule ''Radiological Criteria for License Termination'' (62 FR 39058).

4.4 Cumulative Impacts

The NRC approval of the SMUD Rancho Seco LTP (the proposed action), when combined with known effects on notable resources at the site, is not anticipated to result in any cumulative impacts. Rather, decommissioning and remediation of the Rancho Seco site, resulting in the release of the site for future unrestricted use, would reduce the opportunity for potential negative cumulative impacts.

5.0 Agencies and Persons Consulted and Sources Used

The NRC staff prepared this EA with consultation from the State of California Office of Historic Preservation. The NRC began the consultation by letter dated October 30, 2006 (NRC, 2006b). The State Historic Preservation Officer responded in a letter dated February 15, 2007 (Donaldson, 2007), with clarifying questions, information requests, and considerations. The NRC responded with the requested information and clarification by letter dated March 12, 2007 (NRC, 2007a). Based on a review of this letter, the Historic Preservation Officer's representative suggested that the NRC further evaluate whether or not its action on the LTP is an undertaking (as defined in 36 CFR Part 800, ''Protection of Historic and Cultural Properties''). The NRC conducted the evaluation and provided the determination that the action is not an undertaking to the State Historic Preservation Officer in a letter dated March 16, 2007 (NRC, 2007b). The representative agreed to mutually conclude the consultation. Therefore, the NRC has complied with Section 106 of the National Historic Preservation Act on this matter.

The NRC staff has determined, based on the scope of this action, that the proposed action will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act.

The staff provided a draft of this EA to the State of California Radiological Health Branch (the Branch) for review by letter dated April 25, 2007 (NRC, 2007c), including a request for comments within 30 days. The request was also forwarded electronically to a Branch contact person. During the week

of June, 11, 2007, the NRC staff followed-up with the Branch to determine if the Branch had any plans to comment. The Branch representative indicated that he may not be forwarding any comments. Subsequently, the Branch representative replied electronically on July 3, 2007, and stated that the Branch did not have any comments (CA RHB, 2007).

6.0 Conclusion

The NRC has prepared this EA to evaluate the environmental impact of issuing a license amendment to Facility Operating License No. 50–321, that would approve the SMUD LTP. On the basis of this EA, the NRC staff concludes that there are no significant environmental impacts and the license amendment does not warrant the preparation of an environmental impact statement. Accordingly, the NRC staff recommends a finding of no significant impact determination for this action.

7.0 List of Preparers

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N. Haggerty, Project Manager, Division of Waste Management and Environmental Protection, environmental issues and endangered and threatened species evaluation.

J. Peckenpaugh, Hydrologist, Division of Waste Management and Environmental Protection, surface water and ground water evaluation.

J. Webb, Health Physicist, Division of Waste Management and Environmental Protection, FSS and radiation contamination evaluation.

S. Woods, Project Manager, Division of Waste Management and Environmental Protection, environmental issues.

8.0 List of Acronyms and Abbreviations

ADAMS Agencywide Documents Access and Management System
ALARA as low as is reasonably achievable
bgs below ground surface
CFR *Code of Federal Regulations*
DCGL derived concentration guideline limit
EA environmental assessment
FR **Federal Register**
FSS final status survey
IOSB interim onsite storage building
ISFSI independent spent fuel storage installation
km kilometer
LTP license termination plan
mrem millirem
mSv millisievert
NEPA National Environmental Policy Act
NRC U.S. Nuclear Regulatory Commission
PSDAR postshutdown decommissioning activities report
RAI request for additional information
SER safety evaluation report
SMUD Sacramento Municipal Utility District
TEDE total effective dose equivalent
yr year

9.0 References

10 CFR Part 20. *Code of Federal Regulations,* Title 10, ''Energy,'' Part 20, ''Standards for Protection Against Radiation.''

10 CFR Part 50. *Code of Federal Regulations,* Title 10, ''Energy,'' Part 50, ''Domestic Licensing of Production and Utilization Facilities.''

10 CFR Part 61. *Code of Federal Regulations,* Title 10, ''Energy,'' Part 61, ''Licensing Requirements for Land Disposal of Radioactive Waste.''

10 CFR Part 72. *Code of Federal Regulations,* Title 10, ''Energy,'' Part 72, ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste.''

36 CFR Part 800. *Code of Federal Regulations,* Title 36, ''Parks, Forests, and Public Property,'' Part 800, ''Protection of Historic and Cultural Properties.''

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II. Finding of No Significant Impact

On the basis of this EA, the NRC has concluded that approval of the license termination plan for the Rancho Seco Nuclear Generating Station will not result in significant environmental impacts, and that the license termination does not warrant the preparation of an environmental impact statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

III. Further Information

Documents related to this action are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm.html.* From this site, you can access the NRC's Agency Wide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are identified in the reference section of the EA. If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209 or 301–415–4737, or by electronic mailing at *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR at One White Flint North, 11555 Rockville Pike (first floor), Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 2nd day of November, 2007.

For the Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E7–21924 Filed 11–7–07; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–363]

WTO Dispute Settlement Proceeding Regarding China—Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that the United States has requested, in accordance with the *Marrakesh Agreement Establishing the World Trade Organization* (WTO Agreement), that the WTO Dispute Settlement Body establish a dispute settlement panel to review the U.S. claims concerning: (1) Certain measures that restrict trading rights with respect to imported films for theatrical release, audiovisual home entertainment products (e.g., video cassettes and DVDs), sound recordings, and publications (e.g., books, magazines, newspapers, and electronic publications); (2) certain measures that restrict market access for, or discriminate against, foreign suppliers of distribution services for publications, foreign suppliers of audiovisual services (including distribution services) for audiovisual home entertainment products, and foreign suppliers of sound recording distribution services; (3) certain measures that provide less favorable distribution opportunities for imported films for theatrical release than for like domestic films; and (4) certain measures that provide less favorable opportunities for foreign suppliers of sound recording distribution services and for the distribution of imported sound recordings than are provided to like service suppliers and like products. The panel request may be found at *http://www.wto.org* contained in a document designated as WT/DS363/5. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the consultations, comments should be submitted on or before December 21, 2007 to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0708@ustr.eop.gov,* with ''China Trading Rights and Distribution Services (DS363)'' in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640, with a confirmation copy sent electronically to the electronic mail address above, in accordance with the requirements for submission set out below.

FOR FURTHER INFORMATION CONTACT: Probir Mehta, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–3150.

SUPPLEMENTARY INFORMATION: Pursuant to Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), USTR is providing notice that the United States has requested the WTO Dispute Settlement Body to establish a dispute settlement panel pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).* Such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within approximately nine months after it is established.

Major Issues Raised by the United States

The first matter on which the United States has requested the establishment of a WTO dispute settlement panel concerns certain measures of China that reserve to certain Chinese state-designated and wholly or partially state-owned enterprises the right to import films for theatrical release, audiovisual home entertainment products (e.g., video cassettes and DVDs), sound recordings, and publications (e.g., books, magazines, newspapers, and electronic publications). In this regard, the measures at issue include the following, as well as any amendments and related or implementing measures:

- The Regulations on Administration of the Films Industry;
- The Provisional Rules on the Entry Criteria for Operating Film Enterprises;
- The Administrative Regulation on Publishing;
- The Administrative Regulations on Audiovisual Products;
- The Catalogue for Guidance of Foreign Investment Industries;
- The Several Opinions of the Ministry of Culture, State Administration of Radio, Film and Television, General Administration of Press and Publication, National Development and Reform Commission and the Ministry of Commerce on Introducing Foreign Investment into the Cultural Sector;
- The Measures for the Administration of Import of Audio and Video Products;
- The Measures for Administration of Chinese Foreign Contractual Distribution Ventures of Audiovisual Products;
- The Administrative Regulations on Electronic Publications; and
- The Procedure for Examination and Approval of Establishment of Publication Importation Entities.

It appears that these measures do not allow all Chinese enterprises and all foreign enterprises and individuals to have the right to import the Products into the customs territory of China. It also appears that foreign individuals and enterprises, including those not invested or registered in China, are accorded treatment less favorable than that accorded to enterprises in China with respect to the right to trade. These measures appear to USTR to be inconsistent with China's obligations under paragraphs 1.2, 5.1 and 5.2 of Part I of the *Protocol on the Accession of the People's Republic of China* (Accession Protocol) and Article XI:1 of the *General Agreement on Tariffs and Trade 1994* (GATT 1994).

The second matter on which the United States has requested the establishment of a WTO dispute settlement panel concerns certain measures of China that impose market access restrictions or discriminatory limitations on foreign service providers seeking to engage in the distribution of publications, certain audiovisual home entertainment products, and sound recordings. In this regard, the measures at issue include the following, as well as any amendments and related or implementing measures:

- The Administrative Regulation on Publishing;
- The Administrative Regulations on Audiovisual Products;
- The Provisions on Guiding the Orientation of Foreign Investment;
- The Catalogue for Guidance of Foreign Investment Industries;
- The Several Opinions of the Ministry of Culture, State Administration of Radio, Film and Television, General Administration of Press and Publication, National Development and Reform Commission and the Ministry of Commerce on Introducing Foreign Investment into the Cultural Sector;
- The Administrative Regulations on Management of Foreign-Invested Book, Magazine and Newspaper Distribution Enterprises;
- The Administrative Regulations on the Publication Market (revised);
- The Administrative Regulations on Electronic Publications;
- The Administrative Measures on Subscription of Imported Publications;
- The Procedure for Examination and Approval of Establishment of Chinese-Foreign Entities, Cooperative Joint Ventures, and Wholly Foreign Owned Publication Distribution Enterprises;
- The Measures for Administration of Chinese Foreign Contractual Distribution Ventures of Audiovisual Products;
- The Interim Regulations on Internet Culture Administration;
- The Circular of the Ministry of Culture on Relevant Issues of Implementation of the Interim Regulations on Internet Culture Administration; and
- The Several Opinions on the Development and Regulation of Network Music.

It appears that these measures prohibit foreign service suppliers (including wholly or partially foreign-owned or foreign-invested enterprises) from engaging at least in certain types of distribution of publications and audiovisual home entertainment products within China. In addition, to the extent that some foreign service suppliers are allowed to engage in some aspects of the distribution of publications, there appear to be discriminatory requirements concerning such suppliers' registered capital, such suppliers' operating term, and the particular publications that such suppliers may distribute. The measures at issue also appear to establish different distribution opportunities for imported and domestically produced books, newspapers, and periodicals; imported books, newspapers and periodicals are restricted in their distribution opportunities. Furthermore, to the extent that foreign services suppliers are permitted to engage in any distribution of audiovisual home entertainment products, the measures at issue appear to impose requirements that the service be supplied through a form of entity that Chinese persons control, or in which Chinese persons have a dominant position, or for which there is a limitation on the participation of foreign capital.

Moreover, the measures at issue appear to prohibit any foreign-owned or foreign-invested entity from obtaining the licenses necessary to engage in certain types of ''internet cultural products,'' including sound recordings in digital form. In addition, to the extent that foreign service suppliers can engage in the distribution of sound recordings in digital form, the measures at issue appear to provide that any ''imported'' music is subject to content reviews by the Chinese Government before digital distribution. However, music in which rights are held by Chinese enterprises without foreign investment is not subject to such content review before digital distribution within China. Consequently, the measures at issue appear to accord foreign suppliers of sound recording distribution services less favorable treatment than that accorded to Chinese suppliers of sound recording distribution services.

The foregoing measures appear to USTR to be inconsistent with China's obligations under paragraphs 1.2 and 5.1 of Part I of the Accession Protocol, Article III:4 of the GATT 1994, and Articles XVI and XVII of the *General Agreement on Trade in Services* (GATS).

The third matter on which the United States has requested the establishment of a WTO dispute settlement panel concerns certain measures that provide distribution opportunities for imported films for theatrical release that are less favorable than the distribution opportunities for domestically produced films for theatrical release.

In this connection, the measures at issue include the following as well as

any amendments, related measures, or implementing measures:

- The Regulations on the Administration of the Films Industry;
- The Provisional Rules on the Entry Criteria for Operating Film Enterprises; and
- The Provisional Specific Implementing Rules for Reforming Film Distribution and Exhibition.

It appears that these measures establish a dual distribution system for imported and domestically produced films for theatrical release. Imported films can be distributed within China only by two entities, each of which operates on a nationwide basis. By contrast, domestically produced films can be distributed not only by those same two entities, but also by many other entities, including entities that operate on a local, provincial or other subnational basis.

Accordingly, the measures at issue appear to be inconsistent with China's obligations under the provisions of paragraphs 1.2 and 5.1 of Part I of the Accession Protocol and Article III:4 of the GATT 1994.

The fourth matter on which the United States has requested the establishment of a WTO dispute settlement panel concerns certain measures that provide less favorable distribution opportunities for sound recordings imported into China in physical form than for sound recordings produced in China.

In this regard, the measures at issue include the following, as well as any amendments and related or implementing measures:

- The Interim Regulations on Internet Culture Administration;
- The Circular of the Ministry of Culture on Relevant Issues of Implementation of the Interim Regulations on Internet Culture Administration;
- The Catalogue for Guidance of Foreign Investment Industries;
- The Several Opinions of the Ministry of Culture, the State Administration of Radio, Film and Television, the General Administration of Press and Publication, the National Development and Reform Commission and the Ministry of Commerce on Introducing Foreign Investment into the Cultural Sector; and
- The Several Opinions on the Development and Regulation of Network Music.

These measures appear to require that sound recordings imported into China in physical form but intended for digital distribution must undergo content review by the Chinese Government prior to such distribution within China. However, domestically produced sound recordings appear not to be subject to this requirement, but can instead be digitally distributed immediately. It thus appears that sound recordings imported into China in physical form are treated less favorably than sound recordings produced in China in physical form.

The foregoing measures appear to USTR to be inconsistent with China's obligations under provisions of paragraphs 1.2 and 5.1 of Part I of the Accession Protocol and Article III:4 of the GATT 1994.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments should be submitted (i) electronically, to *FR0708@ustr.eop.gov,* with ''China Trading Rights and Distribution Services (DS363)'' in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640, with a confirmation copy sent electronically to the electronic mail address above.

USTR encourages the submission of documents in Adobe PDF format as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Comments must be in English. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly designated as such and ''BUSINESS CONFIDENTIAL'' must be marked at the top and bottom of the cover page and each succeeding page. Persons who submit confidential business information are encouraged also to provide a non-confidential summary of the information.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions; the submissions, or non-confidential summaries of submissions, received from other participants in the dispute; the report of the panel; and, if applicable, the report of the Appellate Body. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the public file (Docket WTO/DS–363, China Trading Rights and Distribution Services Dispute) may be made by calling the USTR Reading Room at (202) 395–6186.

Daniel Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. E7–21962 Filed 11–7–07; 8:45 am]

BILLING CODE 3190–W8–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Extension Without Change, of a Currently Approved Information Collection: SF 2809

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for extension without change, of a currently approved information collection. SF 2809, Health Benefit Election Form, is used by Federal employees, annuitants other than those under the Civil Service

Retirement System (CSRS) and the Federal Employees Retirement System (FERS) including individuals receiving benefits from the Office of Workers' Compensation Programs, former spouses eligible for benefits under the Spouse Equity Act of 1984, and separated employees and former dependents eligible to enroll under the Temporary Continuation of Coverage provisions of the FEHB law (5 U.S.C. 8905a). A different form (OPM 2809) is used by CSRS and FERS annuitants whose health benefit enrollments are administered by OPM's Retirement Services Program.

Approximately 18,000 SF 2809 forms are completed annually. Each form takes approximately 30 minutes to complete. The annual estimated burden is 9,000 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, Fax (202) 418–3251 or via E-mail to *MaryBeth.Smith-Toomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Jay Fritz, Insurance Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3415, Washington, DC 20415; and Brenda Aguilar, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

For Information Regarding Administrative Coordination—Contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Howard Weizmann,

Deputy Director.

[FR Doc. E7–21952 Filed 11–7–07; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Extension Without Change, of a Currently Approved Information Collection: RI 25–51

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995 and 5 CFR part 1320), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for extension, without change, of a currently approved collection. RI 25–51, Civil Service Retirement System (CSRS) Survivor Annuitant Express Pay Application for Death Benefits, will be used by the Civil Service Retirement System solely to pay benefits to the widow(er) of an annuitant. This application is intended for use in immediately authorizing payments to an annuitant's widow or widower, based on the report of death, when our records show the decedent elected to provide benefits for the applicant.

Approximately 34,800 RI 25–51 forms are completed annually. The form takes approximately 30 minutes to complete. The annual estimated burden is 17,400 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or E-mail to *MaryBeth.Smith-Toomey@opm.gov*. Please include your mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Deputy Assistant Director, Retirement Services Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500; and Brenda Aguilar, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

For Information Regarding Administrative Coordination—Contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Howard Weizmann,

Deputy Director.

[FR Doc. E7–21954 Filed 11–7–07; 8:45 am]

BILLING CODE 6325–38–P

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: Wednesday, November 14, 2007, at 12:30 p.m.; and Thursday, November 15, 2007, at 8:30 a.m. and 10:30 a.m.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

STATUS: November 14—12:30 p.m.—Closed; November 15—8:30 a.m.—Open; November 15—10:30 a.m.—Closed.

MATTERS TO BE CONSIDERED

Wednesday, November 14 at 12:30 p.m. (Closed)

1. Strategic Issues.
2. Audit and Finance Committee Report and Review of FY 2007 Year-End Financial Statements.
3. Financial Update.
4. Rate Case Update.
5. Postal Regulatory Commission Opinion and Recommended Decision in Negotiated Service Agreement with Bank of America, Docket No. MC2007–1.
6. Labor Negotiations Update.
7. Personnel Matters and Compensation Issues.
8. Governors' Executive Session—Discussion of prior agenda items and Board Governance.

Thursday, November 15 at 8:30 a.m. (Open)

1. Minutes of Previous Meeting, September 24–26, 2007.
2. Remarks of the Chairman and Vice Chairman of the Board.
3. Remarks of the Postmaster general and CEO Jack Potter.
4. Committee Reports.
5. Quarterly Report on Service Performance.
6. Consideration of Fiscal Year 2007 Audited Financial Statements.
7. Tentative Agenda for the December 10–11, 2007, meeting in Washington, DC.

Thursday, November 15 at 10:30 a.m. (Closed)—if needed.

1. Continuation of Wednesday's closed session agenda.

CONTACT PERSON FOR MORE INFORMATION: Wendy A. Hocking, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

Wendy A. Hocking,

Secretary.

[FR Doc. 07–5605 Filed 11–6–07; 1:38 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56738; File No. PCAOB–2006–03]

Public Company Accounting Oversight Board; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to Inspections

November 2, 2007.

I. Introduction

On December 20, 2006, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''Commission'') proposed rule amendments (PCAOB–2006–03) pursuant to section 107(b) of the Sarbanes-Oxley Act of 2002 (the ''Act''), relating to the Board's rules governing inspections of registered public accounting firms. On May 31, 2007, the Board amended its filing because certain of the information described in the original filing had changed. Notice of the proposed rule amendments, including Amendment No. 1 to the proposed amendments, was published in the **Federal Register** on October 1, 2007.[1] The Commission received no comment letters relating to the proposed rule amendments. For the reasons discussed below, the Commission is granting approval of the proposed rule amendments.

II. Description

The PCAOB adopted its initial inspection rules at its public meeting on October 7, 2003, and authorized filing the rules with the Commission. After the appropriate comment period, the Commission approved the rules on June 1, 2004. On December 19, 2006, the PCAOB adopted amendments to its inspection rules to temporarily adjust the inspection frequency requirements for firms with 100 or fewer issuer audit clients and to provide for technical amendments to PCAOB Rule 4006, *Duty to Cooperate with Inspectors,* and PCAOB Rule 4009, *Firm Response to Quality Control Defects.* The PCAOB solicited public comments on the proposed amendments at that time. After reviewing the public comments received on the proposed amendments, the PCAOB adopted Amendment No. 1 to the proposed amendments and submitted an amended Form 19b–4 proposed rule change to the Commission. Pursuant to the requirements of section 107(b) of the Act and section 19(b) of the Securities Exchange Act of 1934 (the ''Exchange Act''), the Commission published the proposed amendments for public comment on October 1, 2007.

III. Discussion

The Commission received no public comments relating to the PCAOB's proposed amendments relating to its rules governing inspections of registered public accounting firms. Section 104 of the Act requires the PCAOB to conduct a continuing program of inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with the Act, the rules of the PCAOB, the rules of the Commission, and professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers. Section 104(b)(1)(B) of the Act requires the PCAOB to conduct an inspection, at least once every three years, of each registered firm that regularly provides audit reports for 100 or fewer issuers, and section 104(b)(2) of the Act authorizes the PCAOB to adopt rules adjusting that frequency.

In 2003, the PCAOB adopted Rule 4003(b), which provides that the PCAOB will conduct inspections, on a triennial basis, not only of each firm that regularly provides audit reports for 100 or fewer issuers, but also of any firm that issues any audit report or that plays a substantial role in the preparation or furnishing of an audit report. In the course of inspection planning, including in connection with the Board's budget process, the Board identified a way in which a temporary adjustment to Rule 4003 would, over time, maximize the Board's ability to allocate its inspection resources more evenly, consistently, and effectively year-to-year. The Board explained that the issue arises because the first three years of inspections, 2004 to 2006, coincided with the Board's initial growth period and, as a consequence, the resources available for and devoted to the inspections of firms with 100 or fewer issuer audit clients increased from year to year. The resources available in each year necessarily informed the extent of the inspection work performed in that year, including with respect to both the numbers of firms inspected and the size of firms inspected. This resulted in a year-to-year fluctuation that, because of the minimum frequency requirements of Rule 4003(b), the Board would to some extent be locked into repeating in succeeding three-year periods.

On December 19, 2006, the PCAOB adopted a proposed amendment to its Rule 4003 to temporarily adjust the minimum inspection frequency requirement applicable to certain firms. The Board explained that the proposed amendment will allow the Board to approach long-term inspection planning with the flexibility to eliminate the fluctuation generated in the start-up cycle, including the flexibility to make adjustments that will result in a relatively consistent, from year to year, mix of firms in terms of the size and nature of audit practice.

The proposed amendment to PCAOB Rule 4003 provides that, with respect to firms that became registered in 2003 or 2004, (1) the PCAOB need not conduct the firm's first inspection sooner than the fourth year after the firm, while registered, first issues an audit report or plays a substantial role in an audit, and (2) the PCAOB need not conduct the firm's second inspection sooner than the fifth year after the firm, while registered, first issues an audit report or plays a substantial role. Amendment No. 1 to the proposed amendments removes a sunset provision relating to Rule 4003 from the proposed amendments, which would have caused the proposed amendment to Rule 4003 to expire on June 30, 2007. The proposed amendments also include technical amendments to make corrections to PCAOB Rules 4006 and 4009.

The proposed amendments do not limit the PCAOB's authority to conduct inspections at any time, and do not affect registered firms' obligations under the Act. Even with this adjustment, the Board expects that each U.S. firm that issued an original audit report in 2003 or 2004 after registering with the Board will have its first inspection within the three-year period after first issuing an original audit report. The flexibility provided by the adjustment would come into play principally with respect to the timing of the second inspection of some of those firms, the timing of the first two inspections of some non-U.S. firms, and the timing of inspections of firms that play a substantial role but do not issue audit reports. The adjustment would have no continuing effect on the timing of any inspections after the second inspections of firms that registered in 2003 and 2004, and would have no effect on the timing of any inspection of any firm that registered after 2004. As the Board explained, the adjustment will facilitate the reduction of certain year-to-year fluctuations in the inspection program, which otherwise could interfere with the Board's ability to implement a program consistently and effectively with relatively stable resources from year to year. The adjustment will accomplish this while delaying only a relatively small portion

[1] *See* SEC Release No. 34–56517 (Sep. 25, 2007); 72 FR 55839 (October 1, 2007).

of inspections, and delaying them only for a short period.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed amendments to the Board's rules governing inspections of registered public accounting firms are consistent with the requirements of the Act and the securities laws and are necessary and appropriate in the public interest and for the protection of investors.

It is therefore ordered, pursuant to section 107 of the Act and section 19(b)(2) of the Exchange Act, that the proposed rule amendments (File No. PCAOB–2006–03) be and hereby are approved.

By the Commission.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–21910 Filed 11–7–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56725; File No. SR–Phlx–2007–82]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Market Access Provider Subsidy Section of the Exchange's Fee Schedule

October 31, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 23, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been substantially prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend the Exchange's fee schedule to reflect a Market Access Provider (''MAP'') Marketing Subsidy of $25,000.00 per month for a maximum of three months.

The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.Phlx.com/exchange/phlx-rule-fil.htm.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide marketing incentives to Exchange member organizations, and to encourage additional options order flow to the Exchange.

Market Access Provider

In August 2007, the Exchange amended its fee schedule to provide a per contract subsidy (the ''Subsidy'') for certain Exchange members known as MAPs.[3] A MAP is an Exchange member organization that offers to customers automated order routing systems and electronic market access to U.S. options markets. The Exchange pays a per-contract MAP Subsidy to any Exchange member organization that qualifies as a MAP (an ''Eligible MAP'')[4] who elects to participate by submitting any application(s) and/or form(s) required by the Exchange and complying with other conditions.

The Proposal

The proposal would provide an incentive for Eligible MAPs to market the Exchange as a destination for orders routed by the MAP. Specifically, the Exchange would pay a MAP Marketing Subsidy of $25,000.00 per month, for a maximum of three months (totaling $75,000.00), to Eligible MAPs, in addition to the current per-contract Subsidy.

The MAP Marketing Subsidy is intended to be used by the Eligible MAP to: (i) Promote the Subsidy program; (ii) provide technical assistance and information to its customers on the equity options order routing functionality that pertains to the Subsidy program; and (iii) analyze the volume based usage of such order routing functionality by the Eligible MAP and its customers, in each case with a view towards the successful launch of the Eligible MAP's participation in the Subsidy for Eligible MAPs.

The maximum aggregate Marketing Subsidy that an Eligible MAP would be entitled to receive is $75,000 (*i.e.*, 3 monthly payments). The Exchange's obligation to pay this Marketing Subsidy will be conditioned upon (a) execution by the Eligible MAP of an agreement to function as a MAP with the Exchange and compliance in all respects with the requirements specified therein, and (b) continued participation of the Eligible MAP in the Subsidy program, including compliance in all respects with the requirements of the program.

The Exchange believes that the MAP Marketing Subsidy should assist MAPs in their marketing efforts to route order flow to the Exchange, which should, in turn, encourage more options order flow to the Exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act[5] in general, and furthers the objectives of section 6(b)(5) of the Act[6] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest by enhancing the Exchange's competitive position by providing the MAP Marketing Subsidy to Eligible MAPs and increasing order flow to the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56274 (August 16, 2007), 72 FR 48720 (August 24, 2007) (SR–Phlx–2007–54).

[4] The term ''Eligible MAP'' is defined in current footnote 4(b) of the Market Access Provider Subsidy section of the Exchange's fee schedule (the instant proposal would re-number that footnote to 5(b)).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing with the Commission pursuant to section 19(b)(3)(A)(ii) of the Act[7] and Rule 19b–4(f)(2) thereunder,[8] in that the proposed rule change establishes or changes a member due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2007–82 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–Phlx–2007–82. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. 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–Phlx–2007–82 and should be submitted on or before November 29, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–21879 Filed 11–7–07; 8:45 am]

BILLING CODE 8011–01–P

[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).

DEPARTMENT OF STATE

[Public Notice: 5986]

30-Day Notice of Proposed Information Collection: Form DS–1998, Foreign Service Officer Test Registration Form, OMB Control Number 1405–0008

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Foreign Service Officer Test Registration Form.
- *OMB Control Number:* 1405–0008.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Human Resources, HR/REE/BEX.
- *Form Number:* DS–1998E.
- *Respondents:* Registrants for the Foreign Service Officer Test.
- *Estimated Number of Respondents:* 20,000.
- *Estimated Number of Responses:* 20,000.
- *Average Hours Per Response:* 3 hours.
- *Total Estimated Burden:* 60,000 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from November 8, 2007.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- *E-mail: kastrich@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Mail (paper, disk, or CD–ROM submissions):* Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503.
- *Fax:* 202–395–6974.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Stephen J. Blake, HR/REE/BEX, SA–1, 2401 E Street, H–518, Washington, DC 20522, who may be reached on 202–261–8898 or at *blakesj@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond.

Abstract of Proposed Collection

Individuals registering for the Foreign Service Officer Test will complete a Registration Form that consists of an application form and six personal narrative questions about experience and qualifications. This includes information about their name, age, Social Security Number, contact information, ethnicity, education and work history, military experience, and their knowledge, skills and abilities they would bring to the Foreign Service. The information will be used to prepare and

issue admission to the Foreign Service Officer Test, to assess registrants' qualifications for selection as a Foreign Service Officer, to provide data useful for improving future tests, and to conduct research studies based on the test results.

Methodology

Responses can be submitted electronically.

Dated: October 9, 2007.

Ruben Torres,

Executive Director, HR/EX, Department of State.

[FR Doc. E7–21940 Filed 11–7–07; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF STATE

[Public Notice 5987]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Future Leaders Exchange Civic Education Workshop

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C/PY–08–03.

Catalog of Federal Domestic Assistance Number:

Key Dates: Spring 2008.

Application Deadline: January 3, 2008.

Executive Summary: The Office of Citizen Exchanges, Youth Programs Division of the Bureau of Educational and Cultural Affairs announces an open competition for the conduct of a spring 2008 Civic Education workshop for students participating in the academic year Future Leaders Exchange (FLEX) program. The goal of the workshop is to broaden the participants' knowledge and understanding of the democratic concepts that are integral to a civil society and provide them with tools they can take home to utilize as future leaders of their countries. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to develop and conduct a one-week workshop in Washington, DC, in Spring 2008 on elements of a civil society. The workshop should include approximately 110 high school students from 11 Eurasian countries (Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan) who are attending school in the United States during the 2007/08 academic year. Workshop participants will be selected through an essay contest from among a group of 1,100 students who are participating in the academic year component of the Division's Future Leaders Exchange program. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose

This workshop should provide an opportunity for participants to gain a better understanding of the democratic concepts and values that are an integral part of American society and culture. Concepts such as citizen empowerment, volunteerism, community action, and debate should be included in program components. The program should also enable participants to learn firsthand about the federal system of government, observe government institutions, hear about and discuss issues on the federal agenda, and interact with government officials. Dedicated time blocks should be provided for exposure to and education about the American electoral process, taking into account the upcoming U.S. presidential election. Special attention also should be paid to those issues that will be particularly significant to people from the countries of the former Soviet Union.

Responsibilities

The recipient of the grant is responsible for developing and conducting the Civic Education Workshop based on the Project Objectives, Goals and Implementation (POGI) guidelines. The grantee organization will also be responsible for coordinating travel arrangements for each Workshop participant from his/her host community to Washington, D.C., and return, and for providing room and board for students during their time in Washington. The program should be arranged for seven days, including arrival and departure. The grantee organization will be provided with the names of the academic year students who will have been chosen for the Spring Workshop after competing in an essay contest. The essays will have been reviewed by independent, objective, specially-trained selectors.

Guidelines

The Workshop should be held in late winter or early spring 2008 during a time when Congress is in session. Proposals must effectively describe the organization's ability to accomplish the following essential components of the program:

1. Provide a one-week Civic Education workshop in Washington, DC, as described above and held at the time period indicated. Program components should include sessions on U.S. domestic and foreign policy, the role of the media in a civil society, citizen empowerment, volunteerism and community activism, and federalism.
2. In coordination with the Bureau's Youth Programs Division (ECA/PE/C/PY), provide pre-program training for organization staff on the society and culture of participating countries.
3. Provide housing and meals for all students throughout the workshop.
4. Arrange roundtrip travel for participants from their U.S. host communities to Washington, DC, in coordination with FLEX placement organizations. (Note: Students will likely be coming from most of the 50 states.) Provide ground transportation for Workshop students in the DC area, including to and from Dulles Airport.
5. Provide opportunities to attend cultural events, and visit museums and monuments.
6. Coordinate with ECA/PE/C/PY and the Office of Legislative Affairs (H) in making appropriate arrangements for individual meetings for all Workshop participants with their respective Members of Congress (Senators and/or Representative).
7. Provide staff to assist in case of medical emergencies.
8. Incorporate a Workshop program component designed to facilitate students' transition from the DC program back to their host communities. Include a description of the ways in which all students will be encouraged to share what they have learned, both in their U.S. host communities and when they return to their home countries.
9. Provide a mechanism for evaluation of the program in terms of its impact on

the students and its success in fulfilling the objectives.

A competitive proposal will incorporate important elements of American culture in sessions that are largely interactive and designed to appeal to high school-age students. The workshops must be substantive and academic while, at the same time, be paced realistically to meet the needs of young people.

Significant cost sharing is important since it will enable a greater number of students to participate. Therefore, those proposals that show more generous and creative cost sharing will be deemed more competitive. Please refer to the Program Objectives, Goals, and Implementation section of the Solicitation Package for greater detail regarding the design of component parts as well as other program information.

II. Award Information

Type of Award: Grant Agreement.

Fiscal Year Funds: FY 2008.

Approximate Total Funding: $178,000.

Approximate Number of Awards: 1.

Anticipated Award Date: Pending availability of funds, March 2008.

Anticipated Project Completion Date: September 2008.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, the grantee organization must maintain written records to support all costs which are claimed as its contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event the organization does not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

(a.) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding one grant, in an amount up to $178,000 to support program and administrative costs required to implement this program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. As stated above, the Bureau encourages applicants to provide maximum levels of cost-sharing and funding from private sources in support of its programs.

(b.) Technical Eligibility: All proposals must comply with the Application and Submission requirements described below or they will result in your proposal being declared technically ineligible and given no further consideration in the review process.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information To Request an Application Package

The Office of Citizen Exchanges, Youth Programs Division (ECA/PE/C/PY), Room 568, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, telephone (202) 203–7513; fax (202) 203–7529; e-mail: *BeachLF@state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. It also contains the POGI document, which provides specific information, award criteria and budget instructions tailored to this competition. Please refer to the Funding Opportunity Number (ECA/PE/C/PY–08–03) located at the top of this announcement when making your request. Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

Please specify ECA Program Officer Diana Aronson and refer to the Funding Opportunity Number on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm*, or from the grants.gov Web site at *http://www.grants.gov*. Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f., ''Application Deadline and Methods of Submission'' section, below.

IV.3a. Application Deadline and Methods of Submission: Applicants are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF—424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget. Please refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the POGI for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to All Regulations Governing the J Visa: The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving grants under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of grantee program organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR part 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.*

The Bureau of Educational and Cultural Affairs places critically important emphases on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from:

United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD–SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203–5029, FAX: (202) 453–8640.

IV.3d.2 Diversity, Freedom and Democracy Guidelines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to, ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation: Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes*. *Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes*, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.

2. *Participant learning*, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. *Participant behavior*, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

The grantee organization will be required to provide reports analyzing its evaluation findings to the Bureau in its regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget: Applicants must submit a comprehensive budget for the entire program. The award may not exceed $178,000. There must be a summary budget, as well as breakdowns

reflecting both administrative and program budgets.

Organizations must bid on arranging a program for a minimum of 110 students but may increase the number of participants through cost sharing the additional expenses incurred. Proposals that maximize the number of students will be favorably viewed. One grant will be awarded for this activity.

Please refer to the Solicitation Package for further details, including a list of allowable costs for the program, complete budget guidelines, and formatting instructions.

IV.3f. Application Deadline and Methods of Submission: *Application Deadline Date:* Thursday, January 3, 2008. *Reference Number:* ECA/PE/C/PY–08–03. *Methods of Submission:* Applications may be submitted in one of two ways:

(1.) In hard-copy, via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2.) Electronically through *http://www.grants.gov*.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory PSI of the solicitation document.

IV.3f.1 Submitting Printed Applications: Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and seven copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–08–03, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

IV.3f.2 Submitting Electronic Applications:

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov. Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, Contact Center Phone: 800–518–4726. Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time. E-mail: *support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Applicants will receive a confirmation e-mail from grants.gov upon the successful submission of an application. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes. IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission, as well as the objectives of the FLEX program. Program design must reflect an understanding of young people and of cultural traits that would be specific to this population.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact/follow on:* Proposed programs should describe the impact that workshop participants will have on others, both in their U.S. host communities and in their respective Eurasian country after they return home. There should be a plan for providing students with tools they can take back to their Eurasian home countries to implement concepts and ideas they have gained from the workshop. Proposals also should explain how

participants will be prepared to transition back to their host communities.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (program venue and program evaluation) and program content (topics of program sessions and meetings, resource materials and follow-up activities).

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives are recommended. The successful applicant will be expected to submit a final report.

9. *Cost-effectiveness/Cost-sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments.''

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants* and *http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.*

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus one copy of a final program and financial report no more than 90 days after the expiration of the award.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Diana S. Aronson, Office of Citizen Exchanges/Youth Programs Division, ECA/PE/C/PY, Room 568, ECA/PE/C/PY–08–03, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, Telephone (202) 203–7501, Fax (202) 203–7529, e-mail *AronsonDS@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY–08–03.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: October 29, 2007.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–21942 Filed 11–7–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance, James M. Cox Dayton International Airport, Dayton, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the release of 6.03 acres of airport property for the development of a corporate facility. The land consists of 2 parcels. Both parcels were acquired under grant 9–33–025–C813. There are no impacts to the airport by allowing the airport to lease the property. The land is not needed for aeronautical use. Approval does not constitute a commitment by the FAA to financially assist in the lease of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the lease of the airport property will be in

accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999. In accordance with section 47107 (h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before December 10, 2007.

ADDRESSES: Written comments on the Sponsor's request must be delivered or mailed to: Irene R. Porter, Program Manager, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, MI 48174.

FOR FURTHER INFORMATION CONTACT: Irene R. Porter, Program Manager, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–607, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number (734–229–2915)/FAX Number (734–229–2950). Documents reflecting this FAA action may be reviewed at this same location or at James M. Cox Dayton International Airport, Dayton, Ohio.

SUPPLEMENTARY INFORMATION: *Parcel 1 Legal Description:*

Situated in the City of Dayton, County of Montgomery, being part of Lot numbered 81143 of the consecutive numbers of lots on the revised plat of said City of Dayton, being more particularly described as follows:

Beginning at the centerline intersection of Peters Pike and vacated Old Springfield Pike; thence with the centerline of Peters Pike North 00° 15′ 59″ West 31.08 feet to a point; thence North 89° 44′ 01″ East 30.00 feet to a point in the east right of way of said Peters Pike; thence along the future north right of way of Old Springfield Pike North 87° 40′ 00″ East 1305.41 feet to a point; thence continuing with said right of way South 89° 09′ 51″ East 239.21 feet to a point, said point being the POINT OF BEGINNING OF THE PARCEL herein described; thence leaving said Right of Way North 00° 15′ 59″ West 747.08 feet to a point; thence North 89° 44′ 02″ East 321.58 feet to a point; thence South 00° 15′ 59″ East 747.08 feet to a point in the future North Right of Way of Old Springfield Pike; thence continuing with said Right of Way South 89° 44′ 02″ West 321.58 feet to the true point of beginning, containing 5.515 acres more or less.

Parcel 2 Legal Description:

Situated in the City of Dayton, County of Montgomery, State of Ohio, and being part of Lot 81143 of the consecutive lot numbers in the City of Dayton and being more particularly described as follows:

Beginning at the centerline intersection of Peters Pike and vacated Old Springfield Pike; thence with the centerline of Peters Pike North 00° 15′ 59″ West 31.08 feet to a point; thence North 89° 44′ 01″ East 30.00 feet to a point in the east right of way of said Peters Pike; thence along the future north right of way of Old Springfield Pike North 87° 40′ 00″ East 1305.41 feet to a point; thence continuing with said right of way South 89° 09′ 51″ East 239.21 feet to a point, thence north 89° 44′ 02″ East a distance of 321.58 feet, said point being THE TRUE POINT OF BEGINNING OF THE LEASED PARCEL herein described; thence leaving said right of way North 00° 15′ 59″ West 747.08 feet to a point; thence North 89° 44′ 02″ East 30.00 feet to a point; thence South 00° 15′ 59″ East 747.08 feet to a point; thence South 89° 44′ 02″ West 30.00 feet to the true point of beginning, containing 0.515 acres more or less, subject to all public roads and easements of record.

Issued in Romulus, Michigan, on October 31, 2007.

Matthew J. Thys,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 07–5542 Filed 11–07–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 15, 2007, vol. 72, no. 157, page 45864. FAR Part 43 prescribes the rules governing maintenance, rebuilding, and alteration of aircraft and aircraft components, and is necessary to ensure this work is performed by qualified persons, and at proper intervals.

DATES: Please submit comments by December 10, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov*.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Maintenance, Preventive Maintenance, Rebuilding, and Alteration.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2120–0020.

Forms(s): FAA Form 337.

Affected Public: An estimated 828,498 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden Per Response: Approximately 8.6 hours per response.

Estimated Annual Burden Hours: An estimated 2,374,434 hours annually.

Abstract: FAR Part 43 prescribes the rules governing maintenance, rebuilding, and alteration of aircraft and aircraft components, and is necessary to ensure this work is performed by qualified persons, and at proper intervals. This work is done by certified mechanics, repair stations, and air carriers authorized to perform maintenance.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on November 2, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 07–5572 Filed 11–07–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 15, 2007, Vol. 72, No. 157, page 45863. This report is necessary to establish qualifications of eligibility to receive voluntary psychological training with the U.S. Air Force and will be used as proper evidence of training.

DATES: Please submit comments by December 10, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov*.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Physiological Training.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0101.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: An estimated 5,500 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden Per Response: Approximately 8 minutes per response.

Estimated Annual Burden Hours: An estimated 733 hours annually.

Abstract: This report is necessary to establish qualifications of eligibility to receive voluntary psychological training with the U.S. Air Force and will be used as proper evidence of training. The information is collected from pilots and crewmembers for application to receive voluntary training.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on November 2, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 07–5573 Filed 11–07–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTAION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 15, 2007, vol. 72, no. 157, pages 45861–45862. The FAA collects information from airport sponsors and planning agencies in order to administer the Airports Grants Program.

DATES: Please submit comments by December 10, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Airports Grants Program.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2120–0569.

Form(s): Forms 5100–100, 5100–101, 5100–108, 5100–126, 5100–127, 5370–1.

Affected Public: An estimated 1,950 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 8.6 hours per response.

Estimated Annual Burden Hours: An estimated 78,017 hours annually.

Abstract: The FAA collects information from airport sponsors and planning agencies in order to administer the Airports Grants Program. Data is used to determine eligibility, ensure proper use of Federal Funds, and ensure project accomplishments.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on November 2, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 07–5574 Filed 11–7–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2006–25755]

Operating Limitations at New York LaGuardia Airport; Notice of Order

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of order.

SUMMARY: On August 7, 2007, the FAA proposed amendments to the December 12, 2006, order (the Order) that temporarily limits flight operations at New York's LaGuardia Airport (LaGuardia). Under the Order, the FAA limited scheduled and unscheduled operations at the airport to prevent congestion-related delays associated with LaGuardia's limited runway capacity. The FAA is issuing amendments to the Order as proposed with little modification.

FOR FURTHER INFORMATION CONTACT: Komal K. Jain, Office of the Chief

Counsel, Regulations Division, AGC–240, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3073.

SUPPLEMENTARY INFORMATION:

The FAA's authority to limit the number of flight operations at LaGuardia is an essential component of the FAA's statutory responsibilities. The FAA holds broad authority under 49 U.S.C. 40103(b) to regulate the use of the navigable airspace of the United States. This provision authorizes the FAA to develop plans and policy for the use of navigable airspace and, by order or rule, to regulate the use of the airspace as necessary to ensure its efficient use.

On August 7, 2007, the FAA proposed to modify its December 12, 2006, Order that temporarily limits the flight operations at LaGuardia pending the promulgation of a long-term regulation to manage congestion at the airport. 72 FR 44214. The Agency proposed to (1) provide an approval process for Operating Authorization (OA) transfers for ''day-of'' carrier substitutions; (2) amend provisions affecting the 80 percent minimum use requirement by adding a waiver for holiday periods and providing the Administrator greater discretion to suspend the requirement under certain conditions; and (3) provide a mechanism for withdrawal of OAs for FAA operational reasons.

I. Background

LaGuardia's runway capacity cannot accommodate the number of arrivals and departures that carriers would like to operate without the development of significant congestion. Until January 1, 2007, the FAA limited the number of operations at the airport through implementation of the High Density Rule and the Buy-Sell Rule (or slot rules), 14 CFR part 93, subparts K and S. In 2000, out of concern over the collateral effects of the slot rules at LaGuardia on airport access and competition, Congress included a provision in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) that terminated the LaGuardia slot rules as of January 1, 2007.[1] In anticipation of the HDR's expiration, the FAA proposed a long-term rule that would limit the number of scheduled and unscheduled operations at LaGuardia.[2] Because the FAA could not complete that rulemaking by January 1, the FAA issued the Order and adopted temporary limits that will remain in place until the rulemaking is completed. Without such operational limitations, the FAA expected severe congestion-related delays would occur, both at LaGuardia and at other airports throughout the National Airspace System (NAS) as a result of capacity constraints at LaGuardia.

Under the Order, the FAA (1) maintains the current hourly limits on scheduled (75) and unscheduled (six) operations at LaGuardia during peak period; (2) imposes an 80 percent minimum usage requirement for OAs; (3) provides for a lottery to reallocate withdrawn, surrendered or unallocated OAs; and (4) allows for trades and leases of OAs for consideration for the duration of the Order.

On August 7, 2007, the FAA proposed to modify the Order to (1) provide an approval for OA transfers for ''day-of'' carrier substitutions; (2) amend provisions affecting the 80 percent minimum use requirement by adding a waiver for holiday periods and providing the Administrator greater discretion to suspend the requirement under certain conditions; and (3) provide a mechanism for withdrawal of OAs for FAA operational reasons (August 2007 notice). The FAA requested written comments to its proposed changes. The comment period closed on September 6, 2007.

II. Discussion of Written Submissions and the Final Order

In response to a request for written comments, 12 respondents expressed views on the FAA's proposed amendments to the Order. The respondents included eight air carriers (American Airlines (American), US Airways, Delta Air Lines, Northwest Airlines, United Airlines, jetBlue Airways Corp. (jetBlue), Air Canada, and Pinnacle Airlines Group (Pinnacle)), three air carrier organizations (Regional Airline Association (RAA), Air Carrier Association of America (ACAA) and Air Transport Association of America (ATA)), and the Port Authority of New York and New Jersey (Port Authority).

Overall, the commenters supported the FAA's effort to address concerns that were overlooked or not identified at the time the Order was issued. Several commenters also raised issues that were beyond the scope of the proposed amendments, including elimination of the Perimeter Rule, creation of a buy/sell secondary market, and the withdrawals of OAs for immediate redistribution to limited incumbents. The FAA therefore is not responding to those issues. The FAA, however, has chartered an Aviation Rulemaking Committee (ARC) to address the congestion at the New York City area airports, and these issues are expected to be part of the ARC deliberations. The FAA's discussion of remaining comments follows.

Secondary Market: Approval Process for ''Day-of'' Transfers

As discussed in the August 2007 notice, some air carriers have expressed concerns about the administrative burden associated with obtaining prior approval from the FAA for OA transfers when making ''day-of'' carrier substitutions between affiliated or regional carriers under the marketing control of a single air carrier. Due to the around-the-clock nature of an airline's operations, and the real-time nature of operational logistics, it is not unusual for an air carrier to make ''day-of'' flight service substitutions from one affiliated carrier to another to meet operational needs or to address schedule disruptions. The FAA recognizes that advance approval of an OA transfer for these last-minute carrier substitutions is not always possible, in part because of the coordination required between air carrier operation centers and scheduling or marketing departments and because the FAA Slot Administration Office is not open 24 hours a day. Therefore, it proposed to amend the Order to permit a transfer request to be submitted for FAA approval up to 72 hours after the actual operation.

While the FAA received general support for its efforts to streamline the reporting burden associated with obtaining approvals for transfers between marketing carriers and the operating carriers under their marketing control, several air carriers, ATA and RAA argued that it did not go far enough. ATA and RAA, among others, would have the FAA treat these transactions as ''substitutions'' rather than ''transfers'' among commonly owned and affiliated carriers and, therefore, take them out of the secondary market purview. US Airways further argued that ''once [OAs] are obtained by a carrier, the FAA's only real concern ought to be ensuring compliance with the minimum usage requirements * * * [T]racking of which individual carrier is operating under the ''US'' marketing code seems an unnecessary resource drain on both airlines and the FAA.''

The FAA recognizes there is a significant paperwork responsibility associated with the transfer approval process, and is trying to lessen this burden on carriers while also

[1] 49 U.S.C. 41715(a)(2), enacted by Pub. L. No. 106–181, § 231, 114 Stat. 61, 106–10 (2000).

[2] 71 FR 51360 (August 29, 2006); Docket FAA–2006–25709.

maintaining an accurate record of which air carrier is flying under each OA at any particular time. This is not simply a matter of monitoring operations for minimum use requirements, as US Airways suggests. Under this Order, the FAA limits the number of operations that can occur at LaGuardia and, therefore, has a significant interest and responsibility in ensuring that only carriers with OAs conduct flights at the airport during the allocated time periods. Air carriers may have marketing agreements with many other carriers to operate flights on their behalf, with varying degrees of scheduling or operational control. One carrier may even operate for multiple marketing carriers at the same airport. The FAA monitors operations through several mechanisms including usage reports, published flight schedules, and flight plans filed with FAA Air Traffic Control (ATC). Communication with ATC facilities, including flight plans, require authorized FAA identifiers and call signs that are unique to the operating carrier and do not signify information as to the marketing or selling carrier of the flight. In order for the FAA to have accurate record detailing which carriers are authorized to operate at the airport, approval requests for the transfer of OAs are generally required in advance if they are to be operated by a carrier other than the holder listed on FAA records. This amendment is adopting a very limited exception to provide flexibility for ''day-of'' operational needs.

However, as requested by US Airways under its comment submission, the FAA is willing to provide more time for carriers to inform the FAA of its transfers. Under the Order, the FAA provides carriers five business days, instead of the proposed 72 hours, to submit requests for OA transfer approvals for ''day-of'' transfers among commonly owned and affiliated carriers. This additional time also allows carriers to submit more transfer approval requests under one cover, thereby reducing the number of transactions with the FAA.

As proposed, to support any request, carriers must provide flight information, including flight number, origin, destination and scheduled time of operation. While United commented that this is more information than is required by the FAA under the ''use or lose'' reports, the FAA distinguishes the two reporting requirements. Under this provision, in order to approve an after-the-fact transfer request, the FAA must verify that the substitution from one carrier to another resulted from the express need to conduct a specific flight. Without the above mentioned information, the FAA could not validate the request.

Minimum Usage Requirements and Waivers

Holiday Waiver

In response to the January 9, 2007, petition submitted by ATA,[3] the FAA proposed to treat as used any OA held by a carrier at LaGuardia on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Saturday in January. Most respondents supported the amendment, but Pinnacle and US Airways, asked that this provision be expanded to apply on the 4th of July, Memorial Day and Labor Day. JetBlue and ACAA, on the other hand, did not believe that waivers should be provided for any holiday periods. They argued that the FAA should ''encourage the efficient use of scarce air traffic system capacity'', and if holders of OAs do not fully maximize use of their OAs during holidays, they should be returned to the FAA for temporary redistribution. ACAA would further have the temporary OAs be made available to limited incumbents first.

The FAA first rejects the notion that the holiday waiver to the minimum use requirements be extended to additional days. In establishing the 80% minimum use requirement, the FAA specifically accounted for days in the year where there are drops in service, for planned and unplanned events, including holidays. The FAA, however, has traditionally provided the waiver for the days of Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Saturday in January because of reduced passenger demand at all airports and because they fall within the same 2-month reporting cycle for usage. Therefore, a majority of carriers would not meet the minimum requirement of 80 percent without potentially operating uneconomic flights.

To the extent that there are carriers that hold OAs during holidays and do not anticipate full usage and there are other carriers who desire OAs during those same days, the FAA suggests carriers avail themselves of the secondary leasing market. The FAA is not compelled to increase our management of OA usage and allocations under the Order during holiday periods. The Agency fully believes that a viable and practical solution already exists, and it urges carriers to take advantage of the leasing market.

Start-up Waiver

The FAA did not receive any adverse comments to the proposed amendment to waive the minimum use requirement for 120 days following the allocation of an OA by lottery. The provision is included in this amendment.

Administrator's Waiver Authority

Under the Order, the FAA Administrator can ''waive the 80 percent usage requirement in the event of a highly unusual and unpredictable condition which is beyond the control of the carrier and which exists for a period of 5 consecutive days or more.'' The FAA proposed the Administrator be given greater discretion to issue a waiver if the *impact* of a particular event is five consecutive days versus the duration of the event existing for more than five days. This provision recognizes that carrier operations may require several days to return to normal after significant disruptions to service.

Commenters supported this proposal, and the provision is included in this amendment.

Reversion and Withdrawal of Operating Authorizations

The Order currently does not provide a process for the FAA to reduce flight operations at the airport to meet operational needs or to recognize reductions in available airport capacity. The FAA, therefore, proposed to include such a mechanism and use a weighted lottery system. The Agency received a number of comments in response.

To the extent that certain respondents would have the FAA further refine this provision and have it affect operations at other airports in the New York area or commit to reducing the number of reservations made available to non-scheduled operators before scheduled operators, the FAA notes that these comments are outside the scope of this proposal and, therefore, will not be addressed.

Some carriers opposed the weighted lottery system. Delta argued that the proposal is ''unfair to carriers that operate substantial levels of service, and have made significant investments in operations.'' The FAA believes, however, that through the following explanation, Delta and others will have a better understanding of why the FAA continues to support the proposal and has decided to include it in the Order subject to one modification related to the baseline protection of 20 OAs.

Under the weighted lottery system, a lottery would be implemented each time

[3] See Docket FAA–2006–25755.

we needed to withdraw on OA. All air carriers holding OAs at the airport would be included, regardless of what period of the day needed to be depeaked. In this way, any air carrier operating at LaGuardia assumes the risk, based on its share of operations at the airport, of having OAs withdrawn. Weights will be established based on the proportionate share of OAs the carrier holds at the airport. For example, if an air carrier has a weight equal to 30, the carrier's name will be placed in a random draw 30 times. The random draw by an FAA representative would establish the order in which carriers need to relinquish OAs. While there is more of a likelihood that a carrier with greater operations at LaGuardia will be randomly chosen first, any air carrier holding OAs, including carriers with limited presence at the airport, as explained below, could be chosen. Carriers would relinquish two OAs in each sequence until the FAA's reduced level of operations by half-hour or hour, as appropriate, has been achieved.

The FAA proposed that a withdrawal would not be made from any carrier if the result would reduce its holdings to less than 20 OAs on any weekday. However, upon reconsideration, the FAA believes that every carrier serving LaGuardia should carry the potential burden, proportional to its share of OAs, of a withdrawal. As such, American is correct in its assertion that the FAA should not provide a 20 OA baseline protection from potential withdrawal.

The following illustrates how weights would be assigned to each air carrier in the lottery. On a weekly basis, there are a total of 6,750 available OAs at LaGuardia. Assume Carrier A has 4,000 OAs, Carrier B has 2,000 OAs; and Carrier C has 750 OAs.

Carrier A's share is 4,000/6,750 = .593.

Carrier B's share is 2,000/6,750 = .296.

Carrier C's share is 750/6,750 = .11.

Thus, the weight for each carrier rounded to the higher whole number is:

Carrier A = .593(100) = 60.

Carrier B = .296(100) = 30.

Carrier C = .11(100) = 11.

For these purposes, the FAA will consider commonly owned and affiliated carriers to be single air carriers.

Air Canada argued that their possible inclusion in a lottery violates the Air Transport Agreement between the Government of Canada and the Government of the United States and the 2005 US-Canada Open Skies Agreement in which the U.S. government agreed to provide Canadian carriers with a base level of 42 slots (OAs) at LaGuardia in the summer and winter seasons. The FAA has reviewed these agreements and believes that, as long as the Canadian carriers are subject to the same, non-discriminatory regulations as U.S. operator, no violation of the agreements would occur. This withdrawal system is only to be used in the event of reduced capacity at the airport. The FAA would not be able to engage this mechanism and draw down OA holdings for purposes such as providing U.S. or foreign airlines with OAs for international services or providing OAs for ''new entrants.'' Any OA that is withdrawn or temporarily suspended, if reallocated, will be reallocated to the carrier form which it was taken, provided that the carrier continues to operate scheduled service at LaGuardia.

III. Conclusion: The Amended Order

On August 7, 2007, the FAA proposed amendment to the Order, and solicited written views on the FAA's tentative determination to provide an approval process for OA transfers for ''day-of'' carrier substitutions; to amend provisions affecting the 80 percent minimum use requirement; and to provide a mechanism for withdrawal of OAs for FAA operational reasons. After considering the responses, the FAA has determined to amend the Order and adopt the proposal with two minor modifications. The Order, as amended, is recited below in its entirety.

A. Scheduled Operations

With respect to scheduled operations at LaGuardia:

1. The final Order governs scheduled arrivals and departures at LaGuardia from 6 a.m. through 9:59 p.m., Eastern Time, Monday through Friday and from 12 noon through 9:59 p.m., Eastern Time, Sunday.

2. The final Order takes effect on January 1, 2007, and will expire at the first change of scheduling season, as defined in 14 CFR, part 93, subpart B, occurring no less than 90 days after the issuance of a final rule regulating congestion at LaGuardia.

3. The FAA will assign operating authority to conduct an arrival or a departure at LaGuardia during the affected hours to the air carrier that holds equivalent slot or slot exemption authority under the High Density Rule of FAA slot exemption rules as of January 1, 2007; to the primary marketing air carrier in the case of AIR–21 small hub/nonhub airport slot exemptions; or to the air carrier operating the flights as of January 1, 2007, in the case of a slot held by a non carrier. The FAA will not assign operating authority under the final Order to any person or entity other than a certificated U.S. or foreign air carrier with appropriate economic authority under 14 CFR part 121, 129 or 135. The Chief Counsel of the FAA will be the final decision maker regarding the initial assignment of Operating Authorizations.

4. For administrative tracking purposes only, the FAA will assign an identification number to each Operating Authorization.

5. An air carrier can lease or trade an Operating Authorization to another carrier for any consideration, not to exceed the duration of the Order. Notice of a trade or lease under this paragraph must be submitted in writing to the FAA Slot Administration Office, facsimile (202) 267–7277 or e-mail *7-AWA-Slotadmin@faa.gov,* and must come from a designated representative of each carrier. The FAA must confirm and approve these transactions in writing prior to the effective date of the transaction. However, the FAA will approve transfers between carriers under the same marketing control up to 5 business days after the actual operation. This post-transfer approval is limited to accommodate operational disruptions that occur on the same day of the scheduled operation.

6. Each air carrier holding an Operating Authorization must forward in writing to the FAA Slot Administration Office a list of all Operating Authorizations held by the carrier along with a listing of the Operating Authorizations actually operated for each day of the two-month reporting period within 14 days after the last day of the two-month reporting period beginning January 1 and every two months thereafter. Any Operating Authorization not used at least 80 percent of the time over a two-month period will be withdrawn by the FAA except:

A. The FAA will treat as used any Operating Authorization held by an air carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Saturday in January.

B. The FAA will treat as used any Operating Authorization obtained by an air carrier through a lottery under paragraph 7 for the first 120 days after allocation in the lottery.

C. The Administrator of the FAA may waive the 80 percent usage requirement in the event of a highly unusual and unpredictable condition which is beyond the control of the air carrier and which affects carrier operations for a period of five consecutive days or more.

7. In the event that Operating Authorizations are withdrawn for non-use, surrendered to the FAA or are

unassigned, the FAA will determine whether any of the available Operating Authorizations should be reallocated. If so, the FAA will conduct a lottery using the provisions specified under 14 CFR 93.225. The FAA may retime an Operating Authorization prior to reallocation in order to address operational needs. When the final Order expires, any Operating Authorizations reassigned under this paragraph, except those assigned to new entrants or limited incumbents, will revert to the FAA for reallocation according to the reallocation mechanism prescribed in the final rule that succeeds the final Order.

8. If the FAA determines that a reduction in the number of allocated Operating Authorizations is required to meet operational needs, such as reduced airport capacity, the FAA will conduct a weighted lottery to withdraw Operating Authorizations to meet a reduced hourly or half-hourly limit for scheduled operations. The FAA will provide at least 45 days' notice unless otherwise required by operational needs. Any Operating Authorization that is withdrawn or temporarily suspended will, if reallocated, be reallocated to the air carrier from which it was taken, provided that the air carrier continues to operate scheduled service at LaGuardia.

9. The FAA will enforce the final Order through an enforcement action seeking a civil penalty under 49 U.S.C. 46301(a). An air carrier that is not a small business as defined in the Small Business Act, 15 U.S.C. 632, would be liable for a civil penalty of up to $25,000 for every day that it violates the limits set forth in the final Order. An air carrier that is a small business as defined in the Small Business Act would be liable for a civil penalty of up to $10,000 for every day that it violates the limits set forth in the final Order. The FAA also could file a civil action in U.S. District Court, under 49 U.S.C. 46106, 46107, seeking to enjoin any air carrier from violating the terms of the final Order.

B. Unscheduled Operations:[4]

With respect to unscheduled flight operations at LaGuardia:

1. The final Order applies to all operators of unscheduled flights, except helicopter operations, at LaGuardia from 6 a.m. through 9:59 p.m., Eastern Time, Monday through Friday and from 12 noon through 9:59 p.m., Eastern Time, Sunday.

2. The final Order takes effect on January 1, 2007, and will expire at the first change of scheduling season occurring no less than 90 days after the issuance of a final rule regulating congestion at LaGuardia.

3. No person can operate an aircraft other than a helicopter to or from LaGuardia unless the operator has received, for that unscheduled operations, a reservation that is assigned by the David J. Hurley Air Traffic Control System Command Center's Airport Reservation Office (ARO). Additional information on procedures for obtaining a reservation will be available via the Internet at *http://www.fly.faa.gov/ecvrs.*

4. Six (6) reservations are available per hour for unscheduled operations at LaGuardia. The ARO will assign reservations on a 30-minute basis.

5. The ARO receives and processes all reservation requests. Reservations are assigned on a ''first-come, first-served'' basis, determined as of the time that the ARO receives the request. A cancellation of any reservation that will not be used as assigned is required.

6. Filing a request for a reservation does not constitute the filing of an instrument flight rules (IFR) flight plan, as separately required by regulation. After the reservation is obtained, an IFR flight plan can be filed. The IFR flight plan must include the reservation number in the ''remarks'' section.

7. Air Traffic Control will accommodate declared emergencies without regard to reservations. Non-emergency flights in direct support of national security, law enforcement, military aircraft operations, or public-use aircraft operations will be accommodated above the reservation limits with the prior approval of the Vice President, System Operations Services, Air Traffic Organization. Procedures for obtaining the appropriate reservation for such flights are available via the Internet at *http://www.fly.faa.gov/ECVRS.*

8. Notwithstanding the limits in paragraph 4, if the Air Traffic Organization determines that air traffic control, weather, and capacity conditions are favorable and significant delay is not likely, the FAA can accommodate additional reservations over a specific period. Unused Operating Authorizations can also be temporarily made available for unscheduled operations. Reservations for additional operations would be obtained through the ARO.

9. Reservations cannot be bought, sold, or leased.

Issued in Washington, DC, on November 2, 2007.

Kerry B. Long

Chief Counsel, Federal Aviation Administration.

[FR Doc. 07–5583 Filed 11–2–07; 4:11 pm]

BILLING CODE 4910–13–M

[4] Unscheduled operations are operations other than those regularly conducted by an air carrier between LaGaurdia and another service point. Unscheduled operations include general aviation, public aircraft, military, charter, ferry, and positioning flights. Helicopter operations are excluded from the reservation requirement. Reservations for unscheduled flights operating under visual flight rules (VFR) are granted when the aircraft receives clearance from air traffic control to land or depart LaGuardia. Reservations for unscheduled VFR flights are not included in the limits for unscheduled operators.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highways in Texas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to various proposed highway projects in the State of Texas. Those actions grant licenses, permits, and approvals for the projects.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on any of the listed highway projects will be barred unless the claim is filed on or before May 6, 2008. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Salvador Deocampo, District Engineer, Texas Division, Federal Highway Administration, 826 Federal Building, Room 826, 300 E. 8th Street, Austin, Texas 78701, 8 a.m. to 5 p.m. Monday through Friday, 512–536–5950, *salvador.deocampo@fhwa.dot.gov.* Ms. Dianna Noble, P.E., Director Environmental Affairs Division, Texas Department of Transportation, 118 E. Riverside, Austin, Texas 78704; 512–416–2734; e-mail: *dnoble@dot.state.tx.us.* Texas Department of Transportation normal business hours are 8 a.m. to 5 p.m. (central time) Monday through Friday.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other

Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the highway projects in the State of Texas that are listed below. The actions by the Federal agencies on the projects, and the laws under which such actions were taken, are described in the documented environmental assessments (EAs), issued in connection with the projects, and in other documents in the FHWA project record for the project. The EA and other documents from the FHWA project record files for the listed projects are available by contacting the FHWA or TxDOT at the addresses provided above.

This notice applies to all Federal agency decisions on the listed projects as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

I. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act (FAHA) [23 U.S.C. 109].

II. *Air:* Clean Air Act (CAA), 42 U.S.C. 7401–7671(q).

III. *Land:* Section 4(f) of the Department of Transportation Act of 1966 (4f) [49 U.S.C. 303].

IV. *Wildlife:* Endangered Species Act (ESA) [16 U.S.C. 1531–1544 and Section 1536], Migratory Bird Treaty Act (MBTA) [16 U.S.C. 703–712].

V. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended (106) [16 U.S.C. 570(f) *et seq.*]; Archeological Resources Protection Act of 1977 (ARPA) [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act (AHPA) [16 U.S.C. 469–469(c)].

VI. *Social and Economic:* Civil Rights Act of 1964 (Civil Rights) [42 U.S.C. 2000(d)–2000(d)(1)].

VII. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 402, Section 319); Rivers and Harbors Act of 1899 (RHA), 33 U.S.C. 401–406.)

VIII. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 11514 Protection and Enhancement of Environmental Quality.

The projects subject to this notice are:

1. State Highway (SH) 121 from FM 423 to US 75 in the county of Collin. Project Reference Number: TxDOT CSJ: 0364–03–066, etc. Project Type: The project will be for reconstruction and tolling of approximately fifteen and one half (15.5) miles of a 6 lane (3 in each direction) controlled access road with toll-free three lane frontage roads in each direction. *Project Length:* Approximately fifteen and one half (15.5) miles. General Purpose: The project will improve system linkage and mobility in the area in response to current and future traffic demand needs and development along SH 121. The actions by the Federal agencies on the project, and the laws under which such actions were taken, are described in the documented environmental assessment (EA), issued in connection with the project, and in other documents in the FHWA project record for the project. The EA and other documents from the FHWA project record files for the listed projects are available by contacting the FHWA or TxDOT at the addresses provided above and can be viewed and downloaded from the following Web site: *http://www.keepitmovingdallas.com.*

Final agency actions taken under: NEPA, FAHA, CAA, section 106, ESA, MBTA, ARPA, AHPA, Civil Rights Act, section 404 (USACE NWP14), section 401, section 402, E.O. 11990, and E.O. 11514. NEPA Documents: Actual EA/FONSI was determined on November 22, 1991 and was found to still be valid on October 17, 2002, April 14, 2006, and October 12, 2007.

2. *Project Location:* State Highway (SH) 121 interchange at US 75 in the county of Collin. Project Reference Number: TxDOT CSJ: 0364–04–040. Project Type: The project will be reconstruction and tolling of a 6 and 8 lane (3 and 4 in each direction) controlled access road with three lane frontage roads in each direction and construction of direct connectors between both mainlanes of SH 121 and US75.

Project Length: Approximately two and eight tenths (2.8) miles. General Purpose: The project will improve system linkage and mobility in the area in response to current and future traffic demand needs and development along SH 121. Final agency actions taken under: NEPA, FAHA, CAA, ESA, MBTA, ARPA, AHPA, Civil Rights Act, section 402, E.O. 11990, and E.O. 11514. NEPA Document: EA/FONSI issued April 20, 2006 and was found to still be valid October 12, 2007. Document available at: *http://www.keepitmovingdallas.com.*

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: November 1, 2007.

Salvador Deocampo,

District Engineer.

[FR Doc. 07–5587 Filed 11–7–07; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2007–0022]

Notice of Receipt of Petition for Decision That Nonconforming 2005 Volkswagen Golf Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2005 Volkswagen Golf passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2005 Volkswagen Golf passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 10, 2007.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments

received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov*.

How to Read Comments submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Federal Docket Management System (FDMS) Web page *http://www.regulations.gov*.

(2) On that page, click on ''search for dockets.''

(3) On the next page (*http://www.regulations.gov/fdmspublic/component/main*), select NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION from the drop-down menu in the Agency field, enter the Docket ID number and title shown at the heading of this document, and select ''Nonrulemaking'' from the drop-down menu in the Type field and ''Vehicle Import Eligibility'' in the drop-down menu in the Sub-Type field.

(4) After entering that information, click on ''submit.''

(5) The next page contains docket summary information for the docket you selected. Click on the comments you wish to see. You may download the comments. Although the comments are imaged documents, instead of the word processing documents, the ''pdf'' versions of the documents are word searchable. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Barry Taylor Enterprises of Richmond, California (BTE) (Registered Importer 01–280) has petitioned NHTSA to decide whether nonconforming 2005 Volkswagen Golf passenger cars are eligible for importation into the United States. The vehicles which BTE believes are substantially similar are 2005 Volkswagen Golf passenger cars that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified 2005 Volkswagen Golf passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

BTE submitted information with its petition intended to demonstrate that non-U.S. certified 2005 Volkswagen Golf passenger cars, as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2005 Volkswagen Golf passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 103 *Windshield Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 106 *Brake Hoses*, 108 *Lamps, Reflective Devices and Associated Equipment*, 109 *New Pneumatic Tires*, 113 *Hood Latch System*, 114 *Theft Protection*, 116 *Motor Vehicle Brake Fluids*, 118 *Power-Operated Window, Partition, and Roof Panel Systems*, 124 *Accelerator Control Systems*, 135 *Passenger Car Brake Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 208 *Occupant Crash Protection*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Mounting*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 225 *Child Restraint Anchorage Systems*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

In addition, the petitioner claims that the vehicles comply with the Bumper Standard found in 49 CFR Part 581.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* Installation of a U.S.-model instrument cluster.

Standard No. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect:* Installation of U.S.-model software.

Standard No. 110 *Tire Selection and Rims:* installation of vehicle placard.

Standard No. 111 *Rearview Mirrors:* Installation of a U.S.-model passenger side rearview mirror, or inscription of the required warning statement on the face of that mirror.

Standard No. 209 *Seat Belt Assemblies:* Installation of U.S.-certified model seat belt assemblies.

The petitioner states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR Part 565.

The petitioner additionally states that the vehicles comply with the requirements of the Theft Prevention Standard at 49 CFR part 541, due to the presence of U.S.-model antitheft devices.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 5, 2007.

Harry Thompson,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. E7–21966 Filed 11–7–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2007–0030; Notice 1]

Graco Children's Products, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Graco Children's Products, Inc. (Graco) has determined that certain child restraint systems that it manufactured between June 21, 2006 and October 26, 2007, did not fully comply with paragraphs S5.5.2(m) and S5.6.1.7 of 49 CFR 571.213, Federal Motor Vehicle Safety Standard (FMVSS) No. 213 *Child Restraint Systems.* Graco has filed an appropriate report pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Graco has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Graco's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are several million child restraint systems. Paragraph S5.5.2(m) of 49 CFR 571.213 requires that a child restraint system be permanently labeled with:

(m) One of the following statements, inserting an address and a U.S. telephone number. If a manufacturer opts to provide a Web site on the registration card as permitted in Figure 9a of this section, the manufacturer must include the statement in part (ii):

(i) ''Child restraints could be recalled for safety reasons. You must register this restraint to be reached in a recall. Send your name, address, e-mail address if available (preceding four words are optional) and the restraint's model number and manufacturing date to (insert address) or call (insert a U.S. telephone number). For recall information, call the U.S. Government's Vehicle Safety Hotline at 1–888–327–4236 (TTY: 1–800–424–9153), or go to *http://www.NHTSA.gov.*''

(ii) ''Child restraints could be recalled for safety reasons. You must register this restraint to be reached in a recall. Send your name, address, e-mail address if available [preceding four words are optional], and the restraint's model number and manufacturing date to (insert address) or call (insert a U.S. telephone number) or register online at (insert Web site for electronic registration form). For recall information, call the U.S. Government's Vehicle Safety Hotline at 1–888–327–4236 (TTY: 1–800–424–9153), or go to *http://www.NHTSA.gov.*''

See also S5.6.1.7 of 49 CFR 571.213.

Graco explains that all subject child restraint systems failed to comply with the above requirements because labels attached to them did not include Graco's electronic registration Web site address. In addition, some models of these restraint systems also had labels that included an incorrect NHTSA Hotline telephone number.

Graco states that although the Hotline number printed on the labels is incorrect (i.e., the labels show the superseded NHTSA Hotline number), Graco has procured the former Hotline number and is prepared to have all calls to that outdated number automatically routed to the correct number (i.e., the current NHTSA Hotline number) for a period of seven years.

Graco additionally states that although its electronic registration Web site address is not on the restraint systems, its toll free telephone number appears in at least two places on all the restraint systems. Also, full contact information, including the Graco's company Web site address, appears in the owner's manual of every child restraint system manufactured by Graco.

Graco states that neither the incorrect NHTSA Hotline number nor the absence of Graco's Web site address have any effect on the crashworthiness of the restraint systems. Therefore, Graco states that these noncompliances are inconsequential to motor vehicle safety.

Graco notes that it has stopped shipment of the restraint systems with incorrect labels and ceased production of new seats while corrected labels are being printed. Graco proposes two measures as ''an interim solution to bring infant and child seats produced with the incorrect label into substantial compliance.'' First, Graco reiterates its proposal to have calls to the incorrect NHTSA Hotline number automatically rerouted to the correct number, which has been made possible by Graco's obtaining the rights to the old number. Graco also proposes to send a broadcast e-mail with a direct link to Graco's online registration Web site to approximately 570,000 consumers about the importance of registration of their child restraint systems. The e-mail would be sent to approximately 570,000 consumers who have either registered their child restraint systems through Graco, requested Graco's newsletter, or whose names have been acquired from prenatal lists. Graco believes that providing the direct Graco online registration link will allow those consumers to register their Graco-brand seats once they have received the e-mail.

In summary, Graco states that it does not believe the noncompliances described above appreciably impact motor vehicle safety, and that while the label information required by NHTSA is important, so is the need to have safety equipment available to consumers. Graco argues that prioritization is especially important because cessation of their current shipping and production could jeopardize supplies of Graco child restraint systems to consumers.

We note that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, these provisions apply to vehicles and equipment that have already passed from the manufacturer to an owner, purchaser, or dealer.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. By mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. Electronically: by logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. Please note that we are

allowing just 10 days for comment in order to expedite resolution of this matter. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: December 10, 2007.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: November 2, 2007.

Daniel C. Smith

Associate Administrator for Enforcement.

[FR Doc. E7–21903 Filed 11–7–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Special Permits Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Delmer F. Billings, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue, Southeast, Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reason for Delay''

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Applicantion is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of special permit applications.

Meaning of Application Number Suffixes

N—New application.

M—Modification request.

PM—Party to application with modification request.

Issued in Washington, DC, on October 31, 2007.

Delmer F. Billings,

Director, Office of Hazardous Materials, Special Permits and Approvals.

Application No.	Applicant	Reason for delay	Estimated date of completion
	Modification to Special Permits		
10481–M	M–1 Engineering Limited, Bradford, West Yorkshire	4	11–30–2007
11579–M	Austin Powder Company, Cleveland, OH	1	12–31–2007
	New Special Permit Applications		
14385–N	Kansas City Southern Railway Company, Kansas City, MO	4	11–30–2007
14402–N	Lincoln Composites, Lincoln, NE	1	12–31–2007
14436–N	BNSF Railway Company, Topeka, KS	4	11–30–2007
14500–N	Northwest Respiratory Services, St. Paul, MN	4	11–30–2007
14504–N	Medis Technologies Ltd., New York, NY	1	11–30–2007
14507–N	Gulf Coast Hydrostatic Testers, LLC, Denham Springs, LA	4	11–30–2007
14508–N	Gulf Coast Hydrostatic Testers, LLC, Denham Springs, LA	4	11–30–2007

[FR Doc. 07–5575 Filed 11–7–07; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35081]

Canadian Pacific Railway Company, et al.—Control—Dakota, Minnesota, & Eastern Railroad Corp., et al.

AGENCY: Surface Transportation Board, DOT.

ACTION: Decision No. 2 in STB Finance Docket No. 35081; Notice of Receipt of Prefiling Notification.

SUMMARY: The Surface Transportation Board (Board) has reviewed the submission filed October 5, 2007, by Canadian Pacific Railway Corporation (CPRC), Soo Line Holding Company, a Delaware Corporation and indirect subsidiary of CPRC (Soo Holding), Dakota, Minnesota & Eastern Railroad Corporation (DM&E), and Iowa, Chicago & Eastern Railroad Corporation, a wholly owned rail subsidiary of DM&E (IC&E). The submission is styled as an application seeking Board approval under 49 U.S.C. 11321–26 of the acquisition of control of DM&E and IC&E by Soo Holding (and, indirectly, by CPRC). This proposal is referred to as the ''transaction,'' and, for ease, CPRC, Soo Holding, DM&E, and IC&E are referred to collectively as ''Applicants.''

The Board finds that the transaction would be a ''significant transaction'' under 49 CFR 1180.2(b). The Board's rules at 49 CFR 1180.4(b) require that applicants give notice 2 to 4 months prior to the filing of an application in a ''significant'' transaction. Because Applicants did not file the required prefiling notification before their October 5 submission seeking Board approval of this ''significant'' transaction, and did not pay the filing fee for a ''significant'' transaction, their submission cannot be treated as an application at this time. The Board will, however, consider the October 5 submission a prefiling notification and publish notice of it in the **Federal Register**, which has the effect of permitting Applicants to perfect their application, and provide any

supplemental materials or information, on or after December 5, 2007.

When filing a prefiling notification, merger applicants in a ''significant'' transaction must propose a procedural schedule for Board review of their proposed transaction. As part of their tender of an application for a ''minor'' transaction, Applicants had proposed a procedural schedule that tracks the statutory deadlines for processing ''minor'' applications. Because the Board finds the proposed transaction to be ''significant,'' Applicants must file with the Board no later than November 13, 2007, a revised proposed procedural schedule that reflects the Board's determination that this is a ''significant'' transaction. The Board will promptly seek public comments on a proposed procedural schedule, with comments due 10 days after publication of the proposed procedural schedule in the **Federal Register**. Section 1180.4(b) also calls for merger applicants to indicate in their prefiling notification the year to be used for the impact analysis required in ''significant'' transactions. In their October 5 submission, Applicants cite the 2005 *Carload Waybill Sample* in their market analysis. The Board therefore designates 2005 as the year to be used for impact analysis in the application. In addition, Applicants must submit the difference between the filing fee for a ''minor'' transaction (which Applicants already have paid) and the fee for a ''significant'' transaction when they perfect their application on or after December 5, 2007.

DATES: Applicants must, by November 13, 2007, file a proposed procedural schedule with the Board. In addition, Applicants must submit the difference between the filing fee for a ''minor'' transaction and the fee for a ''significant'' transaction with or without supplemental information, on or after December 5, 2007.

ADDRESSES: Any filing submitted in this proceeding must be submitted either via the Board's e-filing format or in the traditional paper format as provided for in the Board's rules. Any person using e-filing should attach a document and otherwise comply with the instructions found on the Board's Web site at *http://www.stb.dot.gov* at the ''E-FILING'' link. Any person submitting a filing in the traditional paper format should send an original and 10 paper copies of the filing (and also an electronic version) to: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each filing in this proceeding must be sent (and may be sent by e-mail only if service by e-mail is acceptable to the recipient) to each of the following: (1) Terence M. Hynes (representing CPRC), Sidley Austin LLP, 1501 K Street, NW., Washington, DC 20005; and (2) William C. Sippel (representing DM&E), Fletcher & Sippel, 29 North Wacker Drive, Suite 920, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 245–0359. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: CPRC is a Canadian corporation whose stock is publicly held and traded on the New York and Toronto stock exchanges. CPRC and its U.S. rail carrier subsidies, Soo Line Railroad Company (Soo) and Delaware and Hudson Railway Company, Inc. (D&H), operate a transcontinental rail network over 13,000 miles in Canada and the United States. (CPRC, Soo, and D&H are referred to collectively as ''CPR.'') CPR serves the principal business centers of Canada and 14 U.S. states in the Northeast and Midwest. The major commodities transported by CPR include bulk commodities such as grain, coal, sulfur, and fertilizers; merchandise freight including finished vehicles and automotive parts, forest products, industrial products, and consumer products; and intermodal traffic. In fiscal year 2006, the freight revenues of CPR were approximately $4.4 billion.

DM&E is a privately held Class II rail carrier headquartered in Sioux Falls, SD. DM&E and its subsidiary, IC&E, operate over 2,500 miles of rail lines serving eight U.S. states, including the major Midwestern gateways of Chicago, IL, Minneapolis/St. Paul, MN, and Kansas City, MO. Together, DM&E and IC&E interchange rail traffic with all seven U.S. Class I railroads.

DM&E was created in 1986 from lines formerly owned by Chicago and North Western Transportation Company (CNW) in South Dakota, Minnesota, and Iowa. In 1996, DM&E acquired CNW's Colony Line, running from Eastern Wyoming through Western South Dakota and into Northwestern Nebraska. DM&E subsequently acquired the lines now operated by IC&E from the former Iowa and Minnesota Rail Link in 2002. IC&E owns or operates approximately 1,322 route miles of rail lines that were once part of the CPR system, in Illinois, Minnesota, Missouri, and Wisconsin.

In 2006, the Board granted DM&E authority to construct and operate 282 miles of new railroad lines to serve coal origins in Wyoming's Powder River Basin (PRB). DM&E states that it is currently pursuing the process of acquiring the right-of-way needed to build the PRB line. It must execute agreements with PRB mines on terms for operations by DM&E over their loading track and facilities. DM&E must also secure sufficient contractual commitments from prospective coal shippers to route their traffic over the PRB line to justify the large investment to build it. Finally, DM&E must arrange financing for the project and comply with the environmental conditions imposed by the Board. If the proposed transaction is approved, CPR states that it plans to work diligently with DM&E to accomplish these necessary prerequisites to construction of the proposed PRB line, assuming that the decision is made to build it.

The proposed transaction for which Applicants seek approval involves the acquisition of control of DM&E and IC&E by Soo Holding (and, indirectly, by CPRC).[1] On October 4, 2007, Soo Line Properties Company, a Delaware corporation and wholly owned subsidiary of Soo Holding (Soo Properties), merged with and into DM&E, subject to the voting trust described below. At the time of closing, DM&E shareholders received cash consideration of approximately $1.48 billion, subject to certain working capital adjustments in accordance with the Agreement and Plan of Merger (Merger Agreement). As part of the $1.48 billion paid at closing, DM&E and IC&E repaid certain obligations to third party creditors, including $250 million to the Federal Railroad Administration (FRA). The Merger Agreement provides for future contingent payments by CPR to DM&E's shareholders of up to approximately $1 billion. Specifically, an additional payment of $350 million will become due if construction starts on the PRB line prior to December 31, 2025. Further contingent payments of up to approximately $707 million will become due upon the movement of specified volumes of PRB coal over the PRB line prior to December 31, 2025.

Public Interest Considerations. Applicants contend that the transaction would not result in any lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States. Rather, Applicants state that CPR's acquisition of DM&E and IC&E would be strongly pro-competitive. Most significantly,

[1] In Decision No. 1 in this proceeding, served September 21, 2007, the Board issued a Protective Order to facilitate the discovery process and establish appropriate procedures for the submission of evidence containing confidential or proprietary information.

Applicants note that the transaction would create new single-system rail options where none currently exist. Applicants contend that CPR's plan to invest $300 million in capital improvements on DM&E's and IC&E's existing lines would enhance safety and the efficiency of their operations, thereby strengthening the competitive ability of DM&E and IC&E. Applicants state that this investment would allow DM&E and IC&E to upgrade track, bridges, and other rail facilities and to bring their safety performance closer to CPR standards, thus improving the fluidity of their train operations. The transaction would restore CPR's direct access to the Kansas City gateway, enhancing their ability to compete effectively for rail traffic moving between CPR's current network and points in the U.S. Southwest and Mexico. Applicants assert that the transaction would enable CPR to assist DM&E in possibly bringing to fruition its proposal to introduce a third rail competitor to the PRB, which is currently served by UP and BNSF.

Independent Voting Trust. On October 4, 2007, Soo Properties was merged with and into DM&E. At that time, all the common shares of DM&E were deposited into an independent voting trust, pending Board approval of the proposed transaction, in order to avoid unlawful control of DM&E and IC&E in violation of 49 U.S.C. 11323. On or after the effective date of a Board final order authorizing the transaction, the voting trust would be terminated; DM&E's shares would be transferred to Soo Holding; and DM&E would become a wholly owned subsidiary of Soo Holding (and an indirect subsidiary of CPRC). In the event that the Board does not approve the transaction, Soo Holding would use its reasonable best efforts to sell or direct the trustee to sell the trust interests to one or more eligible purchasers or otherwise dispose of the trust interests during a period of 2 years after such a decision becomes final.

With the exception of the Board's final approval of the transaction, all conditions precedent to closing of the merger have been satisfied.

Environmental Impacts. Applicants contend that the transaction would not result in any increases in rail traffic, train operations, or yard activity that would exceed the Board's thresholds for environmental review in 49 CFR 1105.7(e)(5). Applicants therefore assert that the transaction does not require the preparation of environmental documentation under 49 CFR 1105.6(b)(4). However, Applicants plan to prepare a Safety Integration Plan (SIP) under the Board's rules at 49 CFR 1106 and 49 CFR 1180.1(f)(3) setting out how they would ensure that safe operations are maintained throughout the acquisition-implementation process, if the proposed transaction is approved.

In regard to the environmental impacts of the transportation of DM&E PRB coal trains over the lines of IC&E and/or CPR, Applicants propose that the Board defer any required analysis of the environmental impacts of the movement of DM&E PRB coal trains over the lines of IC&E and/or CPR because definitive information regarding the likely volume, destination, and routing of DM&E PRB coal trains beyond DM&E's existing line remains speculative.

The City of Winona, Mayo Clinic, and BNSF Railway Company (BNSF) have filed comments on Applicants' proposed environmental approach. Applicants replied to BNSF's comments. The Board will consider these comments in its review of the transaction; there is no need for the commenters to refile those submissions.

Significant Transaction. The statute and our regulations treat a transaction that does not involve two or more Class I railroads differently depending upon whether or not the transaction would have ''regional or national significance.'' *Compare* 49 U.S.C. 11325(a)(2), (c) (addressing ''significant'' transactions) *with* 49 U.S.C. 11325(a)(3), (d) (addressing ''minor'' transactions). Under our regulations, at 49 CFR 1180.2, a transaction is to be classified as ''significant'' unless the application shows on its face (1) that the transaction clearly would not have any anticompetitive effects, or (2) that any anticompetitive effects would clearly be outweighed by the anticipated contribution to the public interest in meeting ''significant'' transportation needs.

A transaction classified as ''significant'' must meet different procedural and informational requirements than one classified as ''minor.'' For example, Applicants are required to submit more detailed information regarding competitive effects, operating plans and other issues for a ''significant'' transaction than for a ''minor'' transaction. 49 CFR 1180.4(c)(2). Responsive applications are not permitted for a ''minor'' transaction but are allowed for a ''significant'' transaction. 49 CFR 1180.4(d). The time limit for Board review is shorter for a ''minor'' transaction and prefiling notification is not required. 49 U.S.C. 11325(d); 49 CFR 1180.4(b). Finally, the filing fee for a ''significant'' transaction is higher than the fee for a ''minor'' transaction. 49 CFR 1002.2.

Applicants contend that this transaction should be classified as ''minor.'' First, they argue that the transaction is pro-competitive due to its anticipated benefits, including (1) creating new single-system rail options where none currently exist, (2) enhancing the safety and efficiency of DM&E's and IC&E's operations through CPR's plan to invest $300 million in capital improvements on DM&E's and IC&E's existing lines, (3) restoring CPR's direct access to the Kansas City gateway, enhancing its ability to compete effectively for rail traffic moving between CPR's current network and points in the U.S. Southwest and Mexico, and (4) enabling CPR to assist DM&E in possibly bringing to fruition its proposal to introduce a third rail competitor to the PRB, which is currently served by UP and BNSF.

Second, Applicants assert that the transaction would not result in any lessening of effective rail competition because the networks of Applicants are largely complementary, not competitive. Applicants point to the competitive analysis prepared by their expert as confirmation that none of the stations commonly served by Applicants would lose competitive rail service as a result of the proposed transaction due to a variety of station-specific reasons, including the existence of another competitive option or the fact that one or the other of Applicants is not actively serving the station today. Applicants also state that vertical anticompetitive effects would be non-existent because virtually all of the shortlines that interchange with DM&E have many other interchange routing options.

Mayo Clinic, Iowa Northern Railway Company (IANR), and the Iowa Department of Transportation (IDOT) have filed comments taking issue with Applicants' proposed designation of the transaction as ''minor.'' The Mayo Clinic suggests that the Board should compel Applicants to submit ''verifiable documentation regarding DM&E's current revenues to ensure that DM&E does not meet Class I status,'' and that, in any event, this transaction would propel DM&E into Class I status.[2] IDOT

[2] Specifically, Mayo Clinic argues that Applicants' claim that the transaction is ''minor'' rather than ''substantial'' serves ''to limit the information they had to provide in their application'' and allows ''Applicants to avoid scrutiny of various competitive considerations, including whether the proposed transaction will foster a major market extension free and clear of Board scrutiny.'' Mayo Clinic's argument is not well taken because Applicants submitted additional information in their application to comply with the requirements for ''significant'' transactions, including a market analysis and a more detailed Operating Plan. Furthermore, the Board will not

argues that the geographic scope of the transaction means that the merger ''clearly has regional transportation significance,'' and it states that applying the timetable for a ''significant'' transaction would give it sufficient time to analyze the effects of the deal. IANR argues that Applicants provided inadequate competitive analysis to show clearly that the transaction would not have any anticompetitive effects, or that any anticompetitive effects would clearly be outweighed by the public interest benefits. They maintain that use of larger market areas such as Business Economic Areas (BEAs) would have increased the number of 2-to-1 and 3-to-2 cases of potential loss of competition; that the market analysis failed to consider current competition from extending rail connections or from intermodal truck-rail competition; that the market analysis failed to identify potential vertical foreclosure of short line railroads; and that the market analysis did not sufficiently assess markets where Applicants do not ''compete actively.''

In response to IANR's comments, Applicants argue that their competitive analysis is sufficient to support a ''minor'' designation. Applicants assert that they provided a station-by-station review of competitive effects, and also provided information about every shortline that could be impacted by this transaction. Moreover, Applicants assert that they have provided the information that would be required if the transaction were classified as ''significant,'' so that their October 5 submission should be accepted as a complete application regardless of how the transaction is classified.

The purpose of the test articulated in section 1180.2 of the Board's regulations is to allow the Board to lessen the regulatory burden when ''a determination can *clearly* be made, at the time the application is filed, that the transaction passes muster under'' the statute. *See RR. Consolidation Proced. of Significant Transactions*, 9 I.C.C.2d 1198, 1200 (1993) (emphasis in original). It permits the Board to select the most appropriate procedures to apply to a proposed transaction. It is not the purpose of section 1180.2(b) to force the Board to make an advance determination on the extent of the likely competitive effects or to weigh those effects against the public benefits in cases where more information would be helpful. (Any broader reading of the regulation could effectively require a preliminary determination on the ultimate issue in the case even where the Board regards such a determination as premature.)

Here, although Applicants' submission states that no currently served shipper would become captive as a result of the transaction (i.e., no shipper would have its competitive options reduced from two carriers pre-transaction to one carrier post-transaction), it does not clearly establish that there would be no other anticompetitive effects that might result from the transaction. For example, it does not contain information that rules out the possibility that there are some shippers whose competitive options would be reduced post-transaction. Nor does it provide details regarding those stations that both Applicants could serve but at which only one Applicant derived revenue from originating or terminating traffic in 2005.

Applicants' submission asserts that there are anticipated benefits associated with the transaction.[3] Based on the information we have about the possible competitive impacts today, we are unable to conclude at this stage that such impacts would clearly be outweighed by the potential benefits. However, our classification of this transaction as ''significant'' should not be read as any indication of how we might ultimately assess and weigh the benefits and any impacts on competition after development of a more complete record.

The Board considers each proposed transaction based on its unique factual circumstances and our regulatory criteria for classifying transactions. Had Applicants' submission satisfied the criteria for a ''minor'' designation here, the transaction would have been classified as such even if it differed substantially from other transactions designated as ''minor.'' We also reject arguments that the Board should consider this to be a ''major'' transaction based on the notion that DM&E and IC&E combined might someday have revenues for 3 consecutive years that would qualify for Class I status.

The Board finds the proposed transaction to be ''significant'' and is unable to accept the submission as an application now, due to Applicants' failure to provide prefiling notification and pay the filing fee applicable for a ''significant'' transaction. Accordingly, the Board will treat Applicants'' October 5 submission as a prefiling notification. Furthermore, the Board designates 2005 as the year to be used for impact analysis because Applicants use the *2005 Carload Waybill Sample* in the market analysis in their submission.

Applicants may perfect their application by submitting the remainder of the fee on or after December 5, 2007. Pursuant to section 1180.4(b)(2)(v), Applicants may perfect their application with or without supplemental information because they have already submitted sufficient information to substantially comply with the informational requirements for a ''significant'' transaction. Others who have already participated in this proceeding need not resubmit their previous comments, as the Board will consider what has already been submitted to the extent it remains relevant once an application is perfected.

Procedural Schedule. The Board's determination that this transaction is ''significant'' necessitates a different procedural schedule than that proposed by Applicants. Metra, Mayo Clinic, and IANR submitted separate filings commenting on Applicants' proposed procedural schedule.[4] Some of the concerns expressed by these parties are moot, given the Board's determination that the transaction is ''significant.''

In its October 26, 2007 comments, IANR proposes a 270-day schedule starting on December 4, 2007, based on the schedule for a ''significant'' transaction. In their reply, filed on October 29, 2007, Applicants request that, if the Board treats the transaction as ''significant,'' the Board accept as their application the submission tendered on October 5, 2007, and establish a procedural schedule that would allow the transaction to be approved within the statutory deadline.

Applicants must file with the Board no later than November 13, 2007, a revised proposed procedural schedule that reflects the Board's determination that this is a ''significant'' transaction. The Board will promptly seek public comments on a proposed procedural

require Applicants to file verification documents as to DM&E's revenues in this proceeding given the established procedures set forth at 49 CFR 1201 General Instructions 1–1(2) for the classification of railroads.

[3] We do not consider the potential for introduction of another competitor into the PRB as one of those benefits. Applicants state that they have not yet determined whether they would proceed with the construction of that line if this merger is approved.

[4] In its October 18, 2007 reply, Metra requests that the Board delay the due date for the submission of comments, protest, requests for conditions, other opposition, and evidence an additional 2 weeks until January 15, 2008, to allow it sufficient time to negotiate a settlement with Applicants to resolve questions regarding the potential impact the transaction could have on Metra's operations between Elgin, IL, and Chicago over its line, which it shares between Pingree Grove, IL, and Chicago with CPRC and IC&E. Likewise, Mayo Clinic, in its October 24, 2007 reply, states that it supports the request to extend the due date to allow it sufficient time for meaningful negotiations with CPRC.

schedule, with comments due 10 days after publication of the proposed procedural schedule in the **Federal Register**.

Filing Requirements. Any document filed in this proceeding must be filed either via the Board's e-filing format or in the traditional paper format as provided for in the Board's rules. Any person using e-filing should attach a document and otherwise comply with the instructions found on the Board's Web site at *http://www.stb.dot.gov* at the ''E-FILING'' link. Any person filing a document in the traditional paper format should send an original and 10 paper copies of the document (and also an electronic version) to: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

Service Requirements. One copy of each document filed in this proceeding must be sent to each of the following (any copy may be sent by e-mail only if service by e-mail is acceptable to the recipient): (1) Terence M. Hynes (representing CPRC), Sidley Austin LLP, 1501 K Street, NW., Washington, DC 20005; and (2) William C. Sippel (representing DM&E), Fletcher & Sippel, 29 North Wacker Drive, Suite 920, Chicago, IL 60606.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The submission filed by Applicants on October 5, 2007, in STB Finance Docket No. 35081 is treated as the prefiling notification of the anticipated application.

2. Applicants are directed to supplement the prefiling notification by submitting a revised proposed procedural schedule with the Board no later than November 13, 2007, that is consistent with the Board's determination that this is a ''significant'' transaction.

3. This decision is effective on November 2, 2007.

Decided: November 2, 2007.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. E7–21901 Filed 11–7–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of additional persons whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the fifteen individuals identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on November 1, 2007.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

The Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and to the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Kingpin Act blocks the property and interests in property, subject to U.S. jurisdiction, of foreign persons designated by the Secretary of Treasury, in consultation with the Attorney General, the Director of Central Intelligence, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On November 1, 2007, the Director of OFAC designated fifteen additional entities whose property and interests in property are blocked pursuant to section 805(b) of the Foreign Narcotics Kingpin Designation Act.

The list of additional designees follows:

Entities:

1. CABANA GUILLEN, Sixto Antonio, (a.k.a. ''Domingo Bioho''); DOB 15 Jun 1955; POB Orihueca-Cienaga, Magdalena, Colombia; Cedula No. 19500634 (Colombia).

2. CABRERA DIAZ, Hermilo, (a.k.a. ''Bertulfo''; a.k.a. CABRERA DIAZ, Ermilo); DOB 25 Nov 1941; POB Neiva, Huila, Colombia; Cedula No. 9680080 (Colombia).

3. CAICEDO COLORADO, Abelardo, (a.k.a. ''Solis Almeida''); DOB 3 Mar 1960; POB Mercaderes, Cauca, Colombia.

4. CAMARGO, Norbei, (a.k.a. ''James Patapalo''; a.k.a. ''James Patamala''; a.k.a. CAMARGO, Norbey; a.k.a. TRIANA, Hermer; a.k.a. ''Muerto Parado''); DOB 5 Aug 1965; POB Paujil, Caqueta, Colombia; Cedula No. 17702895 (Colombia).

5. CUEVAS CABRERA, Erminso, (a.k.a. ''Mincho''); DOB 16 Sep 1960; POB El Paujil, Caqueta, Colombia; Cedula No. 96328518 (Colombia).

6. LEAL GARCIA, Ignacio, (a.k.a. ''Camilo''; a.k.a. ''Tuerto''); Cedula No. 96186610 (Colombia).

7. LOPEZ MENDEZ, Luis Eduardo, (a.k.a. ''Efren Arboleda''; a.k.a. LOPEZ MENDEZ, Alfonso); Cedula No. 96329889 (Colombia).

8. MOLINA GONZALEZ, Jose Epinemio, (a.k.a. ''Danilo Garcia''; a.k.a. MOLINA GONZALEZ, Jose Epimenio); DOB 18 Nov 1957; POB Inconozo, Tolima, Colombia.; Cedula No. TI. 57111–01681 (Colombia).

9. OLARTE LOMBANA, Alonso, (a.k.a. ''Luis Eduardo Marin''; a.k.a. ''Rafael Gutierrez''; a.k.a. GUZMAN FLOREZ, Reinel); DOB 7 Nov 1960; Alt DOB 11 Apr 1957; POB Bogota,

Colombia; Alt. POB Natagaima, Tolima, Colombia; Cedula No. 18260876 (Colombia).

10. PASCUAS SANTOS, Miguel Angel, (a.k.a. ''Sargento Pascuas''; a.k.a. ''Humberto''); DOB 28 Apr 1952; POB Tello, Huila, Colombia; Cedula No. 12160124 (Colombia).

11. RODRIGUEZ MENDIETA, Jorge Enrique, (a.k.a. ''Ivan Vargas''); DOB 15 Jan 1963; POB Giron, Santander, Colombia; Cedula No. 91223461 (Colombia).

12. ROPERO SUAREZ, Emiro del Carmen, (a.k.a. ''Ruben Zamora''); DOB 2 Sep 1962; POB Municipio de Nueva Granada, Norte de Santander, Colombia; Cedula No. 13461523 (Colombia).

13. SANTANILLA BOTACHE, Miguel, (a.k.a. ''Gentil Duarte''); DOB 10 Dec 1963; POB Florencia, Caqueta, Colombia; Cedula No. 93123586 (Colombia).

14. TORRES CUETER, Guillermo Enrique, (a.k.a. ''Julian Conrado''); DOB 17 Aug 1954; POB Turbaco, Bolivar, Colombia; Cedula No. 9281858 (Colombia).

15. TRASLAVIÑA BENAVIDES, Erasmo, (a.k.a. ''Ismardo Murcia Lozada''; a.k.a. ''Jimmy Guerrero''; a.k.a. ''Isnardo Murcia Lozada''); DOB 19 Jun 1958; POB Guacamayo, Santander, Colombia; Cedula No. 13642033 (Colombia).

Dated: November 1, 2007.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E7–21909 Filed 11–7–07; 8:45 am]

BILLING CODE 4811–42–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending September 30, 2007.

Last name	First name	Middle name/initials
ISLAM	FAKHUR	UL
FAKHUR	NUSRAT	
GORE	ROGER	DALE
PAK	CHANWON	
STOLT-NIELSEN WIKBORG	NADIA	BENEDICTE
TELLVIK	CAROLA	
ARBIB	TAMARA	SARA
ICHIHARA	HIROSHI	
TIM	FRANCIS	MOK-PIK
ICHIHARA	MIYOKO	
BRAJOVIC	MILOS	VIDOJE
NATHAN	LLOYD	C
CLARKE	JENNIFER	P
HO	YUK	HING
COGGINS	PETER	B
COGGINS	JULIE	ANN
AASHEIM	JOHANNES	
ZHANG	RUI	
DE MONTARLOT	ANNE	
SCHLAEPFER	MIREILLE	ANNY
MILINE	DAVID	ALEXANDER
KIRDAR	SERRA	NEMIR
KWEE-NG	STEPHANIE	MEISHA
GEISMAR	JOHN	LEE
WIGHT	KENNETH	JOHN
WIGHT	PARI	
GOLOB	PETER	EUGENE
PEACOCK-EVANS	PATRICIA	WOODWARD
WANG	YING	BO
CRONE IV	JOHN	T
MAC MANUS	PAUL	
DAVIES	PATRICIA	CLAIRE
DAVIES	GEORGE	BERNARD
ADAL	KARIM	ABOU
CHAPPLE	CELIA	ROSE
ADAL	CORINNE	ABOU
BRICKHILL	CHRISTOPHER	JOHN
GONG	FANGXIONG	
ROZWADOWSKI	ANA	L.
REILLY	ISABEL	LUITGARD
DANOWA	PAUL	S
METRO	SIMONA	
LUNT	LAWRENCE	FRANCIS
SCHMIDT	RENE	W.
LESTER	DARIN	K
ROBINSON	LINDSAY	I. B
NATHANIEL	MOSES	S
KING	MATTHEW	RICHARD
CHAN	WINNIE	WING-YAN

Last name	First name	Middle name/initials
CHAN	TERESA	SAU-HAN KAN
CHANG	ERIC	
RUSHTON	PRISCILLA	ELLEN
CHAN	LAWRENCE	CHUN-KOON
WILSON	DENNIS	
KOYAMA	TERUKO	
WOOLEY	TREVOR	D
ZHANG	JUYING	JERRY
LIU	YANI	
BORG	EMMA	G N
NELSON	JANET	M
KELLER	PHILIP	
RIEDIGER	BARRY	RAYMOND
ROBBINS	MARLENE	A.
TORLOF	CHRISTER	H
WONG	LORRAINE	T
BASCHERA	GIAN	MARCO
MOYLAN	THOMAS	P
COOPER	ADAM	
GEORGE	AMANDA	JACKSON
GEORGE	COLIN	TREVOR
STEKETEE	STEPHANIE	H.
LEIPPOLD	THOMAS	B.
STEKETEE	NORMAN	F.
CHUNG	SIU	WAH
SUESS	FRANK	
ADDA	ALEXIA	MARY
WU	PAUL	
MAUGHAN	RUSSELL	GEORGE
MITCHELL	ALISON	
CHELLARAM	ADITYA	SURESH
DAMM	ISABELLE	FREY
CHANG	DAVID	SHUI KEI
MACDONALD	WILLIAM	MUIR
TSCHUDIN	CARL	MICHEL
UMENO	YUGO	
POOR	ROBERT	
CHEN	DOUGLAS	WAI HUEN
ODFJELL	LAURENCE	WARD
WHITAKER	ANITA	LOUISE
ODFJELL	BERNT	DANIEL
ODFJELL	CARL	FREDRIK
GRUER	CAMILLA	ODFJELL
YU	JENNIFER	NGAR WING
BEANLAND	JOAN	A.
BEANLAND	DAVID	J.
ATTWOOD	JAMES	
RAVINDRAN	SIMON	
MCGILL	STUART	R.
DENNIS	CHARLOTTE	VICTORIA
WANG	YUE	
MCGILL	MERYL	
PITTS	STEPHEN	L.
UMENO	HIROKO	
LAU	DENISE	YIN SHAN
BRAGONI	EVELYN	IRENE

Dated: October 24, 2007.

Angie Kaminski,

Manager Team 103, Examinations Operations, Philadelphia Compliance Services.

[FR Doc. E7–21905 FILED 11–7–07; 8:45 AM]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of American Eagle Platinum Coin Price Increases

SUMMARY: The rise in the price of platinum per ounce requires that the United States Mint raise the prices on its 2007 American Eagle Platinum Proof and Uncirculated Coins.

Pursuant to the authority that 31 U.S.C. 5112(k) grants the Secretary of the Treasury to mint and issue platinum coins, the United States Mint mints and issues American Eagle Platinum Proof and Uncirculated Coins in four denominations—one ounce, one-half ounce, one-quarter ounce, one-tenth ounce, and a four-coin set which contains one coin of each denomination. The United States Mint is changing the price of these coins to reflect the increase in value of the underlying precious metal content of the coins—the result of recent increases in the market

price of platinum. The price of platinum has increased substantially since the initial prices were set for the 2007 American Eagle Platinum Proof and Uncirculated Coins

Accordingly, effective November 5, 2007, the United States Mint will commence selling the following 2007 American Eagle Platinum Proof and Uncirculated Coins at the prices indicated below:

Description	Price
American Eagle Platinum Proof Coins:	
One ounce coin	$1,740.95
One-half ounce platinum coin	880.95
One-quarter ounce platinum coin	475.95
One-tenth ounce platinum coin	244.95
Four-coin platinum set	3,207.95
American Eagle Platinum Uncirculated Coins:	
One-ounce platinum coin	1,630.95
One-half ounce platinum coin	830.95
One-quarter ounce platinum coin	435.95
One-tenth ounce platinum coin	204.95
Four-coin platinum set	2,976.95

FOR FURTHER INFORMATION CONTACT: Gloria C. Eskridge, Associate Director for Sales and Marketing, United States Mint, 801 Ninth Street, NW., Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5112 & 9701.

Dated: November 1, 2007.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. E7–21934 Filed 11–7–07; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF VETERANS AFFAIRS

National Research Advisory Council; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the National Research Advisory Council will hold a meeting on Monday, December 3, 2007, in Room 900 at the Greenhoot Cohen Building, 1722 Eve Street, NW., Washington, DC. The meeting will convene at 8 a.m. and end at 3 p.m. The meeting is open to the public.

The purpose of the Council is to provide external advice and review for VA's research mission. The December 3 meeting agenda will include a review of the VA research portfolio. The Council will also provide feedback on the direction/focus on VA's research initiatives.

Any member of the public who expects to attend the meeting or wants additional information should contact Jay A. Freedman, Ph.D., Designated Federal Officer, at (202) 254–0267. Oral comments from the public will not be accepted at the meeting. Written statements or comments should be transmitted electronically to *jay.freedman@va.gov* or mailed to Dr. Freedman at Department of Veterans Affairs, Office of Research and Development (12), 810 Vermont Ave., NW., Washington, DC 20420.

Dated: November 2, 2007.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 07–5578 Filed 11–7–07; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Thursday,
November 8, 2007

Part II

Department of Agriculture

Farm Service Agency
Commodity Credit Corporation

7 CFR Parts 718, 761, 762 et al.
Regulatory Streamlining of the Farm Service Agency's Direct Farm Loan Programs; Final Rule

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 718, 761, 762, 763, 764, 765, 766, 767, 768, and 769

Commodity Credit Corporation

7 CFR Part 1405

RIN 0560–AF60

Regulatory Streamlining of the Farm Service Agency's Direct Farm Loan Programs

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule streamlines the Farm Service Agency's (FSA) regulations governing its direct Farm Loan Programs. The final rule simplifies and clarifies FSA's direct loan regulations; implements the recommendations of the USDA Civil Rights Action Team; meets the objectives of the Paperwork Reduction Act of 1995; and separates FSA's direct Farm Loan Programs regulations from the Rural Development mission area's loan program regulations.

DATES: *Effective Date:* December 31, 2007.

FOR FURTHER INFORMATION CONTACT: William D. Cobb; USDA/FSA/DAFLP/STOP 0520, 1400 Independence Avenue, SW., Washington, DC 20250–0520; telephone (202) 720–1059; electronic mail: *bill.cobb@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Discussion of the Final Rule

On February 9, 2004, the agency published a proposed rule (69 FR 6056–6121) to streamline regulations governing its direct Farm Loan Programs (FLP). The comment period closed on April 9, 2004. The agency received several comments requesting the comment period to be reopened. The agency reopened the comment period until May 4, 2004 (69 FR 20834). In response to the proposed rule the agency received 1,583 comments from 593 individuals and organizations, including 181 banks or banking organizations, 168 individuals, 81 FSA employees, 71 Farm Credit Administration offices or employees, 42 agricultural organizations, 18 state agencies or officials, 13 Farm Bureaus, five State representatives, three Federal agencies, two FSA County Committee members, one tribal association, one university and one loan packager. In addition, six comment letters signed by multiple Members of the United States Congress were received.

Seven comments addressed the agency's decision to move the administrative provisions of program delivery from the Code of Federal Regulations (CFR) to a series of agency handbooks. Three comments opposed the agency's decision while four comments supported it. In accordance with the Administrative Procedures Act, both the proposed and the final rules provide the substantive requirements applicable to the public requesting assistance or benefits from FSA, not internal agency procedures and processes. The agency will issue its internal guidance in handbooks simultaneously with the final rule, since internal guidance only describes the operating procedures of the agency and does not impact services provided to applicants and borrowers. Further, the agency is working on making all its handbooks available on the internet so that any interested party may view, download, and print agency handbooks as appropriate. Therefore, these comments were not adopted.

Four comments were received requesting the agency reopen the comment period. As noted above, the agency reopened and extended the comment period from April 9, 2004, to May 4, 2004, and published a **Federal Register** notice to that effect on April 19, 2004.

Eleven comments provided general comments not related to any specific part, section, or policy of the proposed rule. Therefore, the agency did not take any action regarding these comments.

The following provides a summary of the comments received and the agency's response by CFR part.

Part 761—General Program Administration

The following discussion addresses the comments received on Part 761.

Section 761.2 Abbreviations and Definitions

Three comments were received on the ''active borrower'' and ''borrower'' definitions. Two comments stated the definitions as written are very similar, and therefore, the definition of ''active borrower'' should be removed from the CFR. The other comment stated the term ''active borrower'' is not used in the proposed rule. The agency agrees with the comments and has removed the definition.

One comment was received on the ''agreement for the use of proceeds'' definition. The comment stated the agreement for the use of proceeds has not benefited borrowers or the agency since its inception. Further, the comment stated if the comment is not adopted, the agency should initiate a study on how the agreement for the use of proceeds has benefited the agency's borrowers. Section 335(f) of the Consolidated Farm and Rural Development Act (Act) (7 U.S.C. 1985(f)) requires the agency to release normal income security proceeds to borrowers for essential family living and farm operating expenses until the loan is accelerated. Further, Section 335(f)(6) of the Act provides if a borrower is required to plan or report how proceeds from the sale of security will be used, the agency must notify the borrower of (a) the reporting requirement; (b) the right to release proceeds; and (c) how to request such funds. The agency implemented the Act's requirement with the agreement for the use of proceeds that provides a means for reaching a consensus with a borrower regarding the use of proceeds from the sale of security property when the farm operating plan is developed. In addition, the agency delegates the authority to release proceeds to borrowers according to an established agreement for the use of proceeds to agency officials who do not have loan approval authority. Further, the agency utilizes the agreement for the use of proceeds to account for the agency's security. Moreover, the agency continuously evaluates forms utilized in administering its programs for effectiveness. Therefore, based on this comment as well as the comments received on § 765.302, the agency may conduct further analysis to determine if changes are warranted. Lastly, the agency did not propose to make changes to the agreement for the use of proceeds; therefore, the agency will not take any action on this comment at this time.

One comment stated the term ''agribusiness'' is not defined in the proposed rule. The agency does not use the term in the CFR; therefore, it does not need to include a definition for ''agribusiness.''

Two comments were received on the ''agricultural commodity'' definition. One comment stated the agency must define ''agriculture'' in general to clarify and distinguish that agriculture does not solely consist of commodities and large-scale operations. The definition as written, the comment stated, will make many Indian farm operators ineligible for loans. The other comment stated that the narrow definition of ''agricultural commodity'' adversely impacts the definition of ''basic part of the applicant's total farming operation'' and urged that the definition of ''agricultural commodity'' be broadened to include a

specific list of agricultural products. The agency believes the definition is reasonably broad and provides the agency discretion in determining what constitutes an agricultural commodity. The agency does not use this term in the regulations to suggest that agriculture consists only of commodities and large-scale operations. Furthermore, the definitions of both ''agricultural commodity'' and ''basic part of an applicant's total farming operation'' included in the proposed rule are identical to existing definitions established in the agency's emergency loan regulations by a final rule (67 FR 791–801) published on January 8, 2002, after considering public comments. Based on reviews of assistance provided since the implementation of that final rule, the agency believes both definitions have resulted in the achievement of the program's mission and the agency is not aware of any adverse impact on the public. Therefore, neither comment is adopted.

Two comments were received on the ''applicant'' definition. One comment stated the definition is not clear if husband and wife applicants are considered as a joint operation. Further, the comment objected to husband and wife applicants being considered joint operations. The agency has not revised the definition based on this comment, but, the agency has revised the applicant eligibility requirements under § 764.51, as discussed under that section heading. The other comment stated the agency should eliminate the definition and use ''lender applicant'' in the guaranteed loan program. The agency clarified the definition of ''applicant'' to be applicable to both direct and guaranteed loan programs. The agency believes using the terms ''lender applicant'' and ''lender'' in the guaranteed loan program, however, would be confusing, therefore, the comment is not adopted. Further, to avoid confusion, the agency removed the definition ''loan applicant'' in the final rule. Therefore, the comment is not adopted.

One comment was received on the ''approval official'' definition. The comment stated the definition as written is confusing, because it contains the term ''field official'' which is not defined. The agency agrees with the comment, and removed the definition and replaced the term in the text with the word ''Agency.''

One comment was received on the ''aquaculture'' definition. The comment stated the agency should work with Tribes in the Northwestern, Northeastern and Midwestern United States to ensure the definition covers aquaculture on Tribal reservations. The agency believes the definition as written is broad enough to cover aquaculture operations in every part of the country. Further, the agency evaluates each operation on its merits. Therefore, the comment is not adopted.

Three comments were received on the ''average farm customer'' definition. Two comments supported the definition as written. One comment stated the definition as proposed eliminates Indian producers with niche markets who farm traditionally and practice sustainable agriculture. The agency does not foresee that Indian producers will be impacted by the definition since producers eligible to receive guaranteed loans will remain eligible. Therefore, the comment is not adopted.

One comment was received on the ''basic part of an applicant's total farming operation'' definition. The comment stated the definition as written is narrowly based on the definition of ''agricultural commodity'' without a definition of agriculture. Section 329 of the Act (7 U.S.C. 1970), in part, provides the agency may make emergency loans to applicants based on production losses if the applicant shows that a single enterprise that is a ''basic part of the applicant's farming, ranching, or aquaculture operation'' has suffered at least a 30 percent loss of normal per acre or per animal production. The definition clarifies the agency's implementation of the Act's provisions and as discussed in the agency's response to comments on the definition of ''agricultural commodity,'' the agency does not believe either definition as written, has an adverse impact on an applicant's eligibility. Therefore, the comment is not adopted.

Five comments were received on the ''beginning farmer'' definition. Three comments stated that the definition precludes applicants with less than 3 years of experience from meeting the conditions of the beginning farmer definition. Further, the comments stated an applicant with less than 3 years of experience is eligible for a direct farm ownership loan, but is not eligible for a beginning farmer downpayment farm ownership loan. The agency agrees with the comments and has revised the definition accordingly. One comment stated the agency should revise the definition to remove the word ''direct'' in describing ''OL applicant'' from subparagraph (5). The subparagraph is not applicable to direct or guaranteed operating loans (OL) under the statutory definition, therefore, the agency agrees and has revised the definition accordingly. Further, the comment stated the agency should use the median acreage, as provided in Section 343(a)(11)(F) (7 U.S.C. 1991(a)(11)(F)) of the Act, to determine if an applicant is a beginning farmer. Section 343(a)(11)(F) of the Act was enacted under the provisions of the Agricultural Credit Improvement Act of 1992. As addressed in the preamble of the agency's 1993 final rule (58 FR 48275) published on September 15, 1993, implementing the regulatory definition of ''beginning farmer,'' while the statute referred to ''the median acreage of farm * * * as reported in the most recent census of agriculture,'' the agency utilized the term ''average acreage'' in its regulations as the census of agriculture did not capture ''median acreage'' at that time. The National Agricultural Statistics Service now publishes both the median and average farm size by county. Analysis of the data reveals that the median acreage is typically lower than the average acreage. Adoption of the comment may result in some applicants, who meet the existing requirements of the definition, not being considered a ''beginning farmer.'' However, the comment is correct in that both the existing and proposed regulations do not match the statute. Therefore, the comment is adopted and the definition has been revised accordingly.

One comment stated the agency should remove the requirement that all members of an entity must materially and substantially participate in the operation. Section 343(a)(11) (7 U.S.C. 1991(a(11)) of the Act defines the term ''qualified beginning farmer or rancher'' and provides that for loans made to entities, the entity members must materially and substantially participate in the operation of the farm. The definition was based on the Act's provision, therefore, the comment cannot be adopted.

Three comments were received on the ''borrower'' definition. One comment stated the definition does not seem to be applicable to the guaranteed loan program. The agency agrees with the comment and has revised the definition accordingly. Another comment stated the agency should revise the definition to exclude cosigners since cosigners merely sign the promissory note to assure repayment of the loan and are not program borrowers as defined in the agency's regulations. The agency does not agree with the comment because a cosigner has the same liability for the debt as any other borrower who signed the promissory note. Therefore, the comment is not adopted. The last comment stated the agency should clarify the definition to provide if the borrower's name should match the

operator's name utilized by Farm Programs in their internal agency systems. The agency believes the definition as written is clear; signature requirements are a separate issue. Further, as stated in § 761.2, the definitions included in this part are applicable to FLP only. Therefore, the comment is not adopted.

One comment was received on the ''cash flow budget'' definition. The comment stated that commercial lenders have adopted the practice of not including advances or principal repayments on lines of credit in the cash flow, since they are considered cash flow neutral. The comment stated the agency should revise the definition to match commercial lenders' standards. The agency agrees with the comment and has revised the definition accordingly.

One comment was received on the ''chattel security'' definition. The comment stated the agency should clarify the definition to state that chattel is non-real estate property. The agency obtains a security interest using mortgages, deeds of trust, financing statements and security agreements. The agency believes the comment is proposing to delineate between chattels and real estate which cannot be done uniformly in all cases, especially for loans for which security is growing crops and fixtures. Further, the agency believes the definition as written is reasonably clear. Therefore, the comment is not adopted.

One comment stated the term ''commercial classified account'' is not used in the rule, while the terms ''immediate family'' and ''immediate family member'' even though they are used, are not defined. The agency agrees and, in the final rule, the agency has removed the term ''commercial classified account'' and replaced the terms ''immediate family'' and ''immediate family member'' with the defined ''family member'' term.

Two comments were received on the ''conservation contract review team'' definition. Both comments stated the agency should remove the adjacent public landowners from the definition. The comments did not provide any reason for removing public landowners from the conservation contract review team. The agency has utilized the definition, as published in the proposed rule, since September 14, 1988, and has not encountered any difficulties or concerns. Further, the agency believes public landowners may have concerns or relevant information regarding the potential easement that may affect the agency's decision. Therefore, the comments are not adopted.

One comment was received on the ''cosigner'' definition. The comment stated the agency should revise the definition to state that cosigners are not eligible to receive loan servicing. The agency agrees that cosigners do not have independent rights to receive loan servicing, but may submit a joint application for servicing with all other liable parties. Therefore, the definition is revised accordingly.

One comment was received on the ''current market value buyout'' definition. The comment stated the agency should revise the definition to remove liquidation costs as the definition conflicts with the explanation of current market value buyout included in Appendix B of 7 CFR part 766. The agency agrees with the comment and has revised the definition as the provisions of Appendix B are identical to existing regulations published in subpart S of 7 CFR part 1951. Furthermore, the Agency did not address a revision to the existing regulations in the preamble of the proposed rule.

One comment was received on the ''debt forgiveness'' definition. The comment stated the agency should include in the definition the Act's provision, found in Section 343(a)(12)(B)(ii), which provides that ''any write-down provided as part of a resolution of a discrimination complaint against the Secretary'' is not considered debt forgiveness. The agency agrees with the comment and has revised the definition. The agency also has clarified the definition to state that the term does not include prior debt forgiveness that is repaid in full and debt reduction in exchange for a conservation contract.

One comment was received on the ''debt service margin'' definition. The comment stated the proposed calculation would take a borrower off of limited resource rates if the borrower has atypical or one-time high inventories or cash. Therefore, the comment stated the agency should use the term debt and capital lease coverage ratio, which is the industry standard to calculate the debt service margin. The agency uses a typical plan to calculate the debt service margin and does not consider atypical high inventories or cash when running the Debt and Loan Restructuring System (DALR$) for primary loan servicing. Further, the definition of ''feasible plan'' provides that the farm operating plan will not be based on atypical or one-time high inventories, or cash on hand. Therefore, the comment is not adopted.

Six comments were received on the ''delinquent borrower'' definition. All comments stated the definition contained in the proposed rule did not match the definition in the agency's final rule published on February 4, 2004 (69 FR 5264–5267). The agency agrees with the comments, and has revised the definition accordingly.

Three comments were received on the ''entity'' definition. One comment stated that the term ''trust,'' as used in the definition, must be more clearly defined ''so that it includes trusts established in treaties'' making tribal farms eligible for assistance. Two comments stated that it was not clear in the proposed rule how less than traditional entity structures would be handled. Act section 302(a) (7 U.S.C. 1922(a)) for farm ownership loans, section 311(a) (7 U.S.C. 1941(a)) for operating loans, and section 321(a) (7 U.S.C. 1961(a)) for emergency loans specifically provide the types of entities eligible to receive loans; entity applicants must fit within at least one of the types listed. The agency does not believe the definition, as written, limits the type of trust, or other organization listed, that are considered an entity under the Act's provisions. However, entity applicants must meet the statutory eligibility requirement of being the owner-operator or tenant-operator of a family farm, as well as all other applicable eligibility and loan making requirements. The agency believes the definition, as written, will not result in the adverse impacts suggested in the comments; therefore, the comments are not adopted.

Two comments were received on the ''essential family household expenses'' definition. One comment stated that the definition, along with the definition of ''essential family living and farm operating expenses,'' makes the rule unclear. The agency believes the ''essential family household expenses'' and the ''essential family living and farm operating expenses'' definitions are similar, and has therefore, removed the definition of ''essential family household expenses'' in the final rule as unnecessary and replaced the term throughout the CFR. The other comment stated the agency should revise the text ''the borrower and the immediate family of the borrower'' to read ''the borrower, spouse, and immediate family members'' since the agency defined the term ''family member.'' Since the agency removed the definition of ''essential family household expenses,'' the agency revised the definition of ''family living expenses'' to include expenses for the borrower's spouse and immediate family members.

Two comments were received on the ''essential family living and farm operating expenses'' definition. One comment stated that the agency should

revise the definition to provide that the agency will consider the expenses typical for the local community, instead of expenses typical for that type of operation in the area. Further, the comment stated the agency should remove the provision that the agency will consider what constitutes an efficient method of production for the borrower's resources because it is ambiguous. The agency believes using the term ''local community'' will make the definition unclear when applied to a rural area. Further, the agency believes the provision, as written, furthers the agency's mission of providing supervised credit and allowing the agency and the applicant to adjust to the needs of the operation. Therefore, this part of the comment is not adopted. The comment also stated the agency should include in the definition nursing care of immediate family members not living in the same household. The agency has revised the definition of ''family living expenses'' to include the costs of providing for the needs of family members and those for whom the borrower has a financial obligation, such as alimony, child support, or nursing care of an elderly parent. The agency agrees that nursing care of immediate family members is a family living expense, but the agency believes it is not always an essential family living expense. Therefore, this part of the comment is not adopted. Lastly, the comment stated the agency should remove the reference to church expenses from the definition and replace it with religious expenses. The other comment stated the agency should revise the definition to remove the reference to ''church.'' The agency agrees with the comments and has revised the definition accordingly.

Eight comments were received on the ''established farmer'' definition. Two comments stated the agency should remove the subparagraph describing entity eligibility from the definition because it limits the use of different legal structures for families attempting to transfer the farm to a new generation. The term ''established farmer'' is used only in subpart H of 7 CFR part 764 which addresses requirements specific to emergency loans in accordance with section 321 of the Act (7 U.S.C. 1961). The authorized uses for emergency loan funds include the repair or replacement of essential property damaged or destroyed as a result of a disaster; however, emergency loan funds would not be used to finance the transfer of a farm to a new generation. The agency does not agree that the provision of the definition adversely impacts inter-generational transfers and therefore, the comments are not adopted.

Similar concerns regarding the impact of entity eligibility requirements were received in response to regulations at § 764.101. As described in the agency's response to those comments, the agency revised the entity eligibility requirements contained in that section, and as a result made conforming changes to the definition of ''established farmer'' by revising the provision that an established farmer is not ''an entity with an ownership interest of 50 percent or more held by one or more entities'' to require that an entity cannot be ''an entity whose members are themselves entities.''

One comment stated that the ''established farmer'' definition should be revised to recognize that Tribal farms have sovereign rights that allow for complex land issues, which often require the use of a full time farm manager. As discussed in the response to comments for the definition of entity, the agency does not believe the regulations, as written, impose any additional limitations on a particular type of entity. However, agency assistance is only available to entity operations that are family farms and, therefore, must have a majority of the day-to-day operational and strategic management decisions made by the members operating the farm, as well as meet all other requirements established within the definition of family farm. Therefore, this portion of the comment is not adopted. Further, the comment stated that the ''established farmer'' definition requirement that 50 percent or more of the ownership in the entity cannot be held by another entity will exclude Tribal farms. As discussed in the response to comments received on the general eligibility requirements for loan making (§ 764.101), the agency has revised the eligibility requirements regarding entities to provide that an entity applicant cannot be composed of members that are themselves entities. Therefore, appropriate conforming changes have been made in the CFR, and this portion of the comment is not adopted.

Two comments stated the requirement in the ''established farmer'' definition that the entity is primarily engaged in farming and has over 50 percent of its gross income from all sources from farming, is detrimental to small or beginning farmers who rely on non-farm income to meet operating and family living expenses. This requirement is supported by the ''family farm'' requirement that the farm produce ''agricultural commodities for sale in sufficient quantities to be recognized as a farm rather than a rural residence.'' Furthermore, the 50 percent gross income requirement is included in existing regulations published in 7 CFR 764.2 and the agency is not aware of any adverse impacts on the public; therefore, the comments are not adopted. One comment stated it is not clear what the term ''such loans'' refers to in subparagraph (5)(ii) of the definition. The agency agrees with the comment and has revised the definition to refer to ''Agency loans.'' Two comments suggested that the word ''employees'' in the last sentence of the definition be replaced with the word ''employs.'' The agency agrees with the comments and has revised the definition accordingly.

Two comments were received on the ''false information'' definition. One comment stated the agency should revise the definition to include information the applicant or borrower should have known to be false, because it is difficult for the agency to prove the information the applicant or borrower submitted to the agency was false. While the agency agrees with the comment, the agency believes it is even more difficult to prove the applicant or borrower should have known information submitted to the agency was false. Therefore, the comment is not adopted. The other comment stated the agency should revise the definition to include information the applicant or borrower chose to withhold from the agency. The term is used only in subpart F of 7 CFR part 766 for the submission of false information. Since the proposal concerns information not submitted to the agency, and therefore not relied on, the comment is not adopted. Practically, however, in such cases the information submitted to the agency may be false in light of conflicting information not submitted and would, therefore, be covered by the definition.

Five hundred sixty-four comments were received on the ''family farm'' definition. Of the comments received, 12 supported the definition as proposed while 552 comments opposed it. The proposed definition would establish that the typical year gross income of the operation could not exceed the greater of $750,000 in annual sales, or the 95th percentile of the statistical distribution of the income of farms in the state with gross sales in excess of $10,000, based on the farm data and survey of farm economic factors published by the National Agricultural Statistics Service. The opposing comments stated the proposed definition would make a large number of family farms ineligible for direct and guaranteed agency loans. One hundred seventy comments

recommended the gross income limit be increased from $750,000 to $1,000,000, $1,500,000, or $2,500,000. Seventy-four comments opposed the use of any gross income limit. Fifty-two comments stated that the use of annual sales to determine eligibility was arbitrary. Thirty-one comments stated the proposed definition would exclude high value crop producing farms. Seventy comments stated the agency provided little justification in the proposed rule for using a gross farm income cap. Fourteen comments stated the agency does not have a statutory basis for changing the family farm definition. Thirteen comments opposed using a gross income limit that was not indexed to inflation. Therefore, because of the overwhelming opposition to the proposed requirement, the agency will not include a gross annual income in its family farm definition. However, as noted in the discussion of the proposed rule published on February 9, 2004, the broad guidelines contained within the existing definition have resulted in inconsistencies in applying the definition on a nationwide basis. The agency believes that the ''family farm'' definition in this final rule will minimize inconsistencies regarding management and labor requirements. Based upon comments received, the Office of Management and Budget recommends the agency seek public input as part of a further analysis regarding the inclusion of an appropriate nation-wide income limitation, which may necessitate future action. It is important to note that the definition of a ''family farm'' as stated in this final rule only applies to farm loan program eligibility requirements.

Further, the proposed ''family farm'' definition included the provision that the majority of the day-to-day operational and management decisions are made by the applicant and persons related to the applicant by blood or marriage. One hundred sixteen comments were received on the ''related by blood or marriage'' definition. All comments stated the definition as written excludes certain relationships, including, but not limited to, cousins, uncles, aunts, and grandparents and that as a result, partnerships or entities comprised of these individuals would not be considered a family farm. The agency agrees with the comments and revised the definition to include the relationships except cousins. In addition, in response to the concerns expressed, the agency revised the definition of ''relative'' to include cousin in the covered relationships. Furthermore, the agency revised the ''family farm'' definition to provide that the day-to-day operational and management decisions be made by the applicant and persons related to the applicant by blood or marriage or a relative of the applicant.

One comment expressed concern regarding the provision in the ''family farm'' definition that the farm ''in a typical year generates net cash income that improves the family's standard of living'' as the term ''typical year'' is not defined in the rule. The agency agrees that the provision is subject to different interpretations and could adversely impact applicants that have been subject to recent disasters. Therefore, the agency removed the provision from the definition.

One comment was received on the ''family living expenses'' definition. The comment stated the agency should remove the definition because the CFR already includes the ''essential family living and farm operating expenses'' definition. The agency believes the terms are not synonymous as all family living expenses are not considered essential. Further, the terms are utilized under different circumstances in the loan making and servicing process when the distinction is necessary. Therefore, the comment is not adopted.

One comment was received on the ''family member'' definition. The comment stated the agency should revise the definition to provide family members include the immediate members of the family for whom the borrower has a financial obligation, e.g., child support payments, alimony, nursing care for an elderly parent. The agency revised the definition of ''family living expenses'' to include the expenses provided in the comment, for family members who are the borrower's responsibility, as revising that definition is more appropriate.

One comment was received on the ''farmer'' definition. The comment stated the agency should revise the definition to provide that farmer is an individual or entity who is a family farmer. The agency believes the definition as written is adequate as not every farmer in the United States is a family farmer. Therefore, the comment is not adopted.

Two comments were received on the ''feasible plan'' definition. One comment stated the agency should revise the definition to state ''feasible plan is when the cash flow budget shows total income equals or exceeds total cash outflow.'' The agency does not agree with the comment to limit the evaluation of feasibility to include only ''total income'' as there may be other non-income sources of cash inflows, such as cash on hand, that impact the borrower's repayment ability. Therefore, the comment is not adopted. The other comment stated the agency should clarify the definition to provide that the margin after debt service and ending cash, depending on the loan requested, determine if the operation projects a feasible plan. The agency agrees that the feasibility for an annual operating loan should be evaluated differently than for a term loan. However, ''margin after debt service'' and ''ending cash'' are terms that apply to the Farm Business Plan, a software application utilized by the agency to determine feasibility for direct loan making and servicing requests. ''Feasible plan'' is a term applicable to regulations for both the direct and guaranteed loan programs. While the term ''ending cash'' refers to the applicant or borrower having ''sufficient cash inflow to pay all cash outflow'' and the term ''margin after debt service'' applies to consideration of a typical plan when the ''loan approval or servicing action exceeds one production cycle,'' the agency believes the definition, as written, adequately describes the requirements for both the direct and guaranteed loan programs. Therefore, the comment is not adopted.

One comment was received on the ''financially distressed borrower'' definition. The comment stated the definition should include borrowers who do not have a 110 percent debt service margin to match the DALR$ software program. The agency disagrees. The agency notifies financially distressed borrowers of the availability of loan servicing programs as provided under § 766.101. The agency does not consider a borrower who can develop a feasible plan, which does not require a margin, with less than 10 percent margin to be financially distressed. However, a borrower who is not delinquent, but cannot develop a feasible plan for the current or next production cycle, is considered financially distressed and in need of loan servicing. Further, § 766.105(b)(1) provides the agency will attempt to achieve a 110 percent of debt service margin; however, under § 766.105(b)(3) the agency only requires the borrower ''be able to develop a feasible plan with at least 100 percent of debt service margin'' to be considered for loan servicing programs. If the agency revises the definition as provided in the comment, the agency would have to re-notify all borrowers restructured with a debt service margin of less than 110 percent immediately after the restructuring is complete. Therefore, the comment is not adopted. However, the

agency did revise the definition by removing the text, ''unable to make payments as planned for the current or next business accounting period or to project a feasible plan of operation for the next business accounting period'' as the term ''business accounting period'' is not defined. The removed text was replaced by the text, ''unable to develop a feasible plan for the current or next production cycle'' as the term ''production cycle'' is defined in the rule, and is more easily understood.

Six comments were received on the ''financially viable operation'' definition. One comment recommended the words ''basic family living expenses'' in the definition be revised to read ''essential family living expenses.'' One comment stated the agency should revise the definition to provide the operation must generate sufficient income to meet essential family living expenses to the extent they are not met by dependable non-farm income. The agency agrees with the comments and has revised the definition accordingly. In addition, the agency clarified the definition further to provide that it is applicable only under § 764.252, which provides the conditions applicants have to meet to request a waiver of the operating loan term limit. Four comments stated the definition requires the operation to generate sufficient income to provide for replacement of capital items and long-term financial growth, and that such an operation should qualify for commercial credit, with no agency assistance. Therefore, the comments stated the agency should either remove the definition or make it identical to the ''feasible plan'' definition. In addition, one of the comments stated the definition seems to provide that non-farm income can only be used to meet family living expenses, but that non-farm income is used to make debt payments, replace capital items and supplement working capital. Section 311(c)(4)(B) of the Act (7 U.S.C. 1941(c)(4)(B)) requires the applicant to have a financially viable operation for the agency to consider granting a one-time 2-year waiver of operating loan limits. The agency believes the definition as revised to refer to essential family living expenses should allow flexibility to small operations while meeting the statutory requirements; therefore, the comments are not adopted.

One comment was received on the ''foreclosed'' definition. The comment stated the agency should revise the definition to provide ''foreclosed'' is the completed act of selling real estate security under the power of sale in the security instrument or through judicial proceedings. The agency agrees with the comment and has revised the definition to refer to judicial proceedings.

One similar comment was received on the ''foreclosure sale'' definition. The comment stated the agency should revise the definition to provide ''foreclosure sale'' is the act of selling real estate security. The agency believes the definition as written is adequate since the agency can also foreclose on loans secured by chattels. Therefore, the comment is not adopted.

Two comments were received on the ''good faith'' definition. One comment supported the definition as written. Further, it stated it is not necessary for the agency to consult the Office of General Counsel to determine findings of fraud, waste or conversion. The other comment stated the agency should retain the requirement for a written Office of General Counsel opinion that has been a regulatory requirement since September of 1988, as such determinations have ''grave consequences for the rights and interest of FLP borrowers * * *'' The agency recognizes the seriousness of allegations of fraud, waste, and conversion and therefore has revised the definition to include the requirement that an opinion be obtained form the Office of the General Counsel. Further, the comment stated the ''good faith'' definition should allow for inadvertent departures from the agreements with the agency because good faith deals with the borrower's state of mind at the time the violation of the agreement occurs. The agency does not believe its staff can make determinations regarding a borrower's state of mind. The text, ''The Agency considers a borrower to act in good faith, however, when the borrower is unable to adhere to all agreements due to circumstances beyond the borrower's control'' adequately addresses this concern; therefore, the comment is not adopted. In addition, the comment stated the statutory requirement that a borrower who disposed of security and used proceeds for essential household and operating expenses prior to October 14, 1988, is not considered to lack good faith is not included in the definition. While the agency agrees with the comment, the agency does not believe a borrower will be determined to lack good faith based on events that occurred more than 15 years prior to a current loan or servicing application. However, as an added precaution, the agency handbook will provide guidance on dealing with applicants and borrowers who disposed of security and used proceeds for essential family living and farm operating expenses prior to October 14, 1988. Therefore, the comment is not adopted.

Lastly, the agency made an administrative revision to the ''good faith'' definition by clarifying that good faith requires an applicant or borrower to provide ''current, complete, and truthful information when applying for assistance and in all past dealings with the Agency.'' This text supports the acknowledgment currently included on each loan or servicing application.

One comment was received on the ''graduation'' definition. The comment stated the agency should revise the definition as the payment in full of one or more direct FLP loans. The agency believes the payment in full of one or more loans of the same type, when the borrower has several outstanding loans, cannot be considered as graduation because the borrower is still depending on the agency to obtain necessary credit for the operation. As agency loans are a temporary source of credit for borrowers, for the agency to measure its borrowers' success, borrowers have to obtain their credit needs from another source with or without an agency guarantee. Therefore, the comment is not adopted.

One comment was received on the ''homestead protection'' definition. The comment stated the agency should clarify that homestead protection applies to direct loan borrowers only. The agency agrees with the comment and has revised the definition accordingly.

One comment was received on the ''homestead protection property'' definition. The comment stated the agency should revise the definition to clarify that homestead protection property secured direct loans only. The agency agrees with the comment and has revised the definition accordingly.

One comment was received on the ''household contents'' definition. The comment stated the agency should remove the second sentence of the proposed definition with exclusions for luxury items. The agency believes the definition as written is reasonable. The term is used in Parts 764 and 766 in relation to disaster-related damages and taking additional security refers to needed, not luxury household items. Therefore, the comment is not adopted.

One comment was received on the ''inaccurate information'' definition. The comment stated the agency should revise the definition to include information provided by an applicant without the intent of fraudulently obtaining benefits. The agency agrees with the comment and has revised the definition to refer to applicants, borrowers, lenders, and other sources.

Two comments were received on the ''inventory property'' definition. One comment stated the definition as written includes all Federal property, such as Federal buildings and public land. Further, the comment stated the agency should clarify the definition to include real estate property held by guaranteed lenders after liquidation of guaranteed loans. The other comment stated the agency should revise the definition as real estate and chattel property to which the United States has acquired ownership rights. In response to the comments, the agency has clarified that the term covers such property that formerly secured an FLP loan and to which the Government has acquired title. The definition would not cover former security property held by the guaranteed lender.

One comment was received on the ''joint operation'' definition. The comment stated the agency should remove the definition. Section 343(a)(7) of the Act (7 U.S.C. 1991(a)(7)) defines the term ''joint operation'' and this type of entity is specifically listed as an eligible entity for farm loans. The proposed rule was based on the Act's provision; therefore, the comment cannot be adopted.

One comment was received on the ''lien'' definition. The comment stated the agency should revise the definition as a legally enforceable claim against real or chattel property. The agency agrees with the comment and has revised the definition to refer to real or chattel property.

One comment was received on the ''line of credit agreement'' definition. The comment stated the agency should revise the definition as a contract between the lender and the borrower that contains certain lender and borrower conditions, limitations, and responsibilities for revolving or non-revolving credit. The agency's current guaranteed regulations and handbook have contained the definition as published in the proposed rule since February 12, 1999, without causing adverse impacts on the program. The agency believes the less technical definition is reasonable and easily understood. Therefore, the comment is not adopted.

One comment was received on the ''loss rate'' definition. The comment stated the agency should revise the definition as the net amount of loan loss claims paid on loans made in the previous 7 years divided by the total loan amount guaranteed during the same period. The agency's current guaranteed regulations and handbook have contained the definition as published in the proposed rule since February 12, 1999, without causing adverse impacts on the program. Therefore, the comment is not adopted. The agency did however make an administrative revision to the definition to replace the text ''guaranteed OL, Farm Ownership (FO), and Soil and Water (SW) loans'' with the text ''FSA guaranteed loans'' as the agency has not made guaranteed SW loans in the last 7 years.

One comment was received on the ''mortgage'' definition. The comment stated the agency should revise the definition as a security instrument. The agency defines the term ''mortgage'' to clarify that it is synonymous with the term ''deed of trust'' in those States that use a deed of trust to obtain a lien on real estate. Further, the agency has added the definition for the term ''security instrument'' to describe any document that provides the agency with a security interest in real or personal property. Therefore, the comment is not adopted.

One comment was received on the ''net recovery value of security property'' definition. The comment stated the agency should include a separate definition for the term ''net recovery value of non-essential assets'' instead of including it in the definition of ''net recovery value of security property.'' The agency agrees with the comment. Therefore, the agency defined the term ''net recovery value of non-essential assets'' and revised the ''net recovery value of security property'' definition accordingly.

Seventeen comments were received on the ''non-eligible enterprise'' definition. Four comments supported the agency's proposed definition as written. One comment stated the agency should remove the definition and provide the eligible enterprises under the applicable loan purpose sections. The agency believes enumerating all the eligible enterprises will make the applicable loan purpose sections voluminous. Further, by not enumerating the eligible enterprises in the rule the agency eliminates the possibility of inadvertently omitting an eligible enterprise. Therefore, the comment is not adopted.

Another comment stated the ''non-eligible enterprise'' definition as written could be confusing to the public. The agency believes that by defining the term and providing in the CFR text that loan funds may not be used to finance a non-eligible enterprise, it eliminates confusion. Therefore, the comment is not adopted. One comment, while it supported the definition, stated the agency should provide that an economically viable transportation situation does not exist for the non-eligible enterprise's products. The agency believes that it is not the expenses associated with the enterprise that makes the enterprise ineligible for agency loans, it is the products the enterprise produces. Further, when considering any enterprise, the agency includes transportation expenses when it determines the operation's feasibility, since transportation costs can vary greatly from locality to locality. It is not the agency's intent to allow financing of non-eligible enterprises in one area and not in other areas based on transportation costs. Therefore, the comment is not adopted.

Five comments opposed the ''non-eligible enterprise'' definition as proposed because it eliminates tropical fish farming, the equine industry, llamas, alpacas, and ratites from being eligible for agency loans. The agency has a long-standing policy not to finance the production of animals kept solely for pleasure or companionship. This policy will continue. Therefore, the comments are not adopted. Two comments stated it is not clear if the definition includes products bought and further grown, and then resold, or otherwise having value added to the products. ''Non-eligible enterprise'' would not include common farming operations that buy chickens, piglets, seedling, etc., and resell them when fully grown; it would include operations that purchase ripened fruit and resell it as jam, for example. No change is being made in relation to the comments. Further, the comments stated it is not clear if the requirement that the ''majority of the commodities processed or marketed'' by the enterprise is based on dollar sales or the number of items. The agency believes the requirement as written is applicable only to the number of items processed or sold. Therefore, the comments are not adopted.

Another comment stated the ''non-eligible enterprise'' definition adds another tier of inquiry in determining if a particular enterprise is eligible for agency loans. Further, the comment stated the definition provides enterprises that produce exotic or non-farm animals are not eligible for loans, however, the terms ''exotic'' and ''non-farm animals'' are not defined. In response to the comment, the agency revised the definition to clarify what the agency considers exotic or non-farm animal; however, the term is still needed. The Federal Agriculture Improvement and Reform Act of 1996 (Public Law 104–127), removed financing of non-farm enterprises as an authorized use of loan funds. The agency needs to specify the type of

enterprises that will not be financed to avoid confusion and inconsistent application of this restriction. Further, financing enterprises producing animals or products for which there is not an established market is inconsistent with prudent lending objectives.

Another comment stated the agency must allow Tribal input to determine what tribal agricultural enterprises consist of, and set guidelines to recognize traditional tribal markets. Further, the comment stated the production of leeches, vermiculture and aquaculture must not be included in the non-eligible enterprise definition. The agency believes the definition as revised, along with the definitions of agricultural commodity and aquaculture, adequately identify the enterprises eligible for receiving loans. Further, the agency evaluates each individual operation requesting assistance on its own merits. Therefore, the comment is not adopted.

One comment was received on the ''non-essential assets'' definition. The comment stated the agency should revise the definition to include assets that may contribute a small amount of income to the farming operation but are clearly non-essential for the operation to function. The agency believes the definition as written is adequate, especially when read in the context of the CFR text. Therefore, the comment is not adopted.

One comment was received on the ''non-program loan'' definition. The comment stated the definition as written is too narrow and the agency should continue to use the definition found in current § 1951.451. The agency agrees with the comment and has revised CFR accordingly.

One comment was received on the ''normal production yield'' definition. The comment stated the definition as written is confusing and that the current definition, found in § 764.2, provides the priority for the types of records the agency will use. The proposed definition made no substantive changes from current § 764.2. Some clarifying language has been added in response to the comment.

One comment was received on the ''note'' definition. The comment stated the agency should remove the definition, as the term ''note'' is included in the ''debt instrument'' definition. The agency believes the term ''debt instrument'' does not adequately describe the instruments the agency uses to evidence debt and therefore, the agency removed it in the final rule. However, the agency added the term ''promissory note'' which is used in several sections of the CFR to replace the term ''note,'' and further added the term ''assumption agreement'' for clarity since it is distinguished from the term ''promissory note'' in the text.

The agency revised the definition of ''Operating loan'' to include a youth loan as provided in § 764.1(b).

One comment was received on the ''owner-operator'' definition. The comment stated the definition should be revised to read ''* * *is the individual or entity that owns the farm and provides the labor, management, and capital to operate the farm. An entity must have one or more members operating the farm.'' The terms ''owner-operator'' and ''tenant-operator'' are used in the general eligibility requirements established in 7 CFR 764.101, as well as the additional eligibility requirements established for specific loan types in the applicable subparts. While the proposed rule included a definition of the term ''owner-operator,'' the terms ''tenant-operator'' and ''operator'' were not defined. The agency believes the key term that should be defined is ''operator,'' and has, therefore, removed the definition of ''owner-operator'' in the final rule and has added ''operator.'' The agency defined the term ''operator'' to include both an ''owner-operator'' or ''tenant-operator'' as applicable under each loan program. The agency does not believe that a definition of either of these terms is necessary as they are self explanatory. Further, the agency believes that the new definition of ''operator'' uses the abbreviated text suggested by the comment; therefore, this portion of the comment is adopted. However, the agency did not adopt the portion of the comment suggesting the inclusion of the text ''An entity must have one or more members operating the farm'' as this requirement is adequately addressed in the revisions made to the eligibility requirement established in 7 CFR 764.101(k) requiring the applicant be the operator of a family farm.

One comment was received on the ''partnership'' definition. The comment stated the agency's requirement that partnerships must be formally organized is out of date and unnecessary. The agency believes the definition as written does not require a formal partnership agreement, but instead it provides the agency will comply with State requirements pertaining to partnerships. Therefore, the agency does not believe a change to the definition is necessary.

One comment was received on the ''protective advance'' definition. The comment stated since the definition will be applicable to the guaranteed loan program also, the agency should continue to use the definition found in current § 762.102(b). The agency believes the definition as written in the proposed rule is adequate to cover both the direct and guaranteed loan programs. Further, under §§ 765.203 and 762.149, respectively, the agency specifies the conditions for making protective advances for the direct and guaranteed loan programs. Therefore, the comment is not adopted.

One hundred sixteen comments were received on the ''related by blood or marriage'' definition. As noted in the agency's response to comments received on the definition of ''family farm,'' all comments stated the definition as written excludes certain relationships, including, but not limited to, cousins, uncles, aunts, and grandparents. The agency agreed and revised the definition accordingly.

One comment was received on the ''relative'' definition. The comment recommended the word ''of'' be inserted between the words ''one'' and ''the.'' The agency agrees and has revised the definition accordingly. In addition, as discussed in the agency's response to comments received on the definition of ''family farm,'' the definition of ''relative'' was revised to include the term ''cousin.''

Two comments were received on the ''restructuring'' definition. Both comments stated the definition as written does not cover the guaranteed loan programs. The agency agrees with the comments and has revised the CFR accordingly to adopt the definition from current § 762.102.

Three comments were received on the ''rural youth'' definition. Two comments supported the definition as written and opposed lowering the age limit for youth loans from the proposed 10 years to 8 years of age. One comment, while it supported the definition, stated the population limit should not exceed 20,000 inhabitants. The agency disagrees. The agency believes rural youth residing in areas of up to 50,000 inhabitants can benefit from the youth loan program and that the age minimum should remain at 10 years of age.

Seven comments were received on the ''socially disadvantaged applicant'' definition. Six comments stated that applicants who are spouses are penalized under the definition when the wife is the operator and owns 50 percent of the farming operation, because they do not meet the majority ownership interest test. The agency agrees there are circumstances where a spouse's ability to own the majority interest in property is prohibited by State laws governing spousal rights. Therefore, the agency revised the

definition to allow married couples to be considered socially disadvantaged when the socially disadvantaged spouse owns 50 percent of the farming operation and makes most of the management decisions, contributes a significant amount of labor and is generally recognized as the operator of the farm. Such construction of the term as used in section 355 of the Act is reasonable under these circumstances.

Another comment stated the requirement for entities that the socially disadvantaged member must have a majority ownership interest in the operation to receive targeted funds reduces access to targeted funds by eligible socially disadvantaged applicants. The Act's section 302(a) for farm ownership loans, section 311(a) for operating loans, and 321(a) for emergency loans provide the eligibility requirements for loans to entities. The statutory eligibility requirements apply to members holding a majority interest in the entity. The proposed rule is consistent with the Act's provisions in focusing on the majority interest holder. The agency is taking a more lenient approach only in the case of spouses as discussed above. Therefore, the comment is not adopted.

One comment was received on the ''socially disadvantaged group'' definition. The comment stated the socially disadvantaged groups are not specified in the proposed rule. The agency agrees with the comment and has revised the definition to include the groups currently listed in § 1943.4.

One comment was received on the ''trust'' definition. The comment stated the agency should revise the definition to reflect that Tribes, as sovereign nations, have the ability to create and enforce laws to regulate businesses conducted within their boundaries. The requirement that a trust is recognized by the state in which it conducts business is the same as the requirement applicable to all other entities. Agency regulations cannot address every Tribe's unique situation; therefore, state offices may develop guidance according to applicable state and tribal laws in consultation with the Regional Office of General Counsel. The agency believes the definition as written is adequate; therefore, the comment is not adopted.

One comment was received on the ''United States'' definition. The comment stated the definition as written excludes the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands. Further, the comment stated the Free Association Treaty provides that the agency may enter into loan agreements with citizens of the countries mentioned above. The agency agrees with the comment and has revised the definition accordingly.

One comment was received on the ''working capital'' definition. The comment stated the agency should revise the definition for clarity to provide ''* * * including, but not limited to, paying for feed, seed * * *'' The agency agrees and has revised the definition accordingly.

Four comments were received on the ''youth loan'' definition. Three comments stated youth loans should not be restricted to agricultural projects only. One comment stated that changing the youth loan purposes to include financing agriculturally-related projects only will have a devastating effect on Tribal youth. As stated in the discussion of comments received under § 764.301, the agency believes that youth loan funds should be used for modest, income producing, agriculture-related projects. Therefore, the comments are not adopted.

Section 761.6 Appeals

Five comments were received on the appeals provisions. Three comments stated the agency should clarify the provision that an adverse decision involving a guaranteed loan may be appealed by either the lender or the applicant or borrower. One comment stated the agency should revise § 761.6 as well as § 762.104 to provide a guaranteed applicant or borrower may appeal an adverse agency decision without the lender appealing. Requests for appeal are handled in accordance with 7 CFR parts 11 and 780; therefore, the agency removed the provisions regarding who may request an appeal from § 761.6 and revised § 762.104 to remove the joint appeal requirement. One comment stated that while § 761.6 provides appeals will be handled according to 7 CFR parts 11 and 780, § 766.110 provides appeals of NRCS' technical determinations on conservation contracts will be handled according to 7 CFR part 614. The comment stated the rule as written is not clear. The agency agrees with the comment and has revised § 766.110 to refer to 7 CFR parts 11 and 780.

Section 761.8 Loan Limitations

Thirty-two comments were received on the direct loan limits. One comment stated that the agency should work with Congress to increase the direct loan limit and include an inflation percentage increase as provided for guaranteed loans under section 313(b) of the Act (7 U.S.C. 1943(b)). The agency believes that the impact of any legislative change to increase the direct loan limits must be carefully analyzed as funds provided for direct farm ownership and operating loans are usually exhausted early in the fiscal year, and the Office of Management and Budget (OMB), along with the President play a role in the appropriations process. Therefore, the agency is limiting this rule to revising its regulations within its current statutory authority. However, the Administration's 2007 Farm Bill proposal recommends that the loan limit for the direct loans be increased. The Agency will make the appropriate regulatory changes in the future, in the event the Administration's proposal is adopted.

All other comments on this section stated that the direct loan limit of $200,000 is not adequate to cover the credit needs of socially disadvantaged and limited resource applicants because they are denied commercial loans more often. The proposed rule was based on Section 313(a)(1), limits for direct loans, therefore, the comments cannot be adopted.

Section 761.9 Interest Rates for Direct Loans

One comment was received on the interest rate charged limited resource borrowers. The comment stated the agency should reduce the limited resource interest rate to three percent from five percent. Section 316(a)(2) of the Act (7 U.S.C. 1946(a)(2)) sets the limited resource interest rate minimum at five percent; therefore, the comment cannot be adopted.

Section 761.10 Planning and Performing Construction and Other Development

Five comments were received on the planning and performing construction and other development provisions. Two comments supported the agency's proposal to make the applicant or borrower responsible for ensuring compliance with local construction standards. One comment stated the agency should require the applicant to provide the plans and specifications prior to the agency's loan approval and inspect the planned development at least once. The agency believes the rule as written is adequate as it requires the applicant to provide the plans and specifications to the agency. The applicant or borrower must inspect development work, as needed, to protect their financial interest and provide written certification to the agency that the development conforms to the plans and good construction practices, applicable laws, ordinances, codes and regulations. Under § 761.10(e)(4), the

agency inspections of the planned construction and development do not create or imply any duty or obligation of the agency to the applicant or borrower. The agency inspects the planned construction and development solely to protect its financial interest. The agency's inspection process is internal policy and will be addressed in the appropriate agency handbook. Therefore, the comment is not adopted.

Another comment stated the agency should not require the same process for insurance proceeds less than $5,000 as it requires for direct loan funds, because the process is not cost-effective. In accordance with 7 CFR 764.108, all security except growing crops must be covered by hazard insurance, and the agency must be listed as the beneficiary of a mortgage loss payable clause. Further, 7 CFR 765.152 provides that ''cash proceeds of insurance claims received on Agency collateral, if not being used to repair or replace security items'' will be considered an ''extra payment.'' Therefore, the agency believes it is essential that the provisions of 7 CFR 761.10 be adhered to, regardless of the amount of insurance proceeds. To do otherwise would expose the agency to potential losses as its security may deteriorate in value. Therefore, the comment is not adopted.

One comment stated the provision that requires applicants not to incur any debts for material, labor or other expenditures prior to loan closing is unduly burdensome to applicants who may be able to begin the project while waiting on loan funds. The comment further stated applicants are informed at the beginning of the loan process that agency funds may not be available to close the loan, and as such, applicants are aware that they are responsible for any pre-loan development work. It is important to highlight that the applicant shall not be reimbursed for expenditures incurred prior to loan closing. Further, agency assistance is only available to applicants unable to obtain the needed credit from another source. Therefore, it is unlikely that an applicant would have personal funds available or be able to incur debts to initiate development prior to agency funds becoming available. Therefore, the comment is not adopted.

Section 761.51 Establishing a Supervised Bank Account

Six comments were received on establishing a supervised bank account. One comment stated the agency should clarify whether or not an applicant has to consent to the establishment of a supervised bank account. The agency agrees with the comment and has revised the section to state that the account will be used to assist borrowers with limited financial skills only when the borrower agrees. Three comments stated it is not clear when the agency will use the supervised bank accounts. The agency agrees with the comments and has revised the section to list the conditions under which the agency will use supervised bank accounts. In addition, one of these comments stated the requirement the agency provide applicants $5,000 or 10 percent of the loan funds for family living and operating expenses in a non-supervised bank account was not included in the CFR. One comment supported the agency's decision not to include the provision of providing $5,000 or 10 percent of loan funds in a non-supervised bank account. As stated in the proposed rule, Section 312 of the Act provides that the agency ''may reserve a portion of the loan * * *'' but it is not required. The payment of family living and operating expenses is an authorized use of loan funds, and the agency provides loan funds directly to the applicant to use as specified in the farm operating plan. Therefore, supervised bank accounts for such use are not needed and no change has been made based on these comments. One comment stated the agency should add a section to explain the agency's policies regarding disbursement of funds from a supervised bank account, use of electronic funds transfer instead of supervised bank accounts, and the necessity of supervised bank accounts. The agency believes the disbursement of funds from a supervised bank account is already adequately addressed in § 761.54. Section 764.402 requires the agency to use electronic funds transfer when feasible, so supervised bank accounts are not expected to be routinely used. Therefore, these parts of the comment are not adopted. Lastly, as stated above, the agency has added language in § 761.51 on when supervised bank accounts are necessary.

Section 761.52 Deposits Into a Supervised Bank Account

One comment was received on the deposits into a supervised bank account provisions. The comment stated it is not clear if a check made jointly payable to the agency and the borrower can be deposited in a supervised bank account. The agency believes the CFR as written is clear as it only excludes checks made solely to the agency or the Federal Government, or if it lists the Treasury of the United States as joint payee. The jointly payable check to the agency and borrower could be deposited in the supervised bank account. Therefore, the comment is not adopted.

Section 761.54 Withdrawals From a Supervised Bank Account

Two comments were received on the withdrawals from a supervised bank account provisions. Both comments stated the agency should clarify the CFR to provide the borrower's account must be accelerated before the agency can withdraw funds from a supervised bank account without the borrower's signature. The proposed, as well as the final rule provide the conditions under which the agency will withdraw funds from the supervised bank account without the borrower's signature. It has been the agency's policy to withdraw funds from the supervised bank account when it is in the agency and the borrower's financial interests. The borrower's account need not be accelerated; the agency may withdraw such funds at any time to apply to the account or protect its lien as necessary. The agency believes the limited withdrawals by the agency are reasonable. Therefore, the comments are not adopted.

Section 761.55 Closing a Supervised Bank Account

One comment was received on closing supervised bank accounts. The comment stated the agency should clarify the CFR to provide the borrower's account must be accelerated before the agency can close the supervised bank account. The proposed, as well as the final rule, provide the conditions under which the agency will close the supervised bank account. The supervised bank account can be closed when it is no longer needed; the borrower's account need not be accelerated. The agency believes the CFR as written is reasonable. Therefore, the comment is not adopted.

Even though no comments were received on the provision, the agency increased, from $100 to $1,000, the amount of loan funds remaining in the supervised bank account that can be released to the borrower to use for authorized loan purposes, at the time the account is closed. This action is in the best interest of both the borrower and the agency, as accounts with small loan balances remaining will not be maintained. The agency, however, did not extend this provision to youth loans.

Section 761.104 Developing the Farm Operating Plan (As Numbered in Final Rule)

One comment stated the agency must include in the final rule the provisions of current § 1924.56 that address the

development of farm and home plans used for loan making and servicing actions. Further, the comment stated the agency did not address the farm and home plan utilized by the agency. The agency inadvertently omitted the provisions addressing the development of farm operating plans, and has incorporated them in the final rule. The farm and home plan has not been incorporated, however. As provided in the proposed rule, the agency is removing all internal and administrative provisions, which include identification of specific forms, from its regulations. While specific form numbers are not included in the CFR, both the proposed and final rules address the information collection requirements. The agency no longer uses FSA 431–2 and therefore, it did not include any references to, nor did it discuss the use of, the farm and home plan form in the proposed rule. The agency has developed new forms to replace the farm and home plan, however, the agency accepts any format that provides the information required.

Section 761.105 Year-End Analysis (§ 761.104 in the Proposed Rule)

One comment was received on the year-end analysis provisions. The comment stated the agency should require a year-end analysis for borrowers who have received disaster set-aside. The agency utilizes disaster set-aside to resolve borrowers' temporary financial set-backs due to a natural disaster. Further, the agency requires that borrowers who receive disaster set-aside be able to develop a feasible plan for the next production cycle and provide the appropriate documentation to support it. Since the agency will obtain the documentation needed during the disaster set-aside determination, it does not believe an annual year-end analysis is required. Therefore, the comment is not adopted.

Section 761.208 Target Participation Rates for Socially Disadvantaged Groups

Two comments were received on the target participation rates for socially disadvantaged groups. Both comments questioned why the agency sets the target participation rates for Farm Ownership (FO) loans based on the total rural population in the State that are members of socially disadvantaged groups but the target participation rates for farm Operating loans (OL) are based on the total number of farmers in the State that are members of socially disadvantaged groups. In addition, one comment suggested that to achieve equality, all participation rates should be based on the number of farmers in a State that are members of a socially disadvantaged group. Section 355 of the Act (7 U.S.C. 2003) establishes these different calculations for FO (subtitle A) and OL (subtitle B) target participation rates. Therefore, the comments cannot be adopted.

Section 761.210 Transfer of Funds

Section 346(b)(4) of the Act (7 U.S.C. 1994) provides that beginning on September 1 of each FY, Emergency loan (EM) funds, not resulting from supplemental appropriations, may be used to fund the credit sale of real estate security in the agency's inventory. In the last several FY's, the agency has received insufficient initial appropriations to fund EM loan requests and has relied on supplemental appropriations to meet the demand. Further, the agency does not anticipate future appropriations actions to reverse this trend. Moreover, the agency has not taken a large number of real estate properties in inventory in the last several years. Lastly, other sections of the Act mandate that real estate in the agency's inventory be sold to beginning farmers. Therefore, the agency has not utilized this authority and is removing § 761.210(b) in the final rule.

Part 764—Direct Loan Making

The following discussion addresses the comments received on part 764.

One comment stated the provision from current § 1910.3 that provides persons wishing to apply for loans will be encouraged to do so and that agency staff will explain available programs to applicants and assist applicants as needed in completing farm operating plans, should be included in the final rule. Further, the comment stated the agency should include the provision from current § 1943.11 that states the agency will provide socially disadvantaged applicants with technical assistance necessary when applying for farm ownership loans or other assistance to acquire inventory farmland. The agency believes, through outreach efforts, it provides explanation of available programs and invites persons wishing to apply for loans to do so. Further, agency personnel, as well as Extension agents, assist all applicants who request it, in completing agency forms and farm operating plans. It is the agency's mission to provide any necessary assistance, including technical assistance, to all applicants and borrowers. It is not necessary to publish the agency's mission or internal practices in the CFR. Therefore, the first part of the comment is not adopted. Section 623 of the Agricultural Credit Act of 1987 (7 U.S.C. 1985 note), stated the agency should inform socially disadvantaged applicants of the possibility of acquiring inventory farmland and provide technical assistance to such applicants, while section 335(c) of the Act (7 U.S.C. 1985 (c)) mandates the agency to offer to sell its inventory property to beginning farmers. The agency advertises available inventory property, provides priority to all beginning farmers to buy the property, and assists applicants in completing forms and information necessary to acquire real estate in the agency's inventory, as required by the Act.

Section 764.51 Loan Application

One comment stated that it is not clear if the agency is maintaining the requirement currently contained in 7 CFR 1910.3(c) that provides ''For farmer program loans, there will only be one applicant. If a husband and wife insist on applying as co-applicants for a farmer program loan and the farming operation is a sole proprietorship, they will be considered a joint operation and they both will have to meet the eligibility requirements applicable to the joint operation.'' This comment, as well as one other comment, stated the Internal Revenue Service allows married couples operating a farm to file a joint tax return and does not mandate they be considered a joint operation; therefore, the agency should not treat them as joint operations either. The agency's longstanding policy of considering spouses applying jointly as a joint operation when a formal type of entity does not exist is based on amendments to sections 302 and 311 of the Act. Many of the general loan making requirements established at 7 CFR 764.101 are based on the provisions of sections 302 and 311 of the Act, which specifically provide ''To be eligible for such loans, applicants who are individuals, or in the case of cooperatives, corporations partnerships, joint operations, trusts, and limited liability companies, individuals holding a majority interest in such entity, must * * *.'' Based on this text, each member of an entity applying for assistance may not be required to meet all eligibility requirements, whereas applicants applying as an individual must meet all the eligibility requirements. Changing the agency's current policy to allow spouses applying jointly to be considered an individual applicant, rather than as an entity applicant in the form of a joint operation, would require that each spouse meet all eligibility requirements. The agency believes such a change would result in a more restrictive application of eligibility requirements for spouses applying

jointly and could result in an increased number of these applicants being determined ineligible. Therefore, while the comments are not adopted, the agency did revise § 764.51 to clarify its policy that ''Two or more applicants applying jointly will be considered an entity applicant.'' In addition, the agency revised its application form to clarify its policy, and for applicants applying as a joint operation, the application form will serve as the entity agreement required as part of a complete application under 7 CFR 764.51(a)(2)(iv), unless State law requires otherwise.

One comment stated the agency should not require that a husband and wife who apply for a loan together be treated as a joint operation. The comment pointed out that almost all married individuals file taxes as a married couple, not a joint operation. The agency agrees that applicants should apply in the form of business organization that is most consistent with the actual operating and financial structure of the farm business. However, the Act does not permit the agency to make loans to multiple individuals as one applicant. In situations where more than one individual is applying for the same loan, the applicant will be treated as an entity. The agency acknowledges that this requirement may be confusing and burdensome for married couples in particular, since many of them will file income tax returns and conduct other business affairs as a married couple. To ease this burden, the agency revised this section to recognize the existence of a marriage as sufficient documentation of a joint operation and its structure. Information beyond that required of an individual applicant will be required only when necessary to evaluate specific financial situations or contracts such as prenuptial agreements, which are unique to the marriage, and pertinent to the evaluation of the loan request.

Twenty-two comments were received on the requirement for applicants to provide 3 years of production and financial records (§ 764.51(a)(4) and (5), renumbered to § 764.51(b)(4) and (5)). Eight comments supported the agency's proposal as written. Seven comments, while they supported the agency's proposal, suggested the agency retain the ability to request additional years of records, if needed, to evaluate properly the applicant's operation. The comments stated there are circumstances beyond the applicant's control, such as adverse weather, prolonged drought, and disease, which would require the agency to have additional records at its disposal to accurately evaluate the applicant's operation. Three comments, while they agreed with the proposal, stated using only 3 years of records may not reflect the farming operation's true capabilities. One comment opposed the agency's proposal and further stated the CFR does not provide that for years an applicant suffered a disaster, State or County records may be substituted for the applicant's records. The agency believes the provision as written is adequate. The agency requirements match those of commercial lenders and at the same time reduce the burden imposed on the public. In developing an accurate farm operating plan, § 761.104 excludes the production year with the lowest actual or county average yield if the applicant's yields were affected by disasters during at least 2 of the 3 years. Therefore, no changes need to be made to the records requirement, and the comments are not adopted.

Two other comments stated the agency should require applicants submit 3 years of Federal tax returns to match commercial lenders' requirements as well as the agency's loan servicing requirements. In addition, one of the comments stated that by providing copies of Federal tax returns, the agency will be able to verify other information submitted by the applicant and will reduce the paperwork burden the agency imposes. Further, the comment stated errors on the applicants' part will be eliminated since applicants will no longer have to copy information from their tax returns to the agency forms. The agency agrees with the comments and has revised the section to require 3 years of farm financial records, including Federal tax returns, unless the applicant has been farming for less than 3 years.

One comment stated the records requirements under § 764.355(c)(3) should be revised to match the requirements under § 764.51(b) (renumbered from § 764.51(a)). The agency believes that the requirements should remain as proposed. Section 764.355(c) is applicable only to emergency loan applicants, who lack security because of a disaster. Section 324(d)(2) of the Act (7 U.S.C. 1964(d)(2)) provides that the agency may not deny an emergency loan because the applicant lacks a particular amount of security; however, the agency is authorized to make the loan provided the applicant has the ability to repay the loan. For the agency to determine if an applicant who lacks security has the ability to repay the loan, the agency needs access to additional records, beyond what is required in § 764.51(b) (renumbered from § 764.51(a)), to assess the applicant's income generated by the farming operation. Therefore, the comment is not adopted.

One comment supported the agency's clarification that the payment of the credit report fee is the applicant's responsibility as part of a complete application (§ 764.51(b)(11), renumbered from § 764.51(a)(11)). No comments were received opposing this clarification; therefore, no change was made to this paragraph.

Three comments were received on the verification of an applicant's debts requirement (§ 764.51(b)(12), renumbered from § 764.51(a)(12)). All comments stated it is not cost-effective for the agency to verify debts under $1,000 (two comments), or $500 (one comment). The agency handbook implementing the CFR will provide additional guidance regarding alternatives available to verify an applicant's debts. Therefore, the comments are not adopted.

Two comments were received on the ''additional information deemed necessary by the agency'' provision (§ 764.51(b)(13), renumbered from § 764.51(a)(13)). One comment stated the CFR should provide that the agency requires the additional information to better evaluate the feasibility of the operation and identify any possible security issues. The other comment stated the agency should identify general categories of information that may be required to evaluate an applicant's operation instead of including a general statement that the agency may request additional information deemed necessary. The agency believes the provision as written is adequate, as adoption of the comments may limit the reasons additional information could be requested. As stated in the preamble of the proposed rule, because every farming operation is unique, different information is required from each applicant for the agency to assess properly its risk. The agency handbook implementing the CFR will provide examples of additional information that may be requested. Therefore, the comments were not adopted.

Three comments were received on the Low-Documentation Operating loan (Lo-Doc) requirements § 764.51(c), renumbered from § 764.51(b)). All comments stated that certain information under § 764.51(a) (§ 764.51(b) in final rule) should be required for Lo-Doc applicants. Two of the comments stated the applicant should provide documentation that other credit is not available; the other comment stated the applicant should provide the legal description of the farm

property owned or to be acquired, when applicable. Section 764.51(b)(4) (§ 764.51(c)(4) in final rule) states the agency may require a Lo-Doc applicant to provide any other information listed in § 764.51(a) (§ 764.51(b) in final rule), as needed to make a loan determination in a particular case. In addition, the agency handbook implementing the CFR will provide further guidance on when additional information may be needed. Therefore, the comments are not adopted.

Nine comments were received on the youth loan application requirements (§ 764.51(d) renumbered from § 764.51(c)). One comment supported the agency's decision to implement an abbreviated application process for youth loans. Five comments stated that since verification of non-farm income is not a requirement for Lo-Doc applicants, it should not be required from youth loan applicants either. In addition, one of the comments stated that since the youth loan project is expected to generate sufficient income to repay the loan, the agency does not need to obtain non-farm income information. Further, two of the comments stated the agency official should have discretion to determine if verification of non-farm income is needed for youth loan applicants. The agency agrees with the comments and has revised the CFR to remove the requirement for verification of non-farm income for youth loan applicants. The flexibility to require additional information as needed remains.

Two comments stated the requirement found in § 764.51(a)(13) (§ 764.51(b)(13) in final rule) pertaining to the agency's ability to request additional information, as needed, to evaluate an applicant's eligibility and plan of operation should also be applicable to youth applicants. In addition, the comments stated that, for applicants less than 18 years old, the agency should require written permission from a parent or guardian, and require documentation from the project advisor for all youth loan applicants. Under § 764.51(c)(3) (§ 764.51(d)(3) in final rule), the agency can request any information deemed necessary to evaluate a youth loan applicant's operation. Further, under § 764.302(f), the agency requires the parent or guardian's written permission, so it is not necessary to specifically list it under the general requirements for all youth loans. Therefore, the comments are not adopted.

One comment stated that Indian youths have not purchased on credit by the time they are 18 years old. Therefore, the comment stated if the agency determines that additional information is needed, or the youth may be able to obtain other credit, then the agency should process the application as a guaranteed loan, as well as inquire with other sources of credit before involving a youth already intimidated by the process. The agency believes the youth loan requirements, as written, are adequate. In most states, individuals reach the age of majority at 18, therefore, youth loan applicants who have reached the age of 18, are required to submit the credit report fee and verification of debts, if any. Additionally, § 764.302(a) provides the eligibility requirements youth loan applicants must meet as mandated by Section 311(b)(1) of the Act (7 U.S.C. 1941 (b)(1)) and includes the ''no credit elsewhere'' requirement. There is no guaranteed loan program specifically for youths. Therefore, the comment is not adopted.

Lastly, the agency added the provision requiring applicants to provide a current financial statement as part of a complete application. This is a longstanding requirement that existed under the loan making and loan servicing regulations. The agency's application form contained the financial statement; however, due to agency's paperwork reduction efforts, the financial statement part was removed from the application form.

Section 764.52 Processing an Incomplete Application

Two comments were received on the provisions for processing an incomplete application. Both comments stated the CFR provides that the information requested by the agency must be received within 10 calendar days from the day the agency sent the second incomplete application notification to the applicant. However, the notice the agency uses provides applicants must submit the information requested or contact the agency within 10 days. The comments stated the CFR and the agency notice should be consistent. The agency agrees with the comments and has revised its notice accordingly.

Section 764.53 Processing the Complete Application

One comment was received on the processing the complete application provisions. The comment stated the agency must include in the CFR the requirement found in Section 333A(a)(1) of the Act which states the agency shall approve or disapprove an application and notify the applicant no later than 60 days after a complete application has been received. In addition, the comment stated the reasons for the disapproval must be included in the notification, as provided in Section 333A(a)(3) of the Act. The agency agrees with the comment and has revised the section to add that the agency will notify the applicant of the decision reached and the reasons for any disapproval.

Section 764.54 Preferences When There Is Limited Funding (Renumbered in the Final Rule)

One comment was received on the preferences when there is limited funding. The comment stated the agency should consider funding applications based on the date the application was determined to be complete, regardless of whether there is a shortage of funds. Section 764.53 provides the order in which the agency processes loan applications and states the agency considers applications in the order received, based on the date the application is determined to be complete. The agency cannot consider a loan application until all the information required is received. Section 764.54 provides the preference order in funding complete and approved loan applications. The agency funds applications based on the date the application was received, whether complete or incomplete, because that date provides an easily identifiable benchmark that can be consistently applied. Therefore, the comment is not adopted.

Section 764.101 General Eligibility Requirements

One comment on the general eligibility requirements suggested that the requirements of sections 302 and 311 of the Act (7 U.S.C. 1922 and 1941) for Farm Ownership and Operating loans, which allow the agency to make loans to entities engaged primarily and directly in farming in the United States, be added. The agency agrees and has revised §§ 764.152(c) and 764.252(d) to incorporate the requirement. In addition, a similar provision is contained in section 321 of the Act for emergency loans. Therefore, the agency revised § 764.352(c) (§ 764.352(a)(4) in the proposed rule) accordingly.

Two comments were received on the no prior drug convictions provisions under § 764.101(a). One comment stated that, unless the agency commences background checks on applicants, the requirement should be removed from the CFR. Section 1764 of the Food Security Act of 1985 (21 U.S.C. 889) provides, in part, that an applicant for certain Federal loans or benefits cannot have been convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or

storing a controlled substance within the previous 5 crop years. The agency has complied with this provision since it was incorporated into the law. Applicants are required to self-certify, on the agency's application form, that they have not been convicted of controlled substance violations. If it is later determined the applicant provided false or inaccurate information on the application form, the agency can deny further benefits and take other appropriate action. Lastly, the proposed rule was based on the Food Security Act's requirements; therefore, the comment cannot be adopted.

The other comment stated the agency should add in the CFR the requirement that applicants have not been convicted of possession or distribution of a controlled substance. Section 862 of 21 U.S.C. provides, in part, that applicants may be made ineligible for Federal benefits by court order as a result of a conviction for the distribution of controlled substances or any offense involving the possession of a controlled substance. Ineligibility is not automatic. As stated above, applicants self-certify that they have not been convicted of controlled substance violations. Further, both provisions are applicable to multiple agency programs and are already addressed, in part, in 7 CFR 718.6. The agency has modified 7 CFR part 718 to clarify the impact of the statutory provisions on FLP. The comment, therefore, is not adopted.

Five comments were received on the credit history provisions of the general eligibility requirements (§ 764.101(d)). One comment, while it agreed with the clause that unacceptable credit history is history of failures to repay past debts when the ability to repay was within the applicant's control, stated the agency should incorporate an objective measurement of the criteria to protect the agency and avoid the appearance of disparate treatment. The proposed rule reiterated the agency's established policy. In addition, the agency finds it impossible to anticipate every credit history scenario that may be encountered. An inflexible and absolute standard, such as a minimum credit score, would remove the agency's ability to consider the reasons for an applicant's prior credit problems. Therefore, the comment is not adopted.

Another comment stated the agency should include in the final rule the circumstances currently found in § 1910.5(c) that the agency does not automatically consider unacceptable credit history. The agency agrees with the comment and has revised the CFR for clarity. One comment supported the removal of the requirement that the Office of the General Counsel be involved when the agency believes applicants have not dealt with the agency in good faith. The agency addressed this issue under the ''good faith'' definition discussion.

Two comments stated the agency should remove the requirement that an applicant will make a sincere effort to repay the loan and will devote the effort required to carry out the terms and conditions of the loan. The agency agrees, as it will be difficult to assess the efforts the applicant will make. However, the agency believes the objective requirement that the applicant will carry out the terms and conditions of the loan should remain in the CFR. Therefore, that part of the comment is not adopted.

Six comments were received on the not delinquent on Federal debt provisions of the general eligibility requirements (§ 764.101(f)). Two comments stated the agency should include a definition of Federal debt in the CFR for clarification purposes. The agency agrees that a clarification is needed to determine if an applicant or borrower is in delinquent status of a Federal debt for purposes of automatic ineligibility under 31 U.S.C. 3720B. However, the Department of Treasury has responsibility to publishing standards determining delinquent status on a Federal debt, under this Debt Collection Improvement Act provision. Therefore, the agency simply has incorporated a reference to the applicable Department of Treasury regulation (31 CFR 285.13) in its CFR. Further, the agency handbook will clarify application of this provision in the consideration of loan applications.

Three comments stated the Federal debt rule as written is more restrictive than it needs to be because the term ''delinquent borrower'' is defined under § 761.2(b) as a borrower with any portion of a payment to the agency that is at least 30 days past due. As addressed above on § 761.2(b), the agency revised the ''delinquent borrower'' definition to match the definition included in the final rule published on February 4, 2004. Further, as stated above, the Department of Treasury's regulations provide when the borrower's Federal debt is in ''delinquent status'' for purposes of loan eligibility only. This rule incorporates the Department of Treasury's statutory and regulatory requirements applicable to Federal agencies. Therefore, the comments are not adopted.

One comment stated the agency should extend the prohibition to emergency loans as well to ensure consistency between loan programs. Section 3720B of the Debt Collection Improvement Act of 1996 (DCIA) generally provides that, except for emergency loans, borrowers who are in delinquent status on any non-tax Federal debt are not eligible to obtain any Federal financial assistance. The proposed rule was based on the DCIA; therefore, the comment cannot be adopted.

Three comments were received on the managerial ability provisions of proposed § 764.101(h) (§ 764.101(i) in final rule). One comment stated the applicant's managerial experience should be in an operation similar to the one the applicant proposes, as there are vast differences between types of operations. The agency believes it is not possible to differentiate between skills required by various enterprises to draw the distinction the comment suggested. In addition, the agency can require an applicant to take borrower training in areas the agency considers the applicant to lack adequate experience. Therefore, the comment is not adopted.

One comment disagreed with the provision that the applicant's managerial experience must have been obtained within the last 5 years. The agency believes recent training or experience is important for an applicant to have a reasonable prospect for success, as farming is a rapidly changing business and experience acquired more than 5 years ago may no longer be relevant. Therefore, the comment is not adopted.

One comment stated the agency should add examples of documentation necessary to demonstrate the applicant's managerial ability and clarify whether managerial ability covers production only or all aspects of the operation. The agency has provided extensive internal administrative guidance on acceptable documentation to demonstrate managerial ability, and believes examples of acceptable documentation are more appropriate for inclusion in the agency handbook, available on the agency's website. Further, the agency does not want to limit applicants to a specific form of acceptable documentation and cannot provide an exhaustive list of acceptable documentation to demonstrate managerial ability in the CFR. The agency considers managerial ability to cover both production and financial management because both are required to ensure the applicant has reasonable prospects for loan repayment. Therefore, the comment is not adopted.

Twenty-three comments were received on the general eligibility requirements for loans to entity applicants (§ 764.101(k), renamed and

renumbered to § 764.101(l)). Fifteen comments stated that the general eligibility requirements for entity applicants are unduly restrictive, complicated, and may prevent the transfer of farms to beginning farmers. Two comments stated that the requirement that all entity members must be involved in the operation is restrictive and does not take into consideration age and health issues. The comments stated the agency should require that only the members of the entity holding the majority interest be involved in the farming operation. One comment stated the requirement is too restrictive especially in cases where one family member becomes physically unable to assist in the farming operation but the other members are not able to buy out the physically unable member's share and suggested the agency only require members holding a majority interest be involved in the operation of the farm. The agency agrees and has revised the CFR accordingly.

Two comments stated that the requirement for entity members involved in other farming operations, that the other operations must not be larger than a family farm, is too restrictive because it does not take into consideration that entity members may have an interest in cooperatives to ensure a market for the farming operation's crop. Further, the comments stated it would be difficult for the agency to obtain income information on the other entities in which the member is a participant, unless the agency revises the requirements applicable to individuals to require all entity members provide income information for any other farming operation in which they are participating. The agency agrees with the comments and has revised the CFR accordingly to clarify requirements for majority interest holders, members' collective interests, and entity interests.

One comment stated it is not clear if each farming operation must generate less than the maximum gross income threshold, as proposed in the family farm definition, or if the member's combined share in all entities they are participating in must be under the threshold, or the combined gross income of all the farms must be under the threshold. Further, the comment stated the CFR appears to prohibit financing an applicant entity that has an ownership interest in another entity such as a finishing cooperative. As stated above, the agency is not adopting the proposed gross income requirement of the family farm definition. Further, the agency revised § 764.101(j) (§ 764.101(k) in final rule) in response to comments received on proposed § 764.101(j) and (k) (§ 764.101(k) in final rule). Therefore, the agency believes the comments are no longer applicable.

Two comments stated the family farm requirements for entities as stated in § 764.101(j) (renamed and renumbered to § 764.101(k) in final rule) do not match the eligibility requirements for EM loans at § 764.352. Both comments stated the agency should make § 764.101(j) and § 764.352 consistent. As stated above, the agency revised § 764.101(j) and (k) extensively. In the final rule, § 764.101(k) provides the operator requirements for entities applicable to all loan types, except that paragraph (k)(3) on collective interests does not apply to EM loans. The statutory basis for this paragraph is found in sections 302 and 311 of the Act, but not in section 321 for EM loans. Section 764.352(j) provides EM loan eligibility requirements if the entity composition changes between the time the disaster occurred and the time the loan is closed. One EM loan eligibility requirement applicable to entities is that the entity members operated the farm at the time of the disaster. This requirement and other § 764.352 requirements are based on section 321 of the Act (7 U.S.C. 1961) and do not apply to any other loan type; therefore, the comments are not adopted.

Twenty-nine comments were received on the entity eligibility requirements under the general requirements provisions (§ 764.101(j) and (k)). Five comments supported the provisions as written. Twenty-two comments opposed the provisions and stated the provisions as written are difficult to understand and follow. The agency agrees with the comments and has clarified the paragraph and further revised § 764.352 for consistency. Two comments recommended that the family farm and entity composition requirements under the general requirements provisions be eliminated, as the requirements would have a negative impact on the transition plans for some farm families. The agency believes the revisions discussed above will address these comments and that elimination of the requirements is not necessary. Furthermore, the regulations as revised mirror existing regulatory requirements for guaranteed loans, as well as direct farm ownership and operating loans. The final rule, as written, eliminates inconsistencies in existing regulations governing emergency loans.

Section 764.102 General Limitations

One comment was received on the general limitations requirement that loan funds must be used by farms located in the United States (§ 764.102(b)(2) renumbered to § 764.102(c) in final rule). The comment agrees that funds should not be used to obtain or improve land not in the United States, but does not agree with making applicants with farms split by the United States and Canadian border that have been in operation or existence for years ineligible for loans. Sections 302(a) and 311(a) of the Act (7 U.S.C. 1922 and 1941) for farm ownership and operating loans, respectively, provide that loans may be made to applicants in the United States. The proposed rule was based on the Act's provisions; therefore, the comment cannot be adopted.

Three comments were received on the highly erodible land and wetlands conversion provision (§ 764.102(b)(3) renumbered to § 764.102(d) in final rule). All comments stated the agency should include the prohibition found in section 363 of the Act (7 U.S.C. 2006e), which provides loan funds may not be used to drain, dredge, fill, level or otherwise manipulate a wetland, or in any activity that will impair or reduce the flow, circulation, or reach of water, except for an activity related to the maintenance of a previously converted wetland. In addition, one of the comments stated the words ''to produce an agricultural commodity'' should be removed. The agency agrees with the comments, and has revised this section and § 765.205(b)(10) accordingly. Further, a definition of ''highly erodible land'' has been added to § 761.2.

Eleven comments were received on the noncontiguous tracts provision (§ 764.102(b)(5)). Three of the comments supported the provision while eight comments either opposed it in its entirety or stated reasons the agency cannot realistically apply this specific provision nation-wide. The agency considered the comments opposing the provision and concluded that it is not possible to clarify the proposed limitation in the CFR sufficiently, without making it overly burdensome on the agency and applicants. Furthermore, the agency concluded that there is not a policy concern associated with operating non-contiguous tracts. The changing structure of agriculture and increased urban uses of farmland in many localities require some operators to farm widely-dispersed tracts in order to assemble an economically viable operation. The concern addressed by the proposed requirement is actually that of financial impact. Any increased costs and financial inefficiencies resulting from operating non-contiguous tracts are most appropriately addressed through the business planning process and the

loan feasibility analysis, however, rather than being a separate limitation. Therefore, the agency agrees with the comments and has removed the paragraph.

Section 764.103 General Security Requirements

Twenty comments were received on the general security requirements provisions. One comment was in favor of requiring a lien on non-essential assets for all loans except beginning farmer downpayment and youth loans. The comment stated that by adopting this provision, the agency will eliminate confusion on what liens have to be obtained for what type loans. One comment stated the agency should apply the lien on non-essential assets requirement to beginning farmer downpayment loans, as these loans should not be made to borrowers with a significant accumulation of non-essential assets. One comment stated all agency direct loans, including beginning farmer downpayment and youth loans should have the same security requirements and that such loans are often the most poorly collateralized. The agency believes the downpayment requirement and the short repayment term for beginning farmer downpayment loans result in a better collateral position than most agency loans. Due to the statutorily-mandated 10 percent downpayment requirement, beginning farmers do not normally have significant non-essential assets. The time spent in monitoring non-essential assets is better spent in providing guidance and oversight to beginning farmer borrowers. Therefore, the suggested changes are not adopted.

One comment stated the agency should clarify that it is the agency's choice of what constitutes ''best security available'' when there are several options and that this determination is appealable. The comment suggested the agency make the loan and obtain the best security available to protect the taxpayer and the agency's financial interests. The agency disagrees. The security requirements in part 764 adequately describe the required and preferred items of security. In the rare cases where there are security options and the agency provides financing based on the best security available, no appealable adverse decision results. Applicants, however, can request National Appeals Division (NAD) review of the agency's determination of appealability of any issue. Therefore, the comment is not adopted.

One comment stated the agency should consider, in addition to value, the lien position when choosing between available security. The agency's handbook will provide guidance to agency officials in considering lien position when choosing between available security. Therefore, the comment is not adopted.

One comment suggested the agency obtain a lien on all titled assets the applicant owns, and provided examples of non-titled assets on which the agency should obtain a security interest. Two comments stated the agency should replace the 150 percent additional security requirement with a lien on all farm real estate for farm ownership loans and a lien on all chattel property for operating loans. In addition, one of the comments stated the agency should take a blanket lien appropriate for the type of loan. The agency believes these proposals are overly restrictive and do not provide the agency or applicants sufficient flexibility. Further, a blanket requirement for liens on all titled property would be overly burdensome on the agency to administer and could prevent qualified applicants from receiving credit or from obtaining part of their credit needs from other sources. Therefore, the comments are not adopted.

One comment stated the agency should have discretion in obtaining more than 150 percent of security, if available, and if the agency's lien will not prevent the applicant from obtaining other credit. The agency has determined that the existing 150 percent loan to value ratio is adequate. Most agency applicants rely on other creditors for part of their credit needs. A greater security requirement could weaken the applicant's ability to obtain credit from other sources and would increase administrative burden on agency staff unnecessarily. Therefore, the comment is not adopted.

One comment stated the non-essential asset value should be increased from $5,000 to $15,000 because taking a lien on an asset valued at $5,000 is a burden for the agency to track and adds no value to the agency loans. The agency believes that taking a lien on non-essential assets of $5,000 is worthwhile. The average direct operating loan is between $45,000 and $50,000. Assets that may provide a secondary source of loan repayment of 10 percent or more of the loan amount are considered significant, and the agency will continue to require liens on such assets to reduce potential losses. Therefore, the comment is not adopted.

One comment stated the agency should make liquidation of non-essential assets a loan approval condition as an applicant unable to obtain other credit may realize a greater financial benefit from the liquidation of an asset than from retaining it. The agency believes making liquidation of non-essential assets a mandatory loan condition would potentially create additional financial obligations for applicants due to tax consequences. In addition, the applicant may not be able to sell the non-essential assets timely, and therefore, the applicant's access to loan funds may be delayed for a considerable amount of time and have a negative impact on the farming operation. Therefore, the comment is not adopted.

One comment stated adequate security should have a ''market value of at least 100 percent of the loan amount'' instead of ''security value equal to 100 percent of the loan amount''. The agency defines both ''market value'' and ''security value''. The difference between the two is that the definition of ''market value'' does not include reduction for any prior liens. Therefore, the agency believes the provision as written is correct, and the comment is not adopted.

One comment stated the agency should add in the adequate security provision that a guarantee from a Government or quasi-governmental organization in the case of the Pacific Basin where lands are held in communal, rather than fee simple, and where the U.S. Department of Justice lacks jurisdiction will be acceptable. The agency believes the provision as written, which allows the pledge of security from a third party, permits the agency to accept the quasi-governmental guarantees. Therefore, the agency believes no change is necessary.

One comment stated the agency should replace the 150 percent security requirement with a lien on all assets used in or essential to the farming operation. The comment stated if the comment is not adopted, the agency should allow its officials discretionary authority to waive the agency's lien on crops if the 150 percent requirement is met and the agency is not providing annual operating credit to produce the crops. Another comment stated agency officials should have discretionary authority to waive a lien on crops if the 150 percent security requirement is met and the agency is not providing annual operating credit to produce the crops. As stated above, the agency believes that obtaining a lien on all the applicant's assets may prevent the applicant from obtaining needed credit from other sources. Further, if the 150 percent requirement is met by other security and the agency does not provide funds for crop production, the agency does not obtain a lien on the crops under the

final rule. Therefore, the comments are not adopted.

One comment stated the agency, with applicant input, should make the final decision on taking a lien on the applicant's non-essential assets. The agency retains the discretion to administratively allow for applicant input; however, the agency needs to make the final decision as to the acceptability of loan collateral to protect its financial interest. Therefore, the comment is not adopted.

Two comments stated it is not clear when the agency will take a lien on each non-essential asset that has a value in excess of $5,000. Both comments stated there are circumstances under which the agency may not be able to obtain a lien if the CFR text is interpreted literally. The agency agrees with the comments and has revised the CFR to require a lien on such assets when each or the aggregate value of like assets (such as stocks) has a value in excess of $5,000.

Section 764.104 General Real Estate Security Requirements

Three comments were received on the general real estate security requirements provisions. One comment stated the provision that the applicant must agree not to increase an existing prior lien without the written consent of the agency should be removed because the agency increases its debt by capitalizing interest, so other lenders should not be held to a higher standard. It is agency policy to accept junior lien positions as adequate collateral while other lenders, generally, do not. The prohibition on increasing a prior lien holder's debt without agency consent is critical to limiting the agency's loss and assuring that loan objectives are met. Therefore, the comment is not adopted.

One comment stated the agency should not take leaseholds as security, because when the agency has taken leaseholds as security it has suffered inordinate losses and that very few other lenders engage in the practice. While the agency agrees that leaseholds may decline in value during the term of the loan, it has determined leaseholds serve as security for only a small percentage of its portfolio. Therefore, the comment is not adopted.

One comment objected to the provision on Tribal lands held in trust. The comment stated the agency should use the current provision in § 764.8(j) that provides the agency will take Indian trust lands as security. Further, the comment stated if the applicant is required to request title reports from the Bureau of Indian Affairs (BIA), it should be stated in the CFR. Current § 764.8(j) incorporates BIA title status reports and approval requirements from § 1943.19(a)(7). The agency agrees with the latter part of the comment and has revised the CFR to require the applicant to request BIA to furnish title status reports and BIA provides them and approves the lien.

Section 764.105 General Chattel Security Requirements

Three comments were received on the general chattel security requirements provisions. All comments stated the provision is too broad and requested the agency clarify if the same chattel security can be pledged for a direct and a guaranteed loan at the same time. The agency believes the provision is adequate as written, and it allows the agency flexibility needed to best meet the needs of applicants. The same chattel security could be pledged for a direct and a guaranteed loan. Therefore, the comments are not adopted.

Section 764.106 Exceptions to Security Requirements

Nine comments were received on the exceptions to security requirements provisions. Three comments stated the agency should take a lien on a non-farm residence only when other security property does not provide a security value equal to 100 percent of the loan amount. The comments stated that a lien on the non-farm residence may leave a family homeless if the farming operation is not successful. In addition, the comments stated the lien on the non-farm residence would make it difficult for applicants to take advantage of low housing interest rates and further impede their financial progress. One comment stated the agency is inconsistent in its security requirements because the agency will not obtain a lien on the non-farm residence but will obtain a lien on crops and chattels to meet the 150 percent security requirement for long-term loans. The comment stated crops and chattels are typically considered short or intermediate term assets for loan underwriting purposes. In addition, the comment stated the agency's regulatory limits on security do not seem to be consistent with the Debt Collection Improvement Act (DCIA). Therefore, the comment stated the agency should remove § 764.106(d). The agency disagrees. The DCIA does not dictate appropriate types of loan security but provides collection remedies upon delinquency. The proposed rule continued the agency's existing policy in protecting its financial interest as well as not imposing overly burdensome conditions on applicants. The requirement, as published, provides for some collateral margin, when available, to mitigate the agency's risk. The agency does not want to encumber the applicant's home unnecessarily for the reasons raised, but if the applicant becomes delinquent and loan servicing under 7 CFR part 766 is required to bring the account current, the agency will take a lien on the non-farm residence at that time if it has not already. Therefore, the comments are not adopted.

One comment stated the agency should use, in place of § 764.106(d)(2), the language from existing 7 CFR 1941.19(c) because it provides safeguards for applicants' non-farm residence. The agency believes proposed § 764.106(d)(2) provides the same safeguards as 7 CFR 1941.19(c); therefore, the comment is not adopted.

Three comments stated the agency should clarify the exception applicable to special collateral accounts the applicant uses for the farming operation. Two of the comments stated the provision as proposed, can include almost any asset of the applicant. The agency agrees with the comments and has revised § 764.106(e) to refer to working capital accounts the applicant uses for the farming operation.

One comment stated the agency should add the following to the security exception provision: ''when the U.S. Department of Justice has no jurisdiction or has advised the agency that they will not litigate civil cases in areas lacking a Federal District Court.'' The agency believes the existing provision under § 764.106(c), which states the agency will not take as security property on which it cannot obtain a valid lien adequately addresses this concern. Therefore, the comment is not adopted.

Section 764.107 General Appraisal Requirements for Real Estate and Chattel

Four comments were received on the general appraisal requirements for real estate and chattel provisions. All comments stated the security value of livestock and crop production should remain 100 percent of the amount loaned for annual operating and family living expenses instead of 100 percent of the projected annual income generated from livestock and crop production. The agency agrees that the loan amount is a known value, while the projected annual income from livestock and crops is an estimate, which may be overstated. Use of the projected annual income may significantly overstate the security value of the anticipated production and result

in additional risk and higher loan losses to the agency in the event the operation fails. The agency agrees with the comments and has revised the CFR accordingly.

Section 764.108 General Insurance Requirements

Six comments were received on the general insurance requirements provisions. One comment stated the term ''economically feasible'' under § 764.108(b) is not clear. In addition, the comment stated chattel security need only be covered by hazard insurance if it is available, and the cost of the insurance does not exceed its benefit. The agency agrees with the comment and has revised the CFR text accordingly.

Three comments stated § 764.108(d) and (e) seem to conflict since subparagraph (d) requires crop insurance unless the applicant signs a waiver for emergency crop loss assistance and subparagraph (e) requires crop insurance must be obtained for crops providing adequate security. The agency has revised the CFR to clarify that these are separate requirements. The catastrophic risk protection level of crop insurance is a minimum requirement under 7 U.S.C. 1508 (b)(7) and section 371 of the Act. Insurance for adequate security is an additional administrative requirement.

One comment stated the proposed rule did not provide guidance on the type of insurance required, amount of insurance or insurance waiver conditions. In addition, the comment stated it is not clear if including the crop insurance premium does not result in a feasible plan, would the decision to deny a loan be upheld if a feasible plan can be developed without crop insurance. As stated above, the agency has revised the insurance requirements for clarification and elimination of conflicts. Therefore, this part of the comment is not adopted. The agency considers crop insurance premiums to be essential farm operating expenses and the applicant can utilize operating loan funds to pay the premiums. Further, the agency requires the applicant to obtain crop insurance for growing crops used to provide adequate security for the agency loan. There is no economic feasibility condition. Therefore, no change has been made in response to the latter part of the comment.

One comment stated there is a conflict between the requirements for FLP loans and Farm Program disaster benefits regarding insurance. The comment stated that for FLP loans an applicant must either have crop insurance or sign a crop insurance waiver, but to receive Farm Program benefits after a disaster, an applicant must either have crop insurance or not have insurance. The agency believes the CFR as written provides clear guidance on the insurance requirements applicable to FLP loans under the applicable statutes noted above. Therefore, the comment is not adopted.

Section 764.151 Farm Ownership Loan Uses

One comment stated the agency should extend the provision of refinancing a temporary bridge loan, made by a commercial lender for the acquisition of a farm, to loans made under a private contract for deed. The comment stated contracts for deed are a major source of funds for beginning farmers and the restriction does not benefit the agency. Section 303(a)(1)(E) of the Act provides that farm ownership loan funds can be used to refinance temporary bridge loans made by commercial or cooperative lenders to farmers to acquire a farm in certain instances. In addition, section 310F of the Act authorizes the Secretary to establish a pilot program to provide guarantees of loans made by private sellers on a contract land-sale basis to qualified beginning farmers. The agency implemented Section 310F in a Notice of Funds Availability published in the **Federal Register** on September 4, 2003 (68 FR 52557–52562). The proposed rule was based on the Act's provisions, which do not authorize refinancing contracts for deed on a permanent basis; therefore, the comment cannot be adopted.

Section 764.152 Eligibility Requirements (Farm Ownership Loans)

Three comments were received on the prior debt forgiveness provisions (§§ 764.152(b) and 764.252(b)). One comment stated the agency should revise § 764.152(b) to include all the debt forgiveness conditions found under § 764.252(b) to make the requirements for farm ownership and farm operating applicants the same. One comment stated that applicants that have caused losses to the agency through debt forgiveness should not be eligible for loans. The comment stated the agency receives limited funding each year and it should direct it to applicants who have not received debt forgiveness. In addition, the comment stated the agency's reputation and integrity is harmed from the policy of allowing any applicants who received previous debt forgiveness to be eligible for loans. The third comment objected to the provision that applicants that have received debt forgiveness due to a Presidentially-designated emergency are still eligible for operating loans. The comment stated that the determination if the debt forgiveness was due to a Presidentially-designated emergency would be very subjective and ripe for appeals. The agency disagrees. Section 373(b)(1)(A) of the Act provides that borrowers that have received debt forgiveness on a direct or guaranteed loan, generally are no longer eligible for farm ownership or operating loans. In addition, section 373 (b)(2) of the Act provides limited exceptions under which an annual operating loan may be made to borrowers that received debt forgiveness. The proposed rule was based on the Act's provisions; therefore, the comments cannot be adopted.

Two comments stated changes to Federal and State laws on property ownership have made the agency's owner-operator requirement a barrier for some applicants. The comments stated if owners of the real estate are the same persons who own the entity operating the real estate, the agency should consider the owner-operator requirement to be met. The agency understands that the entity ownership requirement may be a barrier in some cases; however, the agency's application of the owner-operator requirement to entity applicants is consistent with section 302 of the Act. The agency does not choose to make a policy change at this time.

In the proposed rule, the agency inadvertently incorporated the definition of ''participated in the business operation of a farm'' under § 764.152(d). The agency received nine comments requesting the definition be moved to § 761.2(b) and § 764.152 should only provide FO loan eligibility requirements. The agency agrees with the comments and has revised the CFR accordingly.

Four comments were received on acceptable documentation of an applicant's participation in the business operations of a farm (§ 764.152(d)). One comment stated the agency should either publish guidelines in the CFR on what it considers acceptable documentation or develop a form for applicants to provide documentation. One comment stated the agency should publish in the CFR acceptable documentation required for applicants to establish participation in the business operation of a farm. The comment stated the agency requires applicants to provide tax returns, with no alternative form, to verify the applicant's participation in the business operation of a farm. In addition, the comment stated the agency should develop a

standard form for applicants to complete when applicants claim participation in the business operation of a farm by virtue of being raised on a farm. The agency believes the rule as written provides the flexibility needed for applicants to document their participation in the business operation of a farm. Typically, documents include tax returns, FSA records, or W–2's. In addition, because of the different skills acquired through participation in diverse agricultural enterprises by the applicant, it will be difficult for the agency to develop a standard form to cover all potential farming participations that may occur throughout the country. Applicants can address their participation in the business operations of a farm when documenting their farming experience. Moreover, in the agency's experience, applicants have not had difficulty in meeting the requirement as is included in current § 1943.12(a)(6). Therefore, the comments are not adopted.

One comment stated the example of participation by the applicant having been raised on a farm should be removed, as it may have occurred more than 50 years ago. The agency believes it is unlikely the situation the comment stated will occur, because as stated under the general eligibility requirement provisions, the applicant must possess managerial ability by farming experience obtained within the last 5 years. Therefore, the comment is not adopted.

One comment stated the eligibility requirements should require timely experience relevant to the proposed operation to insure a greater success rate for applicants as they will have recent experience in the ever-changing agricultural technology and practices. In addition, the comment stated the requirement the applicant must have participated in the business operation of a farm in 3 out of the last 10 years currently in effect is often misunderstood by applicants, who believe they are eligible for farm ownership loans if they farmed 8, 9, and 10 years ago. The agency believes the farm ownership requirements as written are clear and accurately reflect the statutory requirements in section 302 of the Act. As stated previously, the agency does not differentiate between the skills required to operate various types of farms. The agency cannot make the farming experience timeframe any different than specified in section 302(b)(1) of the Act and does not choose to make the requirements overly burdensome to beginning farmers. Therefore, the comment is not adopted.

One comment was received on the provision that an applicant for a farm ownership loan must not have received a farm ownership loan. The comment stated the provision as written implies that an applicant is only eligible for one farm ownership loan. The agency disagrees. The proposed language sets out alternatives. The agency, however, has clarified that an applicant must ''satisfy at least one of the following conditions'', and lists the alternative requirements from section 302 of the Act. Generally, the applicant may have received a prior farm ownership loan, but such loan may not have been outstanding for more than a total of 10 years prior to the new closing date.

Two comments were received on the requirement that an applicant for a farm ownership loan had been the operator of a farm. One comment stated that changing the requirement is contrary to wise supervised credit and will be a disservice to young individuals since, under the new rule they will be eligible for loans without the necessary ability to make wise financial decisions, as evidenced by filing Schedule F with their Federal tax returns. The other comment stated that the 3-year requirement for owning, managing or operating a farm should not just be stated as ''a year's complete production and marketing cycle.'' Section 302(b)(1) of the Act provides that eligible applicants for farm ownership loans are farmers who have participated in the business operations of a farm for not less than 3 years. The proposed rule was based on the Act's provisions; therefore, the comments cannot be adopted.

The agency inadvertently omitted in the proposed rule the current requirement that the entity must be authorized to own and operate a farm in the state in which the farm is located. Therefore, the agency is adding the requirement in the final rule at § 764.152(c).

Lastly, the agency revised § 764.152(e) in the final rule because the transition rule established under section 302(b)(2) of the Act (7 U.S.C. 1922) is no longer applicable.

Section 764.154 Rates and Terms (Farm Ownership Loans)

Three comments were received on the rates and terms provision pertaining to the joint financing agreements. One comment supported the joint financing agreement provision stating that the lower interest rate offered through the joint financing agreements benefits beginning farmers. Two comments stated the agency should extend it to all loan types. Section 307(a)(3)(D) of the Act (7 U.S.C. 1927(a)(3)(D)) provides the minimum interest rate for a direct farm ownership loan made as part of a joint financing arrangement. The Act does not specifically authorize joint financing agreements with different interest rates for any other type loans. The proposed rule was based on the Act's provisions; therefore, the comments cannot be adopted.

Section 764.203 Limitations (Beginning Farmer Downpayment Loan)

Three comments were received on the limitations provisions under the beginning farmer downpayment loan. One comment stated the Agency should work with Congress to raise the limit from $250,000 to $500,000. The agency believes the impact of any legislative change to increase the beginning farmer downpayment loan limit must be carefully analyzed as the Office of Management and Budget (OMB), along with the President play a role in the appropriations process. Therefore, the agency is limiting this rule to revising its regulations within its current statutory authority. However, the Administration's 2007 Farm Bill proposal recommends that the loan limit for the direct loans be increased. The Agency will make the appropriate regulatory changes in the future, in the event the Administration's proposal is adopted. Two comments stated that this limit is too low for their areas since buying adequate acreage to operate a farm efficiently far exceeds the limit. Section 310E(c)(2) of the Act (7 U.S.C. 1935(c)(2)) provides the maximum beginning farmer downpayment loan limit. The proposed rule was based on the Act's current provision; therefore, the comments cannot be adopted. However, as provided above, the agency will make the appropriate regulatory changes should the Administration's proposal to increase the direct loan limits be adopted.

Section 764.251 Operating Loan Uses

Fifteen comments were received on the operating loan uses. One comment stated the operating loan uses should be clarified to indicate whether income taxes can be paid for the current or prior year and personal residence or personal car payments can be made with operating loan funds. The operating loan uses as written provide for the payment of family living and farm operating expenses. The term ''family living expenses,'' as defined in § 761.2(b), includes ''the cost of providing for the needs of family members.'' The agency believes that income taxes, personal residence and personal car payments are considered a ''cost of providing for the needs of

family members'' and can, therefore, be paid using operating loan funds. The agency believes no additional revisions to the operating loan uses are necessary since it would be impossible to develop an all-inclusive list of family living expenses.

Three comments supported the provision that up to $15,000 of operating loan funds may be used for real estate repairs or improvements. Eleven comments either wanted to raise the limit of operating loan funds to $20,000 (1 comment), $25,000 (1 comment), $30,000 (2 comments), $50,000 (3 comments), or did not want to impose a limit as long as the farming operation's cash flow will sustain the amount used for a 7 year term without balloon payments (3 comments). Further, one of the comments stated the direct loan program should match the guaranteed loan program, as there is no limit on the amount of guaranteed operating loan funds that can be used for real estate repairs. In response, the agency revised the CFR to provide that direct operating loan funds can be used to pay costs for minor real estate repairs or improvements, provided the loan can be repaid within 7 years. The agency agrees that the direct loan provision should be consistent with the guaranteed loan provision.

Lastly, the agency inadvertently omitted the current provision that the applicant may not use Lo-Doc loan funds for refinancing debt. Therefore, the agency added the provision under § 764.251(j)(1).

Section 764.252 Eligibility Requirements (Operating Loans)

Nine comments were received on the eligibility requirements for operating loans. One comment stated the agency should change ''CONACT'' to ''Act'' and remove the definition of ''debt forgiveness'' found in § 764.252(b). In addition, the comment stated the applicant should be eligible for loans by paying the amount of the debt forgiveness the applicant received. The agency agrees. The agency changed the references from ''CONACT'' to ''Act'' throughout the final rule, wherever they occurred, and revised the definition of ''debt forgiveness'' in § 761.2 to provide that the term does not include prior debt forgiveness that is repaid in its entirety.

One comment stated the one-time debt forgiveness exception due to a Presidentially-declared disaster is also available to applicants farming in contiguous counties. The agency agrees with the comment and has revised the CFR accordingly. This change is allowed by section 373(b) of the Act (7 U.S.C. 2008h(b)) and is consistent with the agency's policy of providing EM loans in these contiguous counties.

Seven comments were received requesting the agency clarify that applicants who had reached the statutory limits were no longer eligible for OL. In the preamble of the proposed rule, the agency provided ''The OL loan eligibility requirement that the applicant and any persons signing the promissory note may not close an OL loan in more than 7 calendar years will be modified to apply only after December 31, 2002. This change is required by section 255 of the Agricultural Risk Protection Act of 2000, Public Law 106–224, enacted on June 20, 2002.'' However, the agency removed the appropriate regulatory text since the agency's authority to make operating loans to applicants that had reached the statutory term limits expired on December 31, 2002. As acknowledged in the preamble, the agency attempted to incorporate all the regulatory and statutory revisions required since calendar year 1999. It was due to agency oversight the above text was included in the proposed rule even though the regulatory text was removed. Therefore, the agency will take no further action on these comments.

One comment stated the agency should revise § 764.252(d) (§ 764.252(e) in the final rule) to provide that beginning farmers are eligible for direct operating loans for 10 years as provided under section 311 of the Act. The agency agrees that beginning farmers are not subject to the 7-year limitation under that statutory provision and has revised the CFR accordingly.

Five comments were received on the one time waiver for operating loan term limits under the eligibility requirements provisions. One comment disagreed with the continuous waivers of the operating loan term limits enacted by Congress. The comment stated the term limits either need to be removed completely or implemented fully as required by section 311(c) of the Act. Two comments supported the removal of the term limits and stated eligibility for loans should be based on the applicant's credit worthiness instead of on the number of years an applicant has obtained loans. Both comments, as well as an additional comment, stated that if the term limits remain in effect, the agency should use the term ''financially viable operation'' instead of ''feasible plan'' in § 764.252(f)(1) (§ 764.252(e)(4)(i) in final rule). Sections 311(c)(1) and (4) of the Act (7 U.S.C. 1941 (c)(1) and (4)) provide the term limits and waiver provisions for operating loans. Paragraph (c)(4)(B)(i) specifically allows a borrower to receive a one time waiver of 2 years, if ''the borrower has a viable farm...operation.'' The agency has interpreted the ''financially viable operation'' to mean an operation that will improve over time so that agency assistance is no longer needed. The term ''feasible plan'' indicates the operation will generate inflows to cover outflows but it is not necessarily reflective of a borrower's ability to graduate to commercial credit or to provide for replacement of capital items and long-term growth. The proposed rule was based on the Act's provisions; therefore, the comments cannot be adopted.

One comment stated section 311(c)(4)(A) of the Act (7 U.S.C. 1941(c)(4)(A)) provides the Secretary shall waive the operating loan term limits for farmers whose farm and security instruments are subject to the jurisdiction of an Indian tribe if the Secretary determines that commercial credit is not generally available; therefore, the comment stated § 764.252(g) (renumbered to § 764.252(e)(2)) needs to reflect the statutory requirement. The agency agrees with the comment and has revised § 764.252(e) accordingly.

In the proposed rule, the agency inadvertently stated that applicants ''may request a one-time waiver of OL term limits * * *'' However, the agency's current policy is to automatically consider a waiver for applicants who have reached the OL term limits and does not require a formal waiver request. Therefore, the agency revised § 764.252(e)(4) to provide that ''On a case-by-casis basis, [the applicant] may be granted a one-time waiver of OL term limits * * *''

Lastly, the agency believes the Act's provisions regarding waiver of the operating term limit were not clearly stated in the proposed rule for entity applicants. Section 311 of the Act, which addresses eligibility requirements for operating loans, including both the term limit and the one-time waiver, specifically provides ''To be eligible for such loans, applicants who are individuals, or, in the case of cooperatives, corporations, partnerships, joint operations, trusts, and limited liability companies, individuals holding a majority interest in such entity, must * * *'' Proposed § 764.252(f)(2) provided that one condition for obtaining a waiver is the applicant ''Applied for commercial credit from at least two lenders.'' As proposed, the rule could be interpreted to imply that the applicant and all members of the entity must ''be unable to obtain commercial credit'' when the

Act clearly provides the requirement applies only to the entity applicant and entity members holding a majority interest. Therefore, the Agency clarified the waiver requirements in the final rule by revising § 764.252(e)(4)(ii) to read the applicant ''And in the case of an entity, the members holding the majority interest, applied for commercial credit from at least two lenders and were unable to obtain a commercial loan, including an Agency-guaranteed loan.''

Section 764.254 Rates and Terms (Operating Loans)

Three comments were received on the rates and terms provisions for operating loans. One comment stated that balloon installments should be authorized specifically for direct operating loans as they are for guaranteed operating loans. One comment stated the rule establishes a 7-year maximum term for operating loans; however, the current agency regulations permit unequal and balloon installments. In addition, the comment stated it is not clear if unequal and balloon installments will be allowed under the new rule. The last comment stated the agency should incorporate the conditions currently in regulations under which the agency will allow longer annual operating loan repayment terms. The agency agrees with the comments and has added § 764.254(b)(2)(i) and (ii) to continue existing policies in these areas.

Section 764.255 Security Requirements (Operating Loans)

Two comments were received on the operating loan security provisions. Both comments stated the agency omitted the requirement to obtain a first lien on all property or products acquired or produced with loan funds and the requirement to keep the same lien position when refinancing secured debts. The comments are correct, in part, as the proposed rule simply required a lien, rather than a ''first lien'' as provided in existing regulations at 7 CFR 1941.19(a)(1). However, existing regulations require ''a first lien on all property or products acquired, produced, or refinanced with loan funds,'' not just ''property or products produced and acquired.'' The agency does believe, however, that the comments have merit, as it may not be possible for an applicant to ensure the agency can obtain a higher lien position than the creditor being refinanced. Therefore, the agency is adopting the comments as recommended and has revised the CFR accordingly.

Section 764.301 Youth Loan Uses

Twenty comments were received on the youth loan uses. Four comments supported the provisions as proposed. Four comments stated the agency should continue making youth loans under the same provisions currently utilized. Eleven comments opposed the agency's proposal and stated that since the project advisors are involved in agriculture, the youth loan project will be agriculture-related. In addition, some of the comments stated that even if the project advisor is not involved in agriculture, youth loans provide practical business skills and educational experience. Further, two of the comments stated youth loan funds should also be used for community projects and help children ''stay out of trouble'' after school. One comment stated it is not clear if the youth loan project should meet all of the following: be a modest, income-producing, agriculture-related, educational project. The agency disagrees. As stated in the preamble of the proposed rule, the Youth Loan Program's objective is to provide credit to rural youths to establish and operate modest, income-producing projects in connection with 4-H clubs, FFA, and similar organizations. However, through the years, the objectives of the Youth Loan Program have been interpreted inconsistently to allow loan funds to be used for projects not related to agriculture. The agency's proposal was intended to clarify that section 311(b)(1) of the Act (7 U.S.C. 1941(b)(1)) specifically waives only the managerial ability and borrower training requirements applicable to operating loans. The statute does not waive the loan purposes authorized in section 312 (a) of the Act; therefore, projects should be agriculture-related. Therefore, the comments are not adopted.

Section 764.302 Eligibility Requirements (Youth Loans)

Fifty comments were received on the eligibility requirements for youth loans. In the preamble of the proposed rule, the agency solicited comments on lowering the youth applicant's age limit to 8 years to coincide with the age limitation to participate in 4–H clubs (proposed § 764.302(b)). The agency received 35 comments. Twenty-three comments opposed lowering the youth applicant's age limit, while seven comments supported it. Three comments stated the agency should not change the youth applicant age limit. Two comments stated the agency should not lower the age limit but instead should increase it from 10 years of age to 12 or 14. In addition, one of the comments stated the loan limit for youth applicants younger than 14 years old should be $1,000 instead of $5,000. The agency considered all comments received and determined that lowering the age for youth loan applicants will not enhance applicants' chances of becoming successful farmers. Therefore, the agency is not lowering the youth loan applicants' age limit.

Twelve comments were received on the provision that youth loan applicants reside in a rural area, city, or town with a population of 50,000 or fewer people (proposed § 764.302(c)). Four comments supported the agency's proposal as written. Two comments stated the provision is unnecessarily restrictive and will prevent minority children living in urban areas, whose parents own or operate farms outside of the urban area, from participating in this valuable program. One comment stated youth loans should be available to youths residing in towns with populations of less than 10,000. One comment supported increasing the population's limit to 20,000 because cities with larger populations are not considered rural areas. In addition, the comment stated that by increasing the population limit, demand for youth loans will increase and fewer funds will be available to make operating loans to farmers. One comment opposed increasing the population to 50,000 inhabitants for youth loans. One comment stated the limitation should be removed. One comment stated there is no need to impose additional population restrictions since youth loan funds will be used for agriculturally related projects only. One comment stated that by increasing the population limit to 50,000 or fewer inhabitants and restricting the use of youth loan funds to agricultural projects only, the agency is not making the Youth Loan Program more accessible than it currently is. These opposing comments do not consistently support a specific alternative to the proposed Youth Loan Program provisions. The agency believes that the Youth Loan Program, as proposed, will provide valuable educational opportunities for youths to experience farming. Therefore, no changes have been made in response to these comments.

One comment stated the agency should remove the home economics teacher as an acceptable project advisor since the agency proposed to finance only agriculture-related projects through the youth loan program. The agency agrees with the comment and has revised the CFR accordingly.

One comment stated the agency should include a definition for a youth loan project. The comment stated that sometimes the project advisor provides a written statement that the project under consideration is educational, agriculture-related and beneficial to the applicant; however, the project advisor does not monitor the applicant's progress with the project. The comment stated, if the applicant has difficulties, the project advisor is not available to provide advice as required or needed. The project advisor mainly helps the youth loan applicant develop the project. The agency cannot predict in advance the advisor's willingness to provide assistance at a future date and has no available means to exercise any authority over the advisor. However, the agency provides assistance to youth loan borrowers experiencing difficulties. The agency believes a definition for a youth loan project is not needed since § 764.301 provides the types of projects for which a youth loan may be made; therefore, the comment is not adopted.

One comment stated the word ''supervised'' should be replaced by the word ''mentored'' in proposed § 764.302(d). The agency believes the term used in the CFR and the term provided in the comment are largely the same, so the change would not make a meaningful difference. Therefore, the comment is not adopted.

The agency inadvertently omitted in the proposed rule the eligibility requirement that a youth loan applicant not have caused the Agency a loss by receiving debt forgiveness currently established in 7 CFR 1941.12(a)(8). The agency, therefore, has incorporated the provision in the final rule by adding new § 764.302(b) and redesignating proposed § 764.302 paragraphs (b) through (e) as paragraphs (c) through (f).

Section 764.305 Security Requirements (Youth Loans)

Nine comments were received on the youth loan security requirements provisions. One comment supported the agency's proposal not to continue the 150 percent security requirement for youth loans. One comment stated the agency should require a cosigner for youth loans. One comment stated if the agency will not continue the 150 percent security requirement, the agency should require a cosigner for youth loans like the Department of Education for student loans. Six comments stated the security requirements for youth loans should remain the same as for operating loans. The agency believes youth loan applicants have minimal assets beyond those acquired with loan funds. In addition, the agency has a limited loss exposure for youth loans because of the $5,000 loan limit; therefore, the additional security requirements for operating loans would impose a disproportional administrative burden on the agency. Further, DCIA provisions provide more effective and less costly collection tools than disposition of collateral when the loan amount is small. Lastly, youth loans are made to finance income producing, agriculture-related projects unlike student loans for which repayment of principal is generally deferred until a date in the future. Therefore, the agency does not believe a cosigner is necessary when the cash flow projection reflects a feasible plan. However, the agency may still require a cosigner for youth loans when the agency determines there is not adequate cash flow for the proposed loan otherwise. Therefore, the comments are not adopted.

Section 764.351 Emergency Loan Uses

Two comments stated it is not clear if an agency direct loan can be refinanced with chattel physical loss loan funds or production loss loan funds. Proposed § 764.351 contains the conditions for refinancing debts, including agency debt. The agency did not propose to make policy changes to the existing emergency loan regulation. Therefore, the comments are not adopted.

Three comments stated the agency should clarify in the final rule that only essential property will be repaired or replaced with emergency loan funds. The agency agrees with the comments and has revised the CFR accordingly.

One comment stated the agency should revise § 764.351(a)(2)(v) to provide for ''essential farm operating and family living expenses'' instead of ''essential household expenses.'' The agency agrees with the comment and has revised the CFR accordingly. Lastly, the agency added the words ''not from breeding stock'' from current § 764.3(a)(2)(v) that were inadvertently omitted in the proposed rule.

The agency inadvertently omitted the words ''except that such costs shall not include the payment of bankruptcy expenses'' from current § 764.3(b)(1). Therefore, the agency revised § 764.351(b)(1) accordingly.

Section 764.352 Eligibility Requirements (Emergency Loans)

Seven comments were received on the eligibility requirements for emergency loans. One comment suggested that only the primary operators should meet the eligibility requirements if the ownership structure of a family farm changes from the time a qualified loss occurred to the time the emergency loan is closed. The agency believes adoption of the comment will result in more permissive requirements for entities that underwent a change in their ownership structure than for entities that remained the same. Further, the agency believes that change in the ownership structure does not justify treating those entities any different from entities that did not change ownership structure. Therefore, the comment is not adopted.

Two comments stated the agency should make an eligibility requirement, instead of a limitation, that the physical property must have been covered by general hazard insurance at the time the disaster occurred. The agency disagrees. The property insurance requirement should not be made an eligibility requirement because applicants may have insured only the most valuable physical property, and, therefore, would be disqualified for assistance. Therefore, the comments are not adopted.

One comment stated the agency should require the applicant to obtain a formal denial on a loan application that specifies the commercial lender's reasons for denying credit to the applicant. The comment stated written declinations are not formal denials of credit nor do they represent true analysis of the applicant's credit worthiness. In addition, the comment stated commercial lenders provide written declinations to their clients as a customer service. Another comment stated the agency should remove the requirement that applicants, depending on the amount of the loan request, provide up to 3 written declinations of credit. The comment stated if applicants seem to be able to obtain credit elsewhere, they should apply for a loan from a commercial lender. The agency disagrees. Section 322(b) of the Act (7 U.S.C. 1962(b)) provides the specific number of written declinations, based on the loan amount requested, applicants for emergency loans have to provide the agency. Further, section 322(b) states the specific reasons that have to be included in the declination letter provided by the commercial lender. The agency has incorporated these statutory provisions in § 764.352(e). While there may be cases where commercial lenders provide declinations of credit letters to their customers, the agency has the flexibility under § 764.352(e)(4) to contact other commercial lenders within reasonable proximity of the applicant and make an independent determination of the applicant's ability to obtain credit elsewhere. Lastly, the agency based both the proposed as well as the final rule on the Act's provisions; therefore, no

policy changes have been made in response to the comments.

One comment stated the test for credit requirement will keep a wealthy partner from receiving disaster benefits. Therefore, the comment stated the requirement that owners holding a majority interest in the entity applicant, if not related by blood or marriage, must all operate the farm, should be removed. Section 321 of the Act (7 U.S.C. 1961) provides the entity eligibility requirements for emergency loans. The proposed rule was based on the Act's provisions; therefore, the comment cannot be adopted.

One comment stated the agency should correct § 764.352(b)(1) to state the application for an emergency loan must be received within 8 months after the date the disaster is declared or designated. In addition, the comment stated the agency should correct paragraph (a)(7) to state an emergency loan applicant may have had one occasion of debt forgiveness on or before April 4, 1996, but none after April 4, 1996. The agency agrees with the comment and has revised the CFR.

Another comment suggested that proposed § 764.352(b)(3) be revised to provide that the applicant ''must have suffered disaster-related damage to chattel or real estate essential to the farming operation, or to household contents that must be repaired or replaced, to harvested or stored crops, or to perennial crops for physical loss loans.'' The agency agrees that this language from current § 764.4(b)(2)(iii) was inadvertently omitted and has included the provision in § 764.352(i).

Further, the agency added the provision that applicants that receive duplicative Federal assistance based on the same disaster must agree to repay it to the agency that provided such assistance. This provision is in current § 764.4(a)(15) and was omitted in the proposed rule. Lastly, the agency reorganized this section by removing the subparagraph headings and renumbering the paragraphs.

Section 764.353 Limitations (Emergency Loans)

Two comments were received on the limitations for emergency loans provisions. The comments stated section 321(b)(3) of the Act contains specific provisions for hazard insurance requirements applicable to poultry farmers requesting emergency loans that were not included in the proposed rule. The agency agrees with the comments and has revised paragraph (e) accordingly.

Another comment suggested that proposed § 764.353(d)(3) on calculating eligible physical losses be revised to include the value of replacement livestock products as well as replacement livestock. The agency agrees that such losses are covered under current § 764.3 and has revised the paragraph accordingly.

Lastly, the agency added in § 764.353(c)(4) and (d)(6) the words ''or insurance indemnities received or to be received'' from current § 764.5(c)(4) and (e)(1)(vi) that were inadvertently omitted in the proposed rule.

Section 764.354 Rates and Terms (Emergency Loans)

One comment suggested that § 764.354(b)(3) be revised to provide ''EM loans for annual operating expenses, except expenses associated with establishing a perennial crop, must be repaid within 12 months.'' The agency agrees that this provision in current § 764.7(c) was inadvertently omitted, in part, and has revised the paragraph accordingly.

The agency inadvertently omitted in the proposed rule the provision for expenses associated with establishing a perennial crop found in current 764.7(c). The agency has therefore, incorporated the provision in the final rule and has revised the CFR accordingly.

Section 764.355 Security Requirements (Emergency Loans)

Three comments were received on the security requirements for emergency loans provisions. One comment stated the requirement the applicant has had positive net cash farm income in at least three of the past 5 years should be removed for applicants with no security other than repayment ability, as it would prevent start-up and struggling limited resource operations from obtaining needed assistance. The agency believes that relying on the applicant's repayment ability in lieu of chattel or real estate security significantly increases the agency's level of risk associated with the loan. Therefore, the agency believes the requirement as written is essential to limit the agency's potential losses. In addition, the existing regulation includes an identical requirement when the applicant will utilize repayment ability as security. Further, the agency has not experienced significant problems with the provision as it currently exists and does not expect that it will in the future.

Two comments stated there is an inconsistency between the requirement that applicants provide copies of records to show they had positive net cash farm income in at least three of the past 5 years to obtain an emergency loan based on their repayment ability, and the requirement for applicants to provide records for only 3 years for any other loan. Therefore, the comments stated the records requirements under § 764.355(c)(3) should be revised to match the requirements under § 764.51(a). For the reasons stated above as well as in addressing comments for § 764.51(a), the agency believes that the requirements are reasonable. Therefore, the comments are not adopted.

Lastly, in § 764.355(c)(4) the agency added the provision from current § 764.8(f)(4) that was inadvertently omitted in the proposed rule.

Section 764.401 Loan Decision

Fourteen comments were received on the loan decision provisions. Three comments stated the agency should clarify that the maximum loan limits may be exceeded at the time of loan approval, however, loan limits cannot be exceeded at the time of loan closing. The agency agrees with the comments and has revised the CFR, at § 761.8, accordingly. In addition, the agency revised the guaranteed loan regulation at § 762.122 to incorporate the maximum loan limit of § 761.8.

One comment stated the CFR text does not address the requirement to notify the applicant of loan denial. Such notification is covered under § 764.54(a), which provides that within 60 calendar days after receiving a complete loan application, the agency must complete the processing of the loan request and notify the applicant of the decision reached. Further, the agency handbook provides guidance and information needed to be included in the notification to the applicant of loan denial. Therefore, the comment is not adopted.

Two comments stated the provisions on loan denial should be removed because they are redundant with the loan approval provisions. The agency disagrees. The loan denial provisions enumerate the conditions under which loan denial is appropriate. Therefore, the comments are not adopted.

One comment stated the CFR contains vague and not easily measurable standards because the agency will not make a loan if the applicant's circumstances may not permit continuous operation and management of the farm or the applicant, the operation, or other circumstances surrounding the loan are inconsistent with the authorizing statutes, other Federal laws or Federal credit policies. The comment stated loan denial should be based on objective standards. The agency has responsibility, under sections 302, 311 and 321 of the Act, to

ensure it assists owner-operators or tenant-operators of family-sized farms; providing financial assistance to applicants who may not be available to continually operate the farm is not consistent with program objectives. Loan denials based on the applicant's availability to operate the farm are rare. The agency cannot anticipate every possible scenario that may be encountered since each operation, and the circumstances surrounding each one, in the country is unique, so some flexibility is needed. Applicants denied financial assistance will be advised of the reasons and provided appeal rights. In addition, the agency has a responsibility to implement Federal laws and Federal credit policies applicable to the Federal Government as a whole, not just its authorizing statute. Therefore, the comment is not adopted.

One comment stated the agency should make the National Appeals Division (NAD) official responsible for making a loan to an applicant the agency cannot certify meets all the conditions for loan approval. While the agency may not agree with all NAD final decisions, it is responsible for implementing them. A reversal of loan denial by NAD, however, does not automatically result in loan approval. The agency is still responsible for administering the applicable rules in light of the NAD decision and making a loan decision based on the particulars of the case and the NAD determination. Therefore, the comment is not adopted.

One comment stated the agency should establish timelines for requiring additional information when an agency loan denial is overturned in an appeal. The agency believes reasonable timelines for requiring information from an applicant when the agency's loan denial is overturned in an appeal are appropriate to be included in the agency handbook and in direct notices to the applicant. Therefore, the comment is not adopted.

Two comments stated the agency must implement the NAD decision when the agency's loan denial is overturned in an appeal and not request, what is in effect, a new application. The agency disagrees that updated financial data may never be requested to implement a NAD decision. The agency has the responsibility to make financial assistance available to eligible applicants with feasible operations in accordance with statutory and regulatory limitations, and at the same time protect the taxpayer and agency's financial interest. In most cases, from the time the agency denied a loan application to the time a final NAD decision is granted several months have passed. The actual age of the information would be substantially older in many cases. During that time, applicants' circumstances can and do change significantly so that the old financial information would inaccurately represent the current financial condition of the appellant and could result in significant losses to the agency. The amount of time that has passed may impact the applicant's yields or the ability to even produce a crop. Therefore, agency implementation of a final NAD decision without obtaining and evaluating recent financial information is irresponsible and contrary to sound loan making principles. The agency, however, will consider making a loan for crop production if the applicant can produce a crop in the production cycle in which the loan was requested or for the next production cycle, upon review of current financial data and a farm operating plan for the next production cycle, if the agency determines the loan can be repaid.

One comment supported the requirements that must be met for the loan to be approved after an agency decision is overturned in an appeal. One comment stated the loan approval section should follow the loan application section in the CFR. The proposed and final rules follow the loan process step-by-step from the application stage, through evaluation, to loan decision and closing. If the agency moves the loan approval section to follow the loan application section the step-by-step process will be broken, and thus, the rule will be more difficult to follow and understand. Therefore, the comment is not adopted.

Section 764.402 Loan Closing

Ten comments were received on the loan closing provisions. One comment supported the agency's proposal as written. One comment suggested that for entity applicants, all individuals with at least 10 percent ownership interest in the entity should be required to sign the promissory note to evidence individual liability. The agency believes the rule as written provides adequate and clear guidance on who is required to sign the promissory note in the case of an entity applicant. While the guaranteed regulation at § 762.130 provides for a waiver of individual liability in some cases for members with less than 10 percent ownership interest, direct loans inherently carry additional risk for the agency. Therefore, the comment is not adopted.

One comment stated the agency must provide additional guidance for States with community property laws regarding who is required to sign the promissory note. The comment stated it is not fair for a spouse in community property States to be required to sign the promissory note. Further, the comment stated the agency is vulnerable to lawsuits because it does not provide guidance to spouses in such States on how they can avoid signing the promissory note. Section 764.402(a) provides the signatures required on the promissory note. However, marital property rights and the requirements for obtaining a valid lien on property are governed by State law; therefore, the agency relies on its Regional Offices of General Counsel for guidance on compliance with State laws and regulations. Requirements for valid liens are required for all applicants. The agency does not provide legal advice to applicants. Therefore, the comment is not adopted.

One comment stated the CFR text should specify the minimum insurance and bonding requirements for closing agents. The agency believes the rule as written provides adequate protection against malfeasance or error by a closing agent. In the agency's experience, closing agents carry adequate insurance and fidelity bond to protect the integrity of the service they provide. Further, the documents closing agents execute for providing services for the agency's applicants specify the amount of insurance required. Therefore, the comment is not adopted.

Four comments stated the requirement that a new security agreement be obtained for each new loan prior to funds disbursement is overly restrictive. All comments stated a new security agreement should be required for each initial loan, when required under State law governing secured lender transactions, when there were substantial changes to the security, or the operation. In addition, one of the comments stated some new loans, such as annual operating loans, do not result in new security being taken. The agency agrees with the comments and has revised the CFR to require a new chattel security agreement for new loans as necessary to secure the loan under State law.

Two comments were received on the provision for making loan funds available to applicants within 15 days of loan approval, subject to funds availability. Both comments requested that the timeframe be changed to 30 days. Section 333A(b) of the Act (7 U.S.C. 1983a(b)) provides that loan funds will be available to applicants within 15 days of loan approval, unless the applicants agree otherwise or funds are unavailable. The proposed rule was

based on the Act's provisions; therefore, the comments cannot be adopted.

Section 764.451 Purpose (Borrower Training)

In the preamble of the proposed rule, the agency stated it was eliminating the requirement to assess the need for borrower training when a borrower requests primary loan servicing. Nine comments were received on the agency's decision to eliminate borrower training in primary loan servicing. Four comments fully supported the agency decision. One of the supporting comments stated borrowers who failed to complete borrower training as required, and have therefore become ineligible for direct loan assistance, should become eligible again under the provisions of the final rule. The agency will not retroactively reinstate direct loan eligibility for borrowers who were clearly required to complete borrower training but failed to do so. Therefore, this part of the comment is not adopted.

One comment stated it is not clear how the agency will handle delinquent borrowers applying for primary loan servicing who were required to complete borrower training and did not do so. Further, the comment stated it is not fair for borrowers who are currently delinquent and have not completed borrower training because they are not eligible for primary loan servicing, while borrowers who become delinquent after the final rule is effective will still be eligible for primary loan servicing even if they did not complete borrower training as required. After the final rule becomes effective, the agency will assess a borrower's training needs through the initial loan making stage and continuously evaluate the borrower's training needs with the year-end analysis, farm visits and information contained in the borrower's case file. If there are indications the borrower may need training, the agency may require the borrower to complete training when evaluating subsequent requests for direct loan assistance. Therefore, the comment is not adopted.

One comment stated delinquent borrowers requesting primary loan servicing are prime candidates for borrower training since delinquency indicates need for training. In addition, the comment stated primary loan servicing provides a great incentive for the borrower to complete required training. One comment stated borrower training can be helpful in primary loan servicing since borrowers can see that recordkeeping is a tool in the decision making process. The agency believes borrower training is most effective and beneficial at the beginning of the loan relationship with the borrower. The reason for eliminating the requirement in primary loan servicing is that borrower training is most beneficial in the loan making stages. When the borrower becomes delinquent, borrower training actually hinders the agency's ability to provide effective and timely primary loan servicing because the borrower's training needs have to be assessed before primary loan servicing can be considered. Moreover, eligibility requirements established in § 766.104 provide a borrower is eligible for primary loan servicing when the financial distress or delinquency is due to circumstances beyond the borrower's control. Therefore, the comments are not adopted.

One comment stated the agency should develop a workbook/DVD combination and provide it to all borrowers along with appropriate software. Further, the comment stated the agency should not provide any further direct assistance until borrowers complete all the assignments included in the workbook. Section 359 of the Act (7 U.S.C. 2006a) contains the agency's specific responsibilities for providing financial and farm management training to its borrowers. The requirements as stated in the Act cannot be met by a workbook/DVD combination as the comment provides. Therefore, the comment is not adopted.

One comment stated the provisions under § 764.452(f) and § 764.454(a)(4), if taken together, can be construed to conflict with each other. Therefore, the comment stated the agency should clarify the provisions to ensure borrowers required to take borrower training complete it. The provision under § 764.452(f) states the agency cannot reject an initial loan application based solely on the applicant's need for training, while the provision under § 764.454(a)(4) states that a borrower who is required to complete training and does not do so within the required timeframe, will be ineligible for additional FLP loans. This ineligibility is not based on the need for training but the failure to meet a loan condition. The agency does not believe the two provisions conflict with each other, since they are applicable under different circumstances. Therefore, the comment is not adopted.

Section 764.453 Agency Waiver of Borrower Training Requirements

Two comments were received on the agency waiver of borrower training requirements. One comment stated the agency should clarify whether or not a waiver of financial management training requires evidence of formal coursework. The other comment stated the agency should provide objective requirements that applicants must meet to obtain a waiver of borrower training instead of the broad provision that the applicant submit evidence to demonstrate to the agency's satisfaction the applicant possesses experience and training necessary for a waiver. The agency believes the rule as written provides adequate flexibility for applicants to provide evidence of financial management training through completion of a course as required by § 764.453(b)(1) or other means. Further, the agency evaluates each case based on its individual merits, since it is impossible to identify all possible means through which financial management training can be accomplished. Any additional specificity would limit the applicant and the agency's flexibility. Lastly, rigid guidelines would place excessive burden on some applicants and not require others who may benefit from borrower training to take the opportunity. Therefore, the comments are not adopted.

Section 764.454 Actions That an Applicant Must Take When Training Is Required

Four comments were received on the actions an applicant must take when training is required. Three comments stated it is not clear if a borrower who completes the required training outside of the allowed timeframe remains eligible for additional direct loans. The comments suggested language to be added clarifying whether or not this will affect the borrower's eligibility for primary loan servicing. The agency agrees with the first part of the comments and has revised the CFR to state that if such borrower later completes the training, the borrower will then become eligible for additional direct loans. However, the agency believes the impact on the borrower's eligibility for primary loan servicing is adequately addressed above. While the agency does not evaluate the need for borrower training when a borrower requests primary loan servicing, the eligibility requirements under § 766.104 provide the borrower has acted in good faith. The definition of good faith includes the borrower's adherence with all written agreements with the agency. Therefore, the second part of the comments is not adopted.

One comment stated the agency should replace the words ''direct FLP loans'' with the words ''direct FLP assistance'' in § 764.454(a)(4) to strengthen the lack of good faith denial when delinquent borrowers request

primary loan servicing. The agency believes the comment's concern is sufficiently addressed above. Therefore, the comment is not adopted.

Section 764.458 Vendor Approval

One comment was received on the vendor approval provisions. The comment stated the agreement to conduct training should be for five instead of 3 years. The comment stated Certified and Preferred Lender agreements are valid for 5 years, and lenders have greater fiscal responsibility as opposed to borrower training vendors that only provide training. In addition, the comment stated administrative time spent on renewing vendors' agreements will be cut in half. The agency believes the existing process is adequate. Vendor renewals require minimal time in most cases, and while the vendor is being reviewed for renewal, it is a great opportunity for the agency to assess the vendor's performance. Further, because agriculture is a fast-changing field, the agency needs to ensure that vendors provide cutting-edge training to its borrowers. Therefore, the comment is not adopted.

Miscellaneous Comments in Part 764

Three comments stated the lack of the Administrator's exception provision in the loan making CFR may adversely affect the agency's ability to deal with unique issues for which action outside of the CFR's provisions may be in the agency's financial interest. The agency must administer its loan programs according to the Act and all other Federal laws and regulations. Most loan making requirements are required by law and exceptions would primarily be for the benefit of the applicant only. In addition, the agency believes both the proposed and the final rule have adequately addressed mandatory loan making provisions and provided flexibility where needed. Further, existing regulations applicable to loan servicing only contain the suggested exception authority where exceptions may be needed to protect the agency's financial interest in an existing loan, if not prohibited by statute. Therefore, the comments are not adopted.

One comment stated the agency must implement the provision of the Federal Agriculture Improvement and Reform Act of 1996 authorizing a direct operating line of credit. The OMB has advised the agency that for budgetary purposes, under the provisions of the Credit Reform Act of 1992, a multi-year line of credit loan is treated as a series of individual loans. As a result, a 5-year operating line of credit requires the agency to obligate five times the budget authority as it would for a 1-year operating loan. Program funding levels have been limited so that the agency has exhausted or nearly exhausted operating loan funds over the past several fiscal years. Implementation of an operating line of credit, while it would benefit those who receive it, would consume excessive budget authority and prevent others in need of operating loan assistance from receiving it. As a compromise, the agency implemented the Lo-Doc program in 2002, which with the exception of a multi-year commitment, is similar in most respects to a line of credit. Therefore, the comment is not adopted.

One comment stated the agency must not provide any loan funds to agribusinesses that mistreat animals, but only to operations that grow animals humanely. The agency relies on local and state authorities to make determinations in cases of mistreatment of animals. Enforcement actions against such operations would prevent them from submitting a viable loan application. Moreover, the agency does not have authority to impose certain animal husbandry practices on applicants and borrowers. However, the agency does require production training for applicants that lack experience or education. Therefore, the comment is not adopted.

One comment stated the agency must include that an applicant must request the lower of the interest rates in effect at the time of loan approval or loan closing. In addition, the comment stated the provision should be clearly offered on the agency loan application form. The agency revised Part 764 to state the interest rate will be the lower at the time of loan approval or loan closing. Therefore, the agency will not take any further action on this comment.

Part 765—Direct Loan Servicing—Regular

The following discussion addresses the comments received on Part 765.

Section 765.51 Annual Review

Four comments were received on the provision for increasing a borrower's limited resource interest rate. One comment stated that if the regular interest rate becomes lower than the limited resource rate charged on the borrower's loans, the agency should change the borrower's interest rate from limited resource to the regular rate without notifying the borrower. One comment stated the agency should be allowed to change a borrower's limited resource interest rate to the regular rate if the regular interest rate is lower than the limited resource rate, as has occurred in recent years, and should not provide appeal rights when notifying the borrower, since lowering the borrower's interest rate is not an adverse action. The third comment stated that there should be a mechanism for the agency to provide the borrower with the lower interest rate when the regular interest rate drops below the limited resource interest rate. The fourth comment indicated that the proposed rule does not provide guidance to employees performing limited resource reviews when the regular interest rates are lower than the limited resource rates. The authority for limited resource interest rates was established by Congress during a period of high regular interest rates. The intent was to address high delinquency rates and help farmers stay on the farm. Congress did not anticipate that the regular interest rate would be lower than limited resource; therefore, this situation was not anticipated or addressed in the Act. The agency has established internal procedures to be followed in the unusual situation where the limited resource interest rate is higher than the regular interest rate. The lower of the regular or limited resource interest rate has been used while conducting normal limited resource reviews, year-end analyses, and primary loan servicing. Agency borrowers with limited resource rate loans have been positively impacted by the agency's internal procedures and the agency will continue this established internal guidance in the future. Therefore, the comments are not adopted.

Section 765.101 Borrower Graduation Requirements

Five comments were received on borrower graduation requirements. One comment stated that requiring all loans of the same type be refinanced undercuts graduation rates; therefore, the agency should count any loan refinanced as partial graduation. In accordance with the Act, the agency serves as a temporary source of credit. The agency does not believe its mission of assisting its borrowers to obtain commercial credit has been achieved unless all loans of the same type have been refinanced as part of the graduation process. Therefore, the comment is not adopted.

Three comments stated that, due to loan making and servicing requirements, most borrowers' loans are cross-collateralized which makes it virtually impossible for borrowers to partially graduate. Further, all comments stated the State Executive Director should be granted authority, in partial graduation cases, to release the

security typically associated with the loans under graduation provided the remaining security is at least 150 percent of the remaining debt. The agency disagrees. In loan making, the agency requires, except as provided in § 764.106, security up to 150 percent of the loan amount, if available. The security value for loan making purposes is established by an appraisal. In loan servicing under 7 CFR part 766, the agency requires the best lien obtainable on all the borrower's assets, except as provided in § 766.112(b). Graduation generally occurs a number of years after a loan is made. The borrower's assets securing the agency loans are not appraised as part of the graduation process; therefore, the agency would be basing the release of its liens solely on the security's estimated value. The additional costs the agency would incur by obtaining appraisals for such partial releases would offset any benefits achieved by the partial graduation. Therefore, the comments are not adopted.

One comment stated the agency should revise § 765.101(d) to include the statutory borrower notification requirement when the agency provides the borrower's prospectus to lenders. The agency agrees with the comment and has revised this paragraph accordingly.

Section 765.102 Borrower Noncompliance With Graduation Requirements

One comment was received on the provisions regarding borrower noncompliance with graduation requirements. The comment stated that only borrowers actually able to obtain commercial credit but refuse to do so should be considered as failing to graduate, and will, therefore, be in non-monetary default. In addition, the comment stated the agency should add that a borrower, for good cause, may request additional time to apply for commercial credit. The agency requires the borrower to provide the information needed to determine if commercial credit may be available, apply for a loan if a lender indicates interest in refinancing the borrower's agency loan, and refinance the agency loan if the lender extends credit. All of these requirements are well within the borrower's control. The agency's determination of non-monetary default, therefore, is not dependent on the borrower's successful graduation. To add the provision that a borrower for good cause may take additional time to apply for commercial credit unnecessarily requires additional criteria and subjective decisions from the agency. In addition, Section 319 of the Act (7 U.S.C. 1949) requires that borrowers graduate to commercial credit when able to do so. Therefore, the comment is not adopted.

Section 765.103 Transfer and Assignment of Agency Liens

In some States, graduation requirements are impeded by State laws preventing a lender from obtaining a valid lied on homestead property unless the lender has a purchase money interest in the property. As a result, approval of the transfer and assignment of the agency's lien to the lender refinancing the FLP loan must be approved on a case-by-case basis using the exception authority currently published in 7 CFR 1965.35. The agency inadvertently failed to address this issue in the proposed rule. The agency believes a provision allowing transfer and assignment of its lien should be included in the final rule as it will enable borrowers to graduate to commercial credit in a timely manner.

Section 765.152 Types of Payments

Five comments were received regarding types of payments. Three comments stated the agency should expand the provision allowing proceeds from the sale of real estate security to be applied as regular payments to also include proceeds from the sale of basic chattel security. In addition, the comments stated that the use of proceeds from real estate and basic chattel security as regular payments should be limited to only a delinquent and or current year's payments to prevent basic security proceeds from being used to pay ahead several years. The proposal limiting the use of proceeds from the sale of basic security to only real estate security conforms to the agency's existing regulations at § 1965.13. Allowing the use of proceeds from the sale of chattel basic security to be used as regular payments increases the risk of loss to the agency because, unlike real estate security, the value of chattel security generally declines each year due to depreciation. Approval to use the proceeds from the sale of real estate basic security as a regular payment is at the discretion of the agency; and each situation will be evaluated on its merits. The agency believes the CFR as written provides adequate clarification of its policy for classifying proceeds a ''regular'' or ''extra'' payment. Further, the agency clarified the authorized use for each type of payment it receives. Therefore, the comments are not adopted.

Two comments stated the agency should specify in the CFR the agency employee with the authority to determine if proceeds from the sale of real estate can be applied as regular payments. It is the agency's policy not to provide employee-specific titles in the CFR since they are internal matters. The agency handbook will delegate necessary responsibility. Therefore, the comments are not adopted.

Section 765.153 Application of Payments

Nine comments were received on the application of payments. Eight comments stated publishing the order in which payments will be applied to borrowers' accounts limits the borrower and agency official's flexibility and discretion to apply payments in a manner each feels is most beneficial. In addition, one comment suggested the agency consider the borrower's preference on which loan payments are applied. The agency believes that publishing the order in which payments are applied removes inconsistencies, ensures all borrowers are treated the same, and ensures payments are applied in a manner which best protects the agency's financial interest. Therefore, the comments are not adopted.

One comment stated that it is not clear what happens to proceeds after all payments due on FLP loans are made for the year. Sections 765.152, 765.153 and 765.154 describe the distinction between regular and extra payments and the order in which proceeds will be applied to agency loans. Release of proceeds after all FLP loan payments have been paid is addressed in § 765.301(h). The agency has modified that paragraph to clarify that in those circumstances all proceeds from the sale of normal income security will be released to the borrower. Therefore, the clarification suggested by the comment has already been adequately addressed.

Section 765.154 Distribution of Payments

Two comments were received on the distribution of payments. One comment stated that it is not clear what percentage of each payment will be applied to each of the items listed in § 765.154. The agency cannot assign a percentage to each of the items listed in § 765.154 because outstanding recoverable costs and protective advances must be paid in full before any of the other items listed can be paid. Therefore, the comment is not adopted.

The other comment stated the agency should revise the provision on the payment of accrued deferred interest to state ''only a pro-rata portion of accrued deferred interest will be paid before loan principal is paid.'' Accrued

deferred interest is scheduled for payment on an annual basis and borrower payments received are applied accordingly. Therefore, the comment is not adopted.

Section 765.155 Final Loan Payments

One comment was received on final loan payment provisions. The comment stated that it is not clear how the agency will settle underpayments of less than $10. The rule provides that the agency will not attempt to collect amounts less than $10, and since there is no impact on borrowers, guidance will be provided only in the agency handbook. Therefore, the comment is not adopted.

Section 765.202 Borrower Responsibilities

One comment was received on borrower's responsibilities. The comment stated that the agency should revise § 765.202(a)(2) to provide ''Borrower failure to keep agreements for reasons not beyond the borrower's control, will be considered* * *'' The agency believes that the provision as written allows the agency to consider circumstances for the borrower's failure to keep agreements. Therefore, the comment is not adopted.

Section 765.205 Subordination of Liens

Sixteen comments were received on subordination of liens. Two comments stated the agency should approve subordinations made in conjunction with a guaranteed loan only in a sufficient amount to cover what is currently ahead of the agency loan. Section 762.142(c) provides the conditions under which the agency will subordinate its liens to a guaranteed lender. Therefore, no change is needed to § 765.205, and the comments are not adopted.

One comment stated that the application form required for chattel subordinations is not referenced in the CFR. Another comment stated the agency should provide the general information needed for any subordination since the agency treats subordinations as a method to meet borrowers' annual operating needs, and subordinations are an important tool in assisting its borrowers to obtain commercial credit. As provided in the preamble of the proposed rule, it is the agency's policy not to publish form numbers in the CFR, except as provided by the Act. The agency handbook will provide the forms needed to complete requests for real estate and chattel subordinations, so that comment is not adopted. However, the agency agrees the subordination application requirements were inadvertently omitted in the proposed rule and has included them in the final rule.

One comment stated that it is not clear what the term ''operating cycle'' means under the subordination requirement that the borrower's farm business plan shows that all debts scheduled during the operating cycle will be paid. The agency agrees that the term ''operating cycle'' is not clear. Thus, the agency decided for consistency to use the term ''production cycle'' in place of ''operating cycle'' throughout the final rule. Further, in the final rule the agency clarified the definition of ''production cycle'' at § 761.2.

One comment stated that borrowers with partial or complete deferrals should not be eligible for subordinations. Further, the comment stated that while a borrower's loans are deferred, the borrower's payments are artificially low, and therefore, the operation shows a feasible plan whereas a feasible plan might not be achieved if the deferral is taken into consideration. The agency agrees the deferral may have a significant impact on the borrower's repayment ability. However, the agency makes decisions based on the borrower's current farm operating plan. It would not be in the agency's best interest to deny a subordination request if the subordination would allow the operation to continue, thus increasing the probability of repayment of the agency loan. Should the borrower experience financial difficulty after the deferral period expires, the agency will consider all available loan servicing options. Adoption of the comment would change a longstanding policy that the agency did not propose to change. Therefore, the comment is not adopted.

One comment stated the CFR should provide that the agency ''may'' approve a subordination, instead of ''will'' approve a subordination. The agency cannot use ''may'' in this instance because it would indicate that there are additional requirements beyond the requirements published. In addition, the agency has no basis on which to deny the subordination request if all conditions have been met. Therefore, the comment is not adopted.

One comment stated the agency should clarify § 765.205(a)(11) (§ 765.205(b)(12) as renumbered in the final rule) to provide the subordination has a definite maturity date. The agency agrees with the comment and has revised the CFR accordingly.

Three comments stated the agency should allow multiple subordinations on the same security to the same lender. The agency agrees with the comments and has revised the CFR accordingly.

Two comments stated the agency should be able to subordinate its lien a second time for the borrower to obtain crop insurance. This provision is authorized under proposed § 765.205(b)(2) (renumbered to § 765.205(c)(2) in final rule); therefore, no action is required regarding the comments.

One comment stated the agency should allow multiple subordinations of the same security to different lenders as the current regulations allow. The agency believes allowing multiple subordinations to multiple lenders on the same security increases the agency's risk because the complexities of servicing the account would be increased. When subordinations are granted to multiple lenders, agreements on responsibilities and lien priorities, as well as lines of communication, have to be established between all the lenders before subordination is provided. The agency cannot become involved in these agreements as a matter of course, nor can it be perceived as the mediator in any future possible disagreement between multiple lenders. Lastly, the agency has not allowed multiple subordinations of the same security to multiple lenders in the past and did not propose to change this longstanding policy. Therefore, the comment is not adopted.

One comment stated the agency should adopt a limited documentation subordination application similar to the Lo-Doc application. The agency believes Lo-Doc loans and subordinations are not similar actions since subordination may be considered for any authorized loan purpose, whereas Lo-Doc loan proceeds may only be utilized under limited specific circumstances. Therefore, the comment is not adopted.

One comment stated the agency should require the lender, to whom subordination is granted, to execute a prior lienholder's agreement. Further, the comment stated the agency should not grant a subordination, if agency calculations at the time the subordination is being considered indicate the agency would not make a protective advance to pay the prior lienholders, should default occur on the subordinated loan. The agency believes its interests are adequately protected as the provision was proposed. It is impracticable to approve subordinations and protective advances using similar requirements. Protective advances are generally necessary when a borrower's financial condition has severely deteriorated, and are used to protect agency security, while subordinations

are generally considered for borrowers able to meet commercial lenders' requirements and demonstrate repayment ability. Further, the agency believes adoption of the comment would impose unnecessary collections of information on its borrowers. Therefore, the comment is not adopted.

Section 765.252 Lease of Security

Two comments were received on the provisions regarding lease of security. One comment stated the agency should remove the provision that the term of consecutive leases cannot exceed 3 years, and allow additional years for the property to be leased if a generational transfer is involved. The agency agrees with the comment and has revised paragraph (a)(2) to allow lease of security for up to 5 years when the lessee and the borrower are related by blood or marriage. This will allow the lessee additional time to obtain the farming experience and managerial ability necessary to operate the farm with the elder farmer's guidance and help address the difficulties of affording increasing real estate costs and inadequate farm ownership loan funding. The 5-year limit should be sufficient time for agency funds to become available or the lessee to obtain a commercial loan to finance the purchase of the existing farm. Some lease limit is necessary in the case of such leases because the borrower agreed to operate the farm as a condition in obtaining the loan.

One comment stated the agency should provide the state level with authority to approve lease of security for more than 3 years under certain circumstances. The agency no longer includes in the CFR the office responsible for approving leases of security. A consistent, nation-wide policy is preferred. Further, the agency believes that by adopting the first comment, it has addressed this comment's concerns. Therefore, the comment is not adopted.

Section 765.253 Ceasing To Operate Security (Renamed in Final Rule)

One comment stated the provisions are not clear since it seems the borrower must meet all conditions under § 765.253. Further, the comment stated the provisions do not allow the agency to consent to a borrower's failure to operate the farm where the borrower transfers the operation to an S corporation in which the borrower is the sole member. The agency revised the CFR to provide that borrowers must meet the conditions specified under subparagraphs (a) through (d) and any of the conditions under subparagraph (e). However, the agency believes the example the comment provided does not fit conditions for the agency to consent to the borrower ceasing operating the security, as the borrower would continue operating the security with a different composition. In the example, the agency would proceed with a transfer and assumption and allow the new borrower entity to continue the loan and operate the security. Therefore, this part of the comment is not adopted.

Section 765.301 General

Six comments were received on the general requirements for disposing of chattel security. One comment stated that, instead of requiring the borrower to sell chattel security for the market value, the agency should require that ''the borrower may not dispose of normal income security for less than its market value and basic security for not less than its recovery value.'' Further, the comment stated that the net recovery value of basic security should be determined by an appraisal, less sales expenses. When determining whether or not adequate security is available at the time of loan approval, the agency uses the market value of potential security. Therefore, the agency cannot allow disposition of chattel security for less than its market value. Nation-wide agency devaluation of security will increase losses and is not in the agency's and the taxpayer's financial interests. In addition, under regular servicing circumstances the agency has no reason to calculate or accept estimated involuntary liquidation amounts. Therefore, the comment is not accepted.

Five comments stated the agency should revise § 765.301(h) to state that if all agency loan installments and any past due installments have been paid, checks from the sale of normal income security may be payable solely to the borrower. The agency agrees with the comments, and has revised the CFR accordingly.

Section 765.302 Use and Maintenance of Agreement for the Use of Proceeds

Three comments were received on the use and maintenance of the agreement for the use of proceeds. One comment stated that completing the agreement for the use of proceeds is time consuming and confusing. In addition, for the agreement to be properly completed, the borrower must plan each expense for the year and identify the source of income to pay for it. Then, at the end of the year, the agency needs to reconcile each expense paid with the source of income. The agency believes that the rule provides clear guidelines on when the agreement for the use of proceeds will be completed. Further, as stated in the agency's response to comments received on the definition of ''agreement for the use of proceeds,'' the agency may conduct further analysis to determine if changes are warranted. Therefore, the agency will take no further action on these comments at this time.

Two comments stated that the requirement for the borrower to date and initial changes made on the agreement for the use of proceeds should be eliminated. The agency believes that since the agreement for the use of proceeds is completed by both the borrower and the agency, any changes made should be concurred with by both. Therefore, the comments are not adopted.

Section 765.303 Use of Proceeds From Chattel Security

Three comments were received regarding the use of proceeds from the sale of chattel security. One comment stated that the guidance provided in the existing regulations under § 1962.17 is confusing as to when proceeds from the sale of normal income and basic security can be released. The agency believes that both the proposed and final rules clarified the use of proceeds from the sale of normal income and basic chattel security without changing current policy. Therefore, the agency believes the comment's concern is adequately addressed.

One comment stated the agency should add a provision to protect its interests when crop security is used as feed for a third party's livestock. This section allows for crop security that normally would be sold, to be fed to livestock the borrower owns, if the agency obtains a lien or an assignment on the livestock and the livestock products equal to the lien on the crops. If the borrower feeds agency crop security to a third party's livestock, the borrower has converted agency security and is in non-monetary default with the borrower's agreements with the agency. Agency actions when the borrower is in non-monetary default are addressed in 7 CFR part 766. Therefore, the comment is not adopted.

One comment stated the agency should clarify that proceeds from the sale of chattel security will not be used to acquire real estate but may be used to acquire property that meets the operating loan program's objectives. The agency agrees with the comment and has revised the CFR accordingly.

Section 765.304 Unapproved Disposition

Ten comments were received on unapproved disposition of chattel security. Six comments supported the provision as written. One comment stated that there are no standards established on what information the borrower has to provide for post-approval. In addition, the comment stated that the agency has to release proceeds for family living and farm operating expenses until the account is accelerated, implying that the borrower does not need to provide any information to the agency for post-approval. The agency disagrees. It is impossible to list all possible sources of documentation that a borrower could submit to provide evidence that proceeds were used for an authorized purpose. Further, the essential family living and farm operating expenses definition (§ 761.2(b)) establishes a list of expenses the agency considers to be essential and states that the agency will consider each expense on the list as it applies to each operation. Moreover, the agency and the borrower complete the agreement for the use of proceeds at the beginning of the production cycle. By establishing the conditions under which proceeds can be released, a borrower should be able to determine the type of documentation appropriate for post-approval. Therefore, the comment is not adopted.

Three comments stated the agency does not clearly provide that unauthorized dispositions of security are considered non-monetary defaults. The agency agrees with the comments and has revised the CFR accordingly.

Section 765.351 Requirements To Obtain Agency Consent

Six comments were received on the requirements to obtain agency consent to a partial release of real estate security. Two comments stated the agency should accept ''no less than the agency-defined recovery value'' or ''95 percent of the market value'' for the real estate proposed for partial release. Loan approvals are based on evaluation of the loan security at its market value. Approving real estate security releases for less than market value would be inconsistent with loan making provisions and fiscally irresponsible as doing so could increase the agency's losses. Therefore, the comments are not adopted.

Three comments stated that because many loans are cross-collateralized due to loan making or servicing actions, the agency should allow exchange of real estate security for ''any authorized loan purpose.'' The agency believes the loan purposes are broad enough to accommodate the few cases where exchange of property is considered. Therefore, the comments are not adopted.

One comment stated the agency should clarify that terms for contracts for deed will not exceed the remaining loan term. The agency agrees with the comment and has revised the CFR accordingly.

Section 765.352 Use of Proceeds

Eight comments were received on the use of proceeds from the partial release of real estate. Two comments supported the agency's decision not to allow proceeds from the sale of real estate to be used for developing land not owned by the borrower. One comment disagreed with the agency's decision to not allow borrowers to use proceeds from the sale of real estate security to make improvements on rented land, on which the agency does not have a lien. The comment stated in § 764.151(b) the agency provides the conditions under which loan funds can be used to make improvements on rented land. Moreover, the comment stated the agency accepts security interests in property not owned by the applicant, including leases that provide a mortgageable value. Therefore, the comment stated, the agency should not eliminate the provision. The agency disagrees. The agency accepts as security leases that provide a mortgageable value as well as security pledged by third parties to satisfy the agency's security requirements. Further, § 764.151(b) provides that for the agency to make a farm ownership loan, the applicant must have a lease to ensure the applicant will have use of the improvement over its useful life or to ensure the applicant will be compensated for any remaining economic life when the lease terminates. In those cases, the agency has a security interest in the land; therefore, loan funds can be used to make improvements. The agency removed the provision that allowed borrowers to use sale proceeds from agency security to make improvements on rented land, because the majority of the applicants found it difficult to meet the lease requirement. In addition, it is not prudent to release proceeds from the sale of agency security to improve land on which the agency does not have a lien. Therefore, the comment is not adopted.

One comment stated that the agency should not release proceeds from the partial release of real estate to pay other creditors, unless the amount is small and the agency debt to security ratio is over 1/1 after the transaction is completed. Another comment expressed concern about not allowing proceeds from partial real estate releases to be paid to other creditors ''to the extent needed to establish a basis for continuation of the other creditor's account.'' One comment stated that the agency should allow for SED discretion as to how proceeds from the partial release of real estate will be applied. The agency believes that allowing proceeds to be distributed outside of established lien priorities usually occurs at the expense of the agency, decreases the agency's equity in the security, and increases the taxpayers' risk. Therefore, the comments are not adopted.

One comment inquired about the interaction between § 765.152(c) and § 765.352. Section 765.152(c) establishes that proceeds from the sale of real estate security may be applied to the borrower's account as a regular payment, in which case it is credited toward the borrower's annual payment as opposed to an extra payment, which simply reduces the unpaid loan balance, if the agency's loans will be adequately secured after the transaction. Furthermore, §§ 765.152 and 765.153 only address the order in which payments are applied against agency loans, whereas § 765.352 establishes the use of proceeds from transactions affecting the real estate security. The agency sees no conflict between these provisions; therefore, no change has been made.

One comment stated the agency should replace the words, ''When liquidation is pending,'' with the words, ''After acceleration'' in § 765.352(b) to explain when the agency will approve transactions only in accordance with lien priorities and customary costs. The agency agrees with the comment and has revised the CFR accordingly.

Section 765.353 Determining Market Value

In the preamble of the proposed rule, the agency proposed to increase the estimated value of real estate security considered for partial release to $25,000 before obtaining an appraisal. However, the regulatory text provided that the agency would require an appraisal for a partial release of real estate when its estimated value exceeded $20,000. The agency's intent was to include in the regulatory text $25,000 as evidenced by the final rule published by the agency on June 2, 2004 (69 FR 30997–30999). Fourteen comments were received on the appraisal requirement for partial releases. Several comments pointed out the discrepancy between the preamble

and the regulatory text; however, 10 comments supported the change, while three comments stated the $25,000 limit is too low and should be increased to $35,000 (one comment) or $50,000 (two comments). The agency believes that changing the limit to $35,000 or $50,000, as suggested, would increase the agency's risk to a level the agency cannot accept. Therefore, the comments are not adopted and the $25,000 limit has been adopted.

One comment stated it was not clear who will determine the real estate's estimated value and what qualifications are required to make the determination, since agency personnel are no longer qualified. The agency assigns employee responsibilities in its administrative procedures. The agency handbook will provide the agency official authorized to determine estimated value for real estate; therefore, the comment is not adopted.

One comment was received on the provision not to appraise the remaining security when only part of the security is released (§ 765.353(b)). The comment stated it is sometimes not possible to determine the effect the security being released may have on the value of the remaining security. The rule provides that the agency will obtain an appraisal if the agency believes that the transaction will reduce the remaining security's value. In addition, the agency's handbook will provide further guidance, which will address the comment's concern. Therefore, the comment is not adopted.

Section 765.402 Transfer of Security and Loan Assumption on Same Rates and Terms

Five comments were received on the transfer of security and loan assumption on same rates and terms. Three comments stated that the process for releasing an entity member from liability in cases of transfer and assumption should be similar to the process of releasing a divorced spouse under § 765.406(b). The agency disagrees. The agency considers a change in the composition of the entity as a change in the entity, while a sole proprietorship remains the same sole proprietorship when a debtor leaves the farming operation. In addition, this section provides guidance for situations where the agency debt is being assumed by a party not currently liable for the debt. Section 765.406(b) is applicable in situations where both spouses are individually liable for the debt, but one is withdrawing from the operation. Therefore, the comments are not adopted.

Two comments stated the agency should allow assumptions by eligible applicants on new rates and terms. Assumption of debt by eligible borrowers is addressed in § 765.403; however, in reviewing this section, the agency determined that it failed to address the rates and terms for this type of assumption. Therefore, the agency added new paragraph (e) in the final rule to refer to the rates and terms in part 764 for the type of loan being assumed. The agency also revised paragraph (a) to clarify that EM loans for physical and production losses cannot be assumed under § 765.403. These loans may only be assumed by persons who were directly involved in the operation at the time of the loss as provided in § 765.402(e).

Section 765.404 Transfer of Security to and Assumption of Debt by Ineligible Applicants (Renamed in Final Rule)

Three comments were received on the transfer of security to and assumption of debt by ineligible applicants. Two comments supported the agency's decision to change the term for Non-program loans secured by real estate to 25 years or less, based on the applicant's repayment ability. One comment stated the agency should prohibit transfer and assumption by transferees who have received debt forgiveness from the agency. The agency agrees with the comment and has revised the CFR accordingly. This is a continuation of existing policy from 7 CFR 1962.34(b).

Section 765.451 Continuation of FLP Debt and Transfer of Security

Three comments were received on the continuation of FLP debt and transfer of security when a borrower is deceased. All comments stated the administrative processes the agency uses to continue FLP debt of deceased borrowers are not clearly established in the CFR. The agency disagrees. Section 765.451(a) provides the agency will continue the loan with any individual who is liable for the debt. In addition, § 765.451(b) provides the agency will continue the loan with any individual not liable for the debt in accordance with the transfer and assumption provisions established in § 765.401 through § 765.404. Therefore, the comments are not adopted.

Section 765.501 Agency Exception Authority

Two comments were received on the exception authority provisions. The comments stated the agency should provide in the CFR the internal process utilized by agency employees to request an exception. As stated above, the agency, like most Federal agencies, does not promulgate internal processes in the CFR. However, the agency handbook will provide administrative guidance for agency staff to process requests. Therefore, the comments are not adopted.

Miscellaneous Comments on Part 765

Six comments were received on the agency's decision to eliminate accelerated repayment agreements for borrowers able to graduate to commercial credit. One comment supported the agency's decision, while the remaining opposed it. The opposing comments stated accelerated repayment agreements are cost-efficient, because the agency collects the funds loaned faster and without incurring additional costs, that may result when taking action against a borrower for non-monetary default. In addition, the comments stated that the United States Attorney's offices usually will not pursue foreclosure on these cases. The agency believes that accelerated repayment agreements for borrowers who are able to graduate are not appropriate, since the agency has limited enforcement ability for these agreements, and the agreements cannot be applied consistently nation-wide. Therefore, the comments are not adopted.

Part 766—Direct Loan Servicing—Special

The following discussion addresses the comments received on part 766.

Section 766.1 Introduction

While loan making regulations in 7 CFR 764.304 clearly establish that the limited resource operating loan interest rate is not available for youth loans, loan servicing limitations for youth loans were not so clearly articulated. The agency is authorized under 311(b) of the Act to use operating loan funds for youths, who are rural residents, to enable them to operate enterprises in connection with their participation in 4–H Clubs, Future Farmers of America, and similar organizations. Youth loan enterprises are not the typical farming operations financed with other types of agency farm loans and, therefore, are treated differently in many respects. For example, section 311(c)(2) of the Act does not count youth loans against the applicant seeking a direct operating loan that are limited to beginning farmers or farmers with 6 years or less of previous direct operating loans. Section 302(b)(2) further provides that operation of a youth enterprise does not count towards the required 3 years of participation in a farm operation for a direct farm

ownership loan. Section 353(a)(2) of the Act provides one goal of restructuring delinquent debts is ''to ensure that borrowers are able to continue farming or ranching operations.'' Considering these sections together, the Congress did not intend youth loan borrowers to be treated like other delinquent loan borrowers and receive full servicing rights under section 353 of the Act. The agency will continue its current policy that provided youth loan borrowers may not receive Disaster Set-Aside and may only be considered for rescheduling and deferral under the primary loan servicing process. Therefore, the agency has revised § 766.1(b) to clearly reflect this existing policy.

Section 766.51 General (Disaster Set-Aside)

Two comments were received on the general Disaster Set-Aside (DSA) provisions. The comments stated the agency should not allow a borrower to obtain DSA on Non-program loans, even if the borrower also has program loans. The intent of DSA is to relieve the borrower's immediate financial stress caused by a natural disaster. The agency believes it is in both its and the borrower's financial interest to allow FLP borrowers that also have Non-program loans to obtain DSA. In addition, this policy has been in effect for several years without additional loss to the agency. Therefore, the comments are not adopted.

Section 766.52 Eligibility

Five comments were received on the DSA eligibility provisions. Two comments stated that it may be difficult for borrowers to meet the requirement that all program and Non-program loans be current or less than 90 days past due at the time the application for DSA is complete. Borrowers with January 1st scheduled payments may become 90 days past due before notice of DSA availability is published in local newspapers. The agency disagrees. Under § 766.101, borrowers are notified of primary loan servicing when they become 90 days past due, and those servicing options are designed to assist the borrower in resolving the financial distress and provide long-term financial viability. DSA is not intended to replace or supplant the statutorily mandated primary loan servicing for financially distressed or delinquent borrowers. Thus, DSA does not apply to the situation mentioned in the comments. Therefore, the comments are not adopted.

One comment stated the agency should provide that borrowers must not become 165 days past due before the appropriate agency documents for DSA are executed. The agency agrees with the comment and has revised the CFR accordingly. DSA must not interfere with statutory primary loan servicing requirements. Allowing the agency 15 days to send notices to borrowers 90 days past due and 60 days for the borrowers to submit a complete application for primary loan servicing, the DSA needs to be considered and closed prior to the borrower becoming 165 days past due (90+15+60=165 days).

Two comments stated the agency should clarify that the borrower's account may not have been accelerated or subject to any special servicing. DSA may not interfere with other available statutory loan servicing options. DSA is intended to be a temporary solution to address the borrower's financial distress due to a natural disaster. Distressed and delinquent borrower loan servicing options attempt to address the borrower's financial distress and delinquency, which are outside the borrower's control, and financially stabilize the operation for the long term. The agency agrees with the comments and has revised the CFR accordingly.

Section 766.54 Borrower Application Requirements

One comment was received on the borrower application requirements for DSA. The comment stated the agency should require borrowers to submit 3 years of Federal tax returns as part of the application for DSA, since in many instances analysis of the account has not been completed in several years. The agency believes that the rule as written provides the flexibility needed for agency officials to request information necessary to evaluate a borrower's application. Therefore, the comment is not adopted.

Section 766.56 Security Requirements

Four comments were received on the DSA security requirements. Two comments stated the requirements conflict with the requirements of § 766.52(b)(2). Two comments stated the security requirements are not clear. The agency disagrees. Sections 766.52(b)(2) and 766.56 do not conflict. The prior provision requires the loans to be current after DSA; the latter provision requires certain security if the loans are not current before and when the DSA is executed. The agency believes the security requirements are adequate; therefore, the comments are not adopted.

Section 766.57 Borrower Acceptance of Disaster Set-Aside

One comment was received on the borrower acceptance of DSA. The comment stated the agency should retain the provisions from the current regulations that allow: If a borrower repaid all previous DSA or all the borrower's previous DSA were cancelled through primary loan servicing, the loan is again eligible for DSA; if the borrower has more than one DSA outstanding, payments received will be applied to the oldest DSA until it is paid in full, before payments are applied to the second DSA; and, borrowers receive additional time to accept DSA for extenuating circumstances. The agency has clarified § 766.52 to state that to be eligible, the loan must not have a DSA outstanding. To avoid confusion, because a second DSA on the same loan has not been allowed since 2000, the agency did not include in the proposed rule how payments to multiple DSA will be applied. However, the agency handbook will provide guidance on such payment application and allow borrowers additional time to accept DSA for extenuating circumstances. Therefore, those portions of the comment are not adopted.

Section 766.101 Initial Agency Notification to Borrower of Loan Servicing Programs

Eleven comments were received on the initial agency notification to borrowers of loan servicing programs. Two comments stated the agency should spell out the abbreviation ''SA'' throughout this part. In the preamble of the proposed rule, the agency stated that all abbreviations and definitions applicable to FLP will be included in a single section of the CFR (§ 761.2) to eliminate the need for the public to search multiple CFR parts to determine if and where a term is defined, this includes Shared Appreciation loan. The abbreviation ''SA'' is included in § 761.2. Therefore, the comments are not adopted.

Two comments stated that the process of notifying borrowers with only delinquent SA is not published in the CFR. One comment inquired on the servicing available to borrowers with only SA. Borrowers with only SA debt are considered Non-program borrowers and may only be considered for reamortization under § 766.108 as under current policy. In addition, section 331D of the Act (7 U.S.C. 1981d) only requires the agency to publish the initial notification provided to program borrowers. The agency will address the

form of notification to borrowers with SA only in its handbook. Therefore, the comments are not adopted.

Two comments stated that FSA–2512, FSA–2510, and FSA–2514 do not identify their content. These notices are published in their entirety as appendices to 7 CFR part 766 and are identified as such in the table of contents. Therefore, no changes have been made in response to these comments.

Two comments stated the CFR does not include notification of loan servicing for borrowers who want to liquidate voluntarily. The agency will no longer send primary loan servicing to borrowers who, while current, request agency permission to voluntary liquidate the operation. Current 7 CFR 1965.26(a) requires the agency to send primary loan servicing notices under those circumstances and wait 60 days (within which time the borrower has to provide a complete primary loan servicing application) before the agency can process or consider the request for voluntary liquidation. By that time, the prospective buyer may no longer be interested and the borrower may be unable to sell the security. Under those circumstances, the agency believes that forced consideration of primary loan servicing would hinder the borrower's effort to liquidate and could be detrimental to the Government, especially if the agency loans will be paid in full with the transaction. Furthermore, voluntary conveyance is not a forced collection action by the agency requiring such notice under section 331D of the Act (7 U.S.C. 1981d). Therefore, the comments are not adopted.

Two comments stated the CFR does not mention that if the borrower does not accept the notice by certified mail, the agency will send it by regular mail. The agency agrees with the comments and has revised the CFR accordingly.

One comment stated that since FSA–2512 does not provide a deadline for the borrower to submit a loan servicing application, the CFR should state that borrowers who received an FSA–2512 and did not submit a loan servicing application, will be renotified if they become 90 days past due. This is covered in § 766.103(a) and in FSA–2512 under the paragraph heading ''What Happens if You Do Not Apply?'' Therefore, the comment is not adopted.

Section 766.102 Borrower Application Requirements

Sixteen comments were received on the borrower application requirements for loan servicing. One comment stated the CFR should specify that in the case of an entity, all entity members must sign the acknowledgment form. The agency agrees with the comments and has revised the CFR accordingly.

Two comments supported the reduction in the amount of production and financial records requirement to 3 years. Four comments stated the agency should be allowed the flexibility to request additional years of records to properly evaluate the borrower's request and assess the agency's risk position. One comment stated that due to the number of natural disasters that have occurred throughout the country, 3 years of records may not be sufficient in providing an accurate assessment of a borrower's operation, so the agency should require the borrower submit records from ''normal'' years. For consistency, the agency desires to have the same records requirements for both loan making and loan servicing actions. In addition, the agency added in § 761.104 the methodology used by the agency to project yields and prices on farm operating plans for both loan making and servicing purposes. As mandated by section 331E(b) of the Act (7 U.S.C. 1981e), appropriate adjustments to projected yields are made when the borrower's production history has been substantially affected by a disaster. The agency believes this addresses the concerns expressed in the comments and, therefore, the comments are not adopted.

One comment stated that a complete application for loan servicing should include all items required for a complete loan making application, including legal description of property, leases, contracts, etc. The agency disagrees. Borrowers provide copies of legal description of property owned or operated, leases, and contracts at the time they apply for a loan. The agency maintains the loan making application records in the borrower's file and any updates as changes in the borrower's operation occur. Therefore, the comment is not adopted. However, the agency added the provision requiring borrowers to provide a current financial statement as part of a complete loan servicing application. This is a longstanding requirement that existed under the loan making and loan servicing regulations. The agency's application form contained the financial statement; however, due to agency's paperwork reduction efforts, the financial statement part was removed from the application form.

Two comments were received recommending that to be considered for a conservation contract, the borrower must submit an aerial photograph delineating the land proposed for a conservation contract and provide the term of the conservation contract in writing when applying for primary loan servicing. In § 766.102(b), the agency already proposed that the borrower must submit an aerial photograph delineating the land for the proposed conservation contract. The agency, with direct input of the borrower, utilizes a computer software program known as the Debt and Loan Restructuring System (DALRS) to evaluate each borrower's request for primary loan servicing. The agency and the borrower can, and do, consider different terms offered in combination with other servicing options available. Consequently, the agency and the borrower need the flexibility to evaluate all possible options, including conservation contracts, and enable the borrower to choose the best loan servicing option possible for the operation. Therefore, there would be no benefit from requiring the borrower to specify the conservation contract term at the point of application. No changes have been made in response to these comments.

Three comments suggested the requirement be added that, in cases where jointly liable borrowers have been divorced and one has withdrawn from the operation, to release the withdrawing individual from liability the remaining individual must develop a feasible plan. In many loan servicing cases, a feasible plan cannot be developed, yet it is not in the financial interest of the agency to keep a divorced spouse who has no repayment ability or non-essential assets liable for the loan, since all future servicing can become unduly complicated. Therefore, the comments are not adopted.

Two comments stated the agency should clarify that the financial records requirement is applicable to the entity as well as the entity members themselves. The agency does not agree. The agency believes the provision as written is adequate and does not believe that further clarification is needed, so no change has been made in response to these comments.

Section 766.103 Borrower Does Not Respond or Does Not Submit a Complete Application

Two comments were received on the provisions for notification requirements for borrowers who do not respond or do not submit a complete application. One comment supported the identical treatment of borrowers in monetary and non-monetary default. One comment stated that the agency's current internal policy of reminding borrowers that the agency had not received a complete loan servicing application was not included

in the CFR. The agency handbook will continue this policy. Therefore, the comment is not adopted.

Section 766.104 Borrower Eligibility Requirements

One comment was received on the requirement that borrowers use the net recovery value of any non-essential assets to resolve their financial distress or pay the delinquent portion of the loan (§ 766.104(a)(2)). The comment stated the requirement is harsh for a simple debt-restructuring request, may be overly burdensome, and may discourage borrowers from applying for servicing to resolve the financial distress or delinquency. Section 353(c)(2)(A)(ii) of the Act (7 U.S.C. 200h) requires that the net recovery value of all non-essential assets will be considered to determine if the borrower's loans may be restructured. Therefore, the comment cannot be adopted.

One comment suggested the words, ''in accordance with all loan agreements'' be dropped after the words, ''the borrower has acted in good faith'' in § 766.104(a)(4), since they are included in the definition of good faith. The agency agrees with the comment, and has revised the CFR accordingly.

One comment was received on the requirement that current or financially distressed borrowers requesting primary loan servicing must pay a portion of the interest due on the loans (§ 766.104(a)(5)). The comment disagreed with this requirement and stated that it seems the requirement is new. The requirement is currently published under § 1951.908(c)(5) and is not new. Further, Section 372 of the Act (7 U.S.C. 2008g) requires that to obtain servicing, non-delinquent borrowers must pay a portion of the interest due on the loan. Therefore, the comment cannot be adopted.

One comment stated the agency process of consulting the Office of General Counsel (OGC) when the agency determines that a borrower has not acted in good faith should be removed. The agency does not agree. Therefore, the agency will continue its current policy of considering acts of fraud, waste or conversion of security, when substantiated by a legal opinion from OGC, when determining if an applicant or borrower has acted in good faith. The comment is not adopted.

One comment supported the agency's inclusion of the list of circumstances beyond the borrower's control that may result in a borrower's failure to make payments as agreed. Another comment stated the agency should clarify that the list of circumstances beyond the control of the borrower is not exhaustive. In addition, the comment stated the agency should state in § 765.202(a)(2) that the borrower's failure to keep agreements will be considered when making eligibility determinations only when the failure is ''for reasons not beyond the borrower's control.'' The agency believes the circumstances as listed in § 765.202(a)(2) encompass all causes for a borrower to not make payments for reasons beyond their control. The agency believes that the suggested language for § 765.202(a)(2) is unnecessary as all aspects of the borrower's failure are to be ''considered'' and ''may'' adversely impact future requests for loans or servicing. Furthermore, a borrower's failure to keep agreements with the agency is evaluated when determining if the borrower has ''acted in good faith'' as required under the loan making and servicing eligibility requirements. The definition of ''good faith'' provides, ''the Agency considers a borrower to act in good faith, however, when the borrower is unable to adhere to all agreements due to circumstances beyond the borrower's control.'' Therefore, the comment is not adopted.

Two comments stated the agency should spell out the abbreviation ''SA.'' As noted previously, all abbreviations and definitions used are published in § 761.2. Therefore, the comments are not adopted.

One comment stated the agency should continue to assess a delinquent borrower's need for training to determine the reasons for not being able to pay. In cases where the delinquency is due to lack of financial management knowledge, the comment stated the agency should require financial management training. The agency initially evaluates a borrower's need for training in the loan making process according to § 764.452. As provided in § 761.103, as part of the farm assessment initiated in the loan making process, the agency reviews the borrower's progress at least annually to evaluate training needs. While the agency may recommend additional training, requiring training as a condition of loan servicing only hinders debt restructuring. Restructure of debt is a benefit to the borrower as they develop a payment plan based on past history and is a benefit to the agency as the debt continues to be repaid as serviced without liquidation. Therefore, the comment is not adopted.

One comment stated subparagraph (a)(1) as written is not clear. The agency agrees with the comment and has clarified the subparagraph introduction to state that the delinquency or financial distress is the result of reduced repayment ability due to one of the listed circumstances beyond the borrower's control.

Section 766.105 Agency Consideration of Servicing Requests

Three comments were received on the appraisal of a borrower's assets. All comments stated the agency should clarify if an appraisal of the borrower's assets is needed only when a feasible plan cannot be developed with a 110 percent debt service margin or when a write down is required to achieve at least a 100 percent debt service margin. The agency believes the rule as written specifies that the agency will not forgive debt, through write down or current market value buyout, before obtaining an appraisal of all the borrower's assets, without regard to debt service margin. In addition, the agency handbook will provide guidance on when the agency will obtain appraisals in loan servicing. Therefore, the comments are not adopted.

Section 766.106 Agency Notification of Decision Regarding a Complete Application

Nine comments were received on the agency notification of the decision regarding a complete application. Three comments stated the agency must continue to request mediation or voluntary meeting of creditors if the borrower cannot develop a feasible plan. One comment stated the agency should continue to initiate mediation proactively, otherwise the number of appeals and foreclosures will increase. Two comments stated section 353(d) of the Act (7 U.S.C. 2001) mandates the agency to initiate mediation when a borrower cannot develop a feasible plan for restructuring. The agency disagrees. This Section is applicable only when write down is being considered as a restructuring option. The section also provides that before eliminating the option for writedown, the Secretary will make a reasonable effort to contact the borrower's creditors, either directly or through the borrower to encourage restructuring. This statutory requirement is met by the agency's notification to the borrower of the availability of mediation or voluntary meeting of creditors, as applicable. Further, the agency participates in State-Certified mediation when available. Therefore, the comments are not adopted.

Two comments stated the agency should replace the terms ''the agency will notify the borrower'' and ''the agency will renotify the borrower'' with the terms ''the agency will send the

borrower a notification'' and ''the agency will send the borrower another notification.'' The agency agrees with this clarification and has revised the CFR accordingly.

One comment stated the statutory requirements to provide the borrower the agency's calculations and notify the borrower within 15 days of determining the borrower's ineligibility for loan servicing was not included in the proposed CFR. The agency agrees with the comment and has revised the CFR accordingly.

Section 766.109 Deferral

Five comments were received on the deferral provisions. Three comments supported the agency's clarification that the deferral term will be the shortest possible that provides a feasible plan. One comment stated the agency should not grant deferrals to borrowers who have accumulated excessive debt for non-essential expenses. The agency agrees that in some cases, a borrower's financial distress or delinquency may be the result of the borrower incurring excessive debt for non-essential expenses. The eligibility requirement that the financial distress or delinquency be the result of reduced repayment ability due to circumstances beyond the borrower's control, however, adequately addresses the concern. Therefore, the comment is not adopted.

One comment stated deferrals should be cancelled when a borrower files for bankruptcy protection, since by filing for bankruptcy, the borrower has elected to restructure the agency debt. When the agency restructures a borrower's loans with deferral of debt, the borrower executes the promissory note establishing the repayment schedule. The terms established by the promissory note take the deferral into consideration. If a borrower files for bankruptcy protection, the agency is not authorized to modify the repayment schedule without obtaining the prior approval of the court. Therefore, the comment is not adopted.

Section 766.110 Conservation Contract

Eighteen comments were received on the conservation contract provisions. Three comments stated the agency should include SA debt when calculating debt to be written down by a conservation contract. The agency agrees with the comments, provided the borrower has other outstanding program loans, and has revised the CFR accordingly. SA-only debt may not be serviced with a conservation contract. SA-only debt is classified as Non-program debt for borrowers who have no remaining program loans. The purposes of conservation contracts include allowing the borrower to timely repay the agency loans. Since those borrowers have no program loans remaining, this particular purpose of the conservation contract cannot be met. Therefore, the agency cannot offer conservation contracts to those borrowers. The section has been revised to provide that for borrowers who have at least one program loan outstanding, the Non-program debt can be considered for conservation contract because the conservation contract's purpose will be fulfilled as the borrower will be in a better position to repay the debt timely.

Three comments stated the agency should clarify that borrowers can appeal technical decisions made by NRCS according to NRCS's appeal process. The agency agrees with the comments and has revised the section to state that NRCS technical decisions will be handled in accordance with applicable NRCS regulations. At this time, the applicable NRCS regulations are published at 7 CFR part 614. Other aspects of a denial of conservation contract by the agency would be appealable under normal agency rules at 7 CFR parts 11 and 780.

Two comments stated the abbreviation ''SA'' should be spelled out; the agency loan under consideration for conservation contract must be secured by real estate; and that Non-program loans cannot be considered for conservation contracts. As noted previously, all abbreviations and definitions used are published in § 761.2. Therefore, this part of the comments is not adopted. The agency agrees that the loan under consideration for conservation contract has to be secured by real estate and has revised the CFR accordingly. The agency believes the benefit of conserving the nation's precious natural resources cannot be limited to program loans only. At least one program loan must be involved, however, for the agency to enter into a conservation contract with a Non-program borrower because the Act provides that only ''qualified'' borrowers may enter into conservation contracts. The CFR has been revised to accurately reflect this requirement and therefore, this part of the comments is not adopted.

Two comments suggested that the borrower select in writing the term of the conservation contract. As previously explained in the response to comments under § 766.102, the agency and the borrower can, and do, consider different options or combinations of options that will allow the borrower's account to be restructured. Consequently, the agency and the borrower need the flexibility to choose the best loan servicing option possible for the borrower's operation. Therefore, the comments are not adopted.

Two comments stated that NRCS should develop the conservation management plan and the agency should approve it, as specified in the Memorandum of Understanding between the agencies. The agency agrees and has revised the CFR accordingly.

Two comments stated the CFR does not state the borrower has to sign the conservation contract agreement nor does it provide the form number for the conservation contract agreement. Section 766.109(j) requires the borrower to sign the Conservation Contract Agreement. As stated previously, the agency does not publish form numbers in the CFR; however, the agency handbook will provide guidance for employees. Therefore, the comments are not adopted.

Two comments suggested the agency include required servicing for conservation contracts and agency actions if the borrower is not following the management plan or if the borrower sells the property under the conservation contract. One comment stated the penalties for violating the conservation contract agreement must be more severe than currently provided, because, if the only penalty the agency will assess is the reinstatement of the debt, it is sometimes to the borrower's economic benefit to violate the conservation contract. The agency did not propose to make substantive changes to the conservation contract requirements, but will do so through separate rulemaking procedures. Therefore, the comments are not adopted.

One comment stated the agency should require subordination of any prior liens and title clearance on the property under consideration for a conservation contract and that the conservation contract should not be renegotiated during its term or removed before expiration. The agency requires the real estate property under a conservation contract to be security for agency loans. Therefore, the agency would already have a lien on the property and additional title clearance is not required. Further, the agency, as a matter of policy, does not renegotiate the terms of the conservation contract, nor does it remove the conservation contract from the property until it expires. Some flexibility, however, should remain in the contract for unusual cases. Therefore, the comment is not adopted.

Two comments were received on the maximum debt reduction calculation by

a conservation contract used for current or financially distressed and delinquent borrowers (§ 766.110(h) and (i)). Both comments stated that the calculations should be the same for all. Section 349(e) of the Act (7 U.S.C. 1997) however, provides different calculations to be used for debt reduction by conservation contract for delinquent borrowers than non-delinquent borrowers. Therefore, the comments cannot be adopted.

Section 766.111 Writedown

Two comments stated the reference to the 101 percent debt service margin for writedown as provided in § 766.111(b) should be changed to 110 percent. The 101 percent reference is correct as used. When the agency calculations in DALR$ reflect that a feasible plan can be developed with writedown, the agency will determine if a feasible plan and a debt service margin of 101 percent or more can be achieved without a writedown. If so, the agency will provide the borrower the option to choose the plan used in the restructuring. Therefore, the comments are not adopted.

Three comments stated the agency should remove subparagraph (a)(2), excluding debtors with SA only, since subparagraph (a)(1)(iii) provides the borrower must not have received a previous debt forgiveness to be eligible for writedown. The agency agrees with the comments and has revised the CFR accordingly.

One comment stated the agency should clarify on FSA–2512 (Appendix A to part 766, subpart C) that to receive writedown, the borrower must be delinquent on the agency loans. The agency agrees with the comment and has revised FSA–2512 accordingly.

Section 766.112 Additional Security for Restructured Loans

Eight comments were received on the additional security for restructured loans provision. Two comments stated the agency should continue its current policy of requiring a lien on all assets when servicing delinquent borrowers' loans only. Three comments stated the agency should not require a lien on all the borrower's assets when servicing a financially distressed borrower's loans, but instead require the borrower to provide security of up to 150 percent of the agency loans. The comments stated that requiring a lien on all assets may make financially distressed borrowers not apply for loan servicing even when such servicing may move their operation towards financial viability. The agency agrees and has revised the proposed language to require a lien on all assets only when the borrower is delinquent prior to restructuring. The agency does not agree with the comments on requiring such borrowers to provide security of up to 150 percent of the agency loans when servicing loans. This is consistent with current policy.

Two comments suggested agency employees be granted authority to waive the agency's lien on crops when the agency is not providing an annual operating loan because a lien on crops in a subordinate position frustrates lenders, borrowers, and employees when trying to secure new crop production financing. The agency believes that the lien on crops should continue to be taken as it helps secure the agency's interests and provides a valid lien on future crops. In addition, it ensures that crop proceeds, which are normal income security, are used to pay agency debt, after the prior lien holder has been paid. Therefore, the comments are not adopted.

One comment stated that when servicing loans, the agency should obtain a lien on the borrower's personal residence, even if the residence is not located on the farm, as the agency obtains a lien on chattels and crops for long-term loans. When the agency provides primary loan servicing to delinquent borrowers, the potential for loss to the agency is increased due to the borrowers' deteriorated financial position. Further, the agency will continue to obtain a lien on crops to ensure that normal income is applied to the agency debt after prior lien holders have been paid. Therefore, the agency agrees with the comment and has revised the CFR to remove the security exception for personal residences.

Section 766.113 Buyout of Loan at Current Market Value

One comment was received on the buyout of loan at current market value provisions. The comment stated it is not clear if buyout of loans at current market value is available for borrowers who are 90 days past due only. The agency agrees with the comment and has clarified the CFR to reflect its current policy making market value buyout is available to delinquent borrowers. Further, the agency clarified FSA–2512 and FSA–2514 to state that current market value buyout is available to delinquent borrowers.

Section 766.115 Challenging the Agency Appraisal

Three comments were received on the appraisal options available to a borrower requesting primary loan servicing. Two comments stated that a borrower who does not agree with the agency's appraisal should only be offered the option of a technical appraisal review. Further, one of the comments stated that borrowers should only be allowed to obtain a technical appraisal review to determine if the agency's appraisal meets the Uniform Standards of Professional Appraisal Practice (USPAP) requirements and if there are flaws in the agency's appraisal that would change the appraised value of the property. In addition, the comment stated if there are no flaws in the agency's appraisal there should be no further challenge to the appraisal and no need for a second appraisal. Section 353(c)(7) and (j) of the Act (7 U.S.C. 2001) requires negotiation of appraisals and appellant rights to independent appraisals. Therefore, the comments cannot be adopted.

Another comment stated that since the Act does not specify any percentage that the appraisals may differ in the negotiation process, the agency should not limit the borrower's right to have a third appraisal conducted. While the agency agrees the Act does not specify the percentage the appraisals may differ, the use of the five percent difference is reasonable and does not create limitations on the borrower's rights. If the appraisals differ by less than five percent, the agency provides the borrower the option to choose the appraisal to be used, thus saving the borrower and the agency the expense of a third appraisal. It would be unrealistic and cost prohibitive not to include any limit, and it would not be in the borrower and the agency's financial interest if the limit were any lower than five percent. Lastly, the agency has found that since its implementation, the provision has worked well for both the borrowers and the agency. Therefore, the comment is not adopted. However, the agency revised this section to correct that the borrower selects the appraisal to be used when the two appraisals differ by five percent or less (rather than by less than five percent) to reflect the agency's current policy.

Section 766.151 Purpose (Homestead Protection)

Two comments were received on the homestead protection program purpose provision. Both comments stated the agency should clarify that the former borrower possesses no statutory right to remain in possession of the acquired property. In addition, both comments stated the agency should replace the word ''retain'' with the word ''re-acquire.'' The agency agrees with the first part of the comments, however, it believes they are more applicable under

the liquidation provisions. The agency, therefore, has added § 766.353(e) to adopt the comments. This section has been removed as unnecessary.

Section 766.152 Applying for Homestead Protection (Renumbered to 766.151 in the Final Rule)

Two comments were received on the provision for applying for homestead protection. One comment stated that appeal rights should not be provided to borrowers who do not submit a complete application. When borrowers initially apply for loan servicing, homestead protection is included in the loan servicing options for which borrowers may be considered, and therefore, must automatically be considered for pre-acquisition homestead protection. If that option is denied for any reason, appeal rights will be provided. Therefore, the comment is not adopted.

The other comment stated section 352(c)(6) of the Act (7 U.S.C. 2000) provides for notice ''no later than the date of acquisition of the property'' but that the proposed rule requires notice ''After the agency acquires title to the property.'' The comment stated the agency should revise the CFR to comply with the Act's requirement. There is no substantive difference between these provisions. The proposed and final rule language mirrors existing language at 7 CFR 1951.911. Therefore, the comment is not adopted.

Section 766.153 Eligibility (Renumbered to 766.152 in the Final Rule)

Seven comments were received on the eligibility requirements for homestead protection. Two comments stated the former owner should be responsible for paying costs associated with obtaining and meeting all state and local requirements for dividing the homestead property; otherwise the agency should deny the homestead protection request. After the former owner's property becomes the agency's inventory property, the agency is the legal owner and is responsible for the costs associated with separating the homestead protection property. This furthers the intent of the Act requiring that the agency offer this benefit. Therefore, the comments are not adopted.

One comment stated the agency should only pay junior liens when a positive recovery can be made and when the cost of foreclosure will exceed the amount of the prior lien. The agency agrees, in part, with the comment and has revised § 766.152(a)(4) to reference the voluntary conveyance requirements in § 766.353. Further, § 766.353 was revised to provide that the agency may attempt to negotiate a settlement with the junior lienholder if it is in the agency's financial interest; however, the agency's attempt to negotiate with the junior lienholder does not imply or create a right for the borrower.

One comment stated the agency should clarify the homestead protection provisions applicable to entities. The agency agrees with the comment and has revised the CFR accordingly.

Three comments stated the agency should further clarify the lessee's responsibilities regarding making improvements to the property under the homestead protection lease provisions. The agency agrees with the comments and has revised the CFR accordingly.

Three comments were received on the former owner eligibility requirements for homestead protection. The comments stated that borrowers requesting servicing are required to provide 3 years of financial information, and, therefore, the Agency will not have financial records available to it to make the proposed 60 percent income determination from at least two of the preceding 6 years. Section 352(c)(1)(B) and (C) of the Act (7 U.S.C. 2000) provide the former owner eligibility requirements for homestead protection. Additionally, borrowers requesting homestead protection will have received assistance from the agency for a number of years and as a result, prior years' income records are likely to be in the borrower's agency file. If additional information is needed to satisfy this eligibility requirement, it must be submitted with the application under § 766.152. Therefore, no changes have been made in response to these comments.

Section 766.155 Homestead Protection Leases (Renumbered to 766.154 in the Final Rule)

Three comments were received on homestead protection leases. All comments stated the CFR does not specify that applicants can select the appraiser to conduct the independent appraisal to determine the property's market value. The agency agrees with the comments and has revised the CFR accordingly.

Further, one of the comments stated the agency should incorporate the Act's provisions requiring the agency to provide notice with appeal rights to former owners for failing to make rental payments and to comply with state and local laws governing evictions. The agency, at § 761.6, provided that review or appeal of adverse agency decisions will be handled in accordance with 7 CFR parts 11 and 780. In addition, the agency handbook will provide guidance for employees to implement notice requirements. Moreover, the agency already consults with OGC for the proper process to follow for evictions, due to the differences in state and local requirements. Therefore, these comments are not adopted.

The comment finally stated, the agency should not require borrowers with homestead protection leases to make costly improvements or replace systems during the lease term. The agency revised § 766.152(b)(5) to provide lessees will be responsible for the normal maintenance of the homestead protection property.

One comment was received on the requirement that a homestead protection lease term be no less than three and no more than 5 years. The comment stated that the requirement should read ''the lease term must be less than 5 years.'' Section 352(b)(3) of the Act provides that a homestead protection lease may not exceed 5 years, but in no case should it be less than 3 years. Therefore, the comment cannot be adopted.

Section 766.201 Shared Appreciation Agreement

One comment questioned the term of the Shared Appreciation Agreement as being 5 years instead of 10 years. The agency published a final rule on August 18, 2000 (65 FR 50401–50405) and revised the term for Shared Appreciation Agreements from 10 years to 5 years. The agreement may be triggered earlier by one of the events described in the agreement. Therefore, no change was made based on the comment.

Section 766.202 Determining Shared Appreciation Due

Five comments were received on determining the shared appreciation due. One comment stated the agency should clarify the term ''remaining contributory value'' as used in § 766.202(a)(3). The agency agrees inclusion of the word ''remaining'' in the phrase causes confusion and has removed it.

Two comments stated that an appraisal completed according to § 761.7 and within one year of the maturity date or the triggering event of the shared appreciation agreement, is timely. The agency agrees with the comments and has clarified the CFR accordingly.

Two comments stated the agency should clarify that the borrower is responsible for providing the capital improvements added during the term of the shared appreciation agreement and

should provide the information before the agency obtains the appraisal. The agency agrees with the comments and has clarified the CFR accordingly.

Section 766.203 Payment of Recapture

One comment was received regarding the payment of recapture. The comment stated it is not clear what happens if the borrower does not pay the recapture amount due within the timeframe provided. Section 766.204 describes the actions the agency will take if the borrower is not able to pay the recapture amount due. Other internal collection remedies available need not be discussed in the rule. Therefore, no change has been made in response to the comment.

Section 766.252 Unauthorized Assistance Resulting From Submission of False Information (Renumbered and Renamed in Final Rule)

Proposed § 766.251 (types of unauthorized assistance) was removed in the final rule as unnecessary

One comment was received regarding unauthorized assistance resulting from false information (§ 766.253 in proposed rule). The comment stated the agency should revise the section to state that false information includes information the borrower should have known to be false. As stated in the response to a similar comment regarding the definition of ''false information,'' it would be very difficult for the agency to prove the applicant or borrower should have known the information submitted to the agency was false. Therefore, the comment is not adopted.

Section 766.253 Unauthorized Assistance Resulting From Submission of Inaccurate Information by Borrower or Agency Error (Renumbered and Renamed in Final Rule)

Nine comments were received on the treatment of unauthorized assistance received by borrowers (§ 766.254 in proposed rule). Three comments stated that borrowers should be able to continue with the loan under program rates and terms if they are unable to repay the entire amount of unauthorized assistance in a lump sum. In addition, two comments stated borrowers may not be able to repay the loan under Non-program rates and terms. While the agency is willing to work with such borrowers on a repayment plan, the unauthorized debt must be repaid. The Act does not authorize the agency to allow borrowers who have received unauthorized assistance to continue with the loan on below market program rates and terms. Therefore, the comments are not adopted.

Another comment stated that the agency's proposal to reclassify the entire loan as a Non-program loan if a portion of the loan is unauthorized seems to be extreme, if the unauthorized loan was the result of employee misunderstanding. While the agency understands the concern expressed in the comment, it does not have the authority to allow continued assistance to an applicant or borrower that does not meet statutory program requirements. Therefore, the comment is not adopted.

One comment questioned the ability of the agency's Finance Office to process an accelerated repayment agreement. Two comments stated the provisions outlining possible resolutions needed to be clarified. Two comments stated the agency should specify if the terms of current accelerated repayment agreements (5 years or less), will be changed according to the proposed provisions. In evaluating the comments, the agency determined that use of an accelerated repayment agreement does not resolve the unauthorized assistance received, but rather allows for continued assistance during the period established by the agreement without program compliance. Therefore, the agency removed accelerated repayment agreements as an option for unauthorized assistance repayment. In cases where the unauthorized assistance is the result of borrower or agency error, the agency retained the option allowing the borrower to repay the unauthorized assistance in a lump sum. If the borrower is unable to repay all or part of the unauthorized amount in a lump sum and has repayment ability, the agency may convert the loan to a Non-program loan, using rates and terms identical to those proposed for accelerated repayment agreements. In addition, the agency revised § 766.251 to provide that the agency may reverse any unauthorized loan servicing received by the borrower, where possible. The agency believes this action provides those borrowers whose unauthorized assistance is the result of an error with reasonable alternatives, ensures borrowers do not retain benefits for which they are not entitled to, and establishes enforceable loan and security instruments ensuring repayment of the debt.

Section 766.351 Liquidation

Two comments were received on the general liquidation provision. Both comments stated the proposed rule did not provide for notification of loan servicing for borrowers who want to liquidate voluntarily. The agency disagrees. Section 766.351(b)(2)(ii) provides ''if the conditions of (b)(1) of this section have not been met, the agency will notify the borrower in accordance with subpart C of this part, prior to acting on the request for voluntary liquidation.'' No changes, therefore, are necessary.

Section 766.352 Voluntary Sale of Real Property and Chattel

Three comments were received regarding the voluntary sale of real property and chattel. One comment stated that allowing borrowers to sell security voluntarily in lieu of involuntary liquidation should stop once the involuntary liquidation process has begun, otherwise the remaining security has to continually be updated through the court as the security changes with each partial sale. Sections 766.352(a)(1) and (2) provide that a borrower must sell all security until the debt is paid in full or all security is liquidated, if the agency approves the sale. Further, paragraph (b)(4)(ii) provides the agency will only approve a sale that does not result in full payment of the debt only when it is in the agency's financial interest. In addition, as stated in § 766.351(b)(2)(i), the agency will not delay involuntary liquidation for a voluntary sale to close. Therefore, the agency believes the comment's concerns are adequately addressed in the CFR and no action is required.

Two comments stated the sales proceeds in voluntary liquidation situations, for both real estate and chattel security, should be ''equal to or greater than either the agency debt or the agency-defined recovery value'' instead of ''equal to or greater than the market value of the property.'' The comments stated that often the agency receives only the recovery value if the agency has to liquidate the borrower's security. The agency disagrees. When the agency evaluates a loan request, the adequacy of the security is based on the market value of the property, therefore, allowing liquidation of security for less than its market value is not reasonable. Such policy would increase losses and is not in the agency and the taxpayers' financial interest. Therefore, the comments are not adopted.

Section 766.353 Voluntary Conveyance of Real Property

Four comments were received regarding the voluntary conveyance of real property. Three comments stated the agency form for voluntary conveyance is not addressed in the CFR. Two comments stated the same as to chattel property. The agency does not publish form numbers in the CFR;

however, the agency handbook will provide the form numbers required for voluntary conveyance of chattel and real property. Therefore, no changes have been made in response to the comments.

Two of the comments also stated junior liens, real estate taxes, and judgments can be charged to the borrower's account as recoverable costs. Recoverable costs may include administrative costs associated with the agency's acquisition of the property such as lien search or recording fees. The agency agrees that recoverable costs can be charged to the borrower's account as provided in the proposed rule.

One comment stated there was a conflict between § 766.353(c)(2) that provides the borrower has to pay junior liens, real estate taxes, judgments, and other assessments before the agency will accept a voluntary conveyance of real property and paragraph (d)(1) that provides the agency will charge the borrower's account for recoverable costs incurred in connection with a voluntary conveyance. As stated above, the agency has revised the CFR as proposed. Therefore, no further action is required.

Section 766.357 Involuntary Liquidation of Real Property and Chattel (as Renumbered in Final Rule)

Three comments were received regarding involuntary liquidation of real property and chattel (§ 766.356 in proposed rule). Two comments stated the agency should clarify that the borrower does not retain statutory or implied or inherent regulatory right of possession of the real estate property after the date of the foreclosure sale. The agency agrees with the comments and has revised the CFR accordingly.

One comment stated the agency should incorporate the requirement found in 25 U.S.C. Section 483a(a) which provides, in part, that foreclosure proceedings involving Indian land will be in accordance with Tribal laws, or if Tribal foreclosure laws are absent, according to State laws. Further, the comment stated the agency should recognize Indian reservations as political subdivisions and Tribal entities as State-approved entities. Foreclosure proceedings differ from state to state, thus, it would make for exceptionally voluminous regulations for the agency to include all internal foreclosure procedures in its regulations. The agency has adhered to Tribal and State-specific foreclosure laws, as applicable, and will continue to do so. Furthermore, the agency does not impose different requirements on entities approved by States or by Tribes. Therefore, no changes have been made in response to the comment.

One comment stated the agency should incorporate the provisions found in Section 335(e) of the Act that provide detailed guidance for disposition and administration of inventory property located within an Indian reservation where the borrower is a member of the Tribe. Furthermore, section 335(e) of the Act provides detailed guidance regarding the acceleration of loans to Native American borrowers that was not addressed in the proposed rule. The agency redesignated proposed § 766.356 as § 766.357 in the final rule and added a new § 766.356 addressing statutory provisions regarding the acceleration of loans to Native American borrowers in the final rule. These policies are consistent with those currently addressed in internal agency notices.

While no comment was received regarding § 766.357(b)(2), the agency determined that the proposed rule modified existing regulations currently published in 7 CFR 1955.18(e)(2)(ii). Modification of the existing policy was unintended and was not addressed in the discussion of changes in the preamble of the proposed rule. Therefore, the agency revised § 766.357(b)(2) to provide that the agency will credit a borrower's account after a foreclosure sale based on the amount of its bid as provided in existing regulations, rather than the market value, less prior liens, as provided in the proposed rule. No substantive change was intended.

Appendices to 7 CFR Part 766

The agency renumbered all the Appendices in the final rule to accommodate its new numbering system for all forms used in loan servicing. Therefore, FSA–2501 has been renumbered to FSA–2512; FSA–2503 has been renumbered to FSA–2510; and FSA–2505 has been renumbered to FSA–2515. Further, under paragraph (f) in all appendices, the agency rearranged the forms comprising a complete primary loan servicing application in numerical order. Under current rules, applicants for primary loan servicing are required to provide multiple copies of a form to the agency to verify debts and assets of the applicant. Under the final rule, applicants will sign only one authorization to release information and provide it to the agency. The agency, in turn, will use the authorization to verify debts and assets as well as non-farm income. This process closely matches commercial lenders' practices. Therefore, paragraph (f) in all appendices is revised to reflect the agency's new policy.

Eight comments were received on the Appendices to 7 CFR part 766. One comment stated the agency should replace the word ''mediation'' with the words ''Alternative Dispute Resolution (ADR)'' because ADR is the term used in the agency's handbook and describes the agency's informal process for resolving disputes. The agency uses the term ''mediation'' in all the Appendices sent to the borrowers because the term covers both the formal and informal mediation process for resolving disputes. In addition, agency borrowers are familiar with the term ''mediation,'' while ADR encompasses a wider variety of techniques not used by the agency. Therefore, the comment is not adopted.

Two comments stated the title for FSA–2512 should be revised to ''Notice of Availability of Loan Servicing to Borrowers Who Are Current, Financially Distressed or Less Than 90 Days Past Due.'' In addition, both comments stated FSA–2512 should not include the option for writedown and shared appreciation agreement and inquired if a lien on all assets will be required for current or financially distressed borrowers. The agency agrees and has revised the Appendix's title as suggested. The agency published a final rule on February 4, 2004 (69 FR 5264–5267), that eliminated the 30-day past due period prior to a determination that a borrower is delinquent. As a result, borrowers are eligible for writedown, and therefore, shared appreciation agreement, the day after they miss a payment. Therefore, that part of the comments is not adopted. The agency did, however, revise FSA–2512 to clarify that writedown is only available to delinquent borrowers. The agency will not require current or financially distressed borrowers to provide a lien on all assets.

Three comments stated the agency should revise FSA–2510 to clarify that after the agency sends it to the borrower, along with the separate notice of administrative offset, administrative offset may occur at any time. Offset of payments are initiated according to the timeframes established in the offset notice and applicable regulations. Generally, offset may begin prior to the timeframe provided to the borrower to request loan servicing or pay the account current. As a result, inclusion of the reference to administrative offset in the notice of availability of primary and preservation loan servicing is misleading. Therefore, the agency removed the administrative offset provision from FSA–2510.

One comment stated the agency should revise the CFR to incorporate the property restrictions and easement

provisions found in the Appendices. As stated in the preamble of the proposed rule, the agency is eliminating the redundancy found in its current regulations. Once the agency has acquired a property into inventory, the property is subject to the provisions of 7 CFR 767, including Subpart E, pertaining to real property with important resources, or special hazard areas; therefore, the first part of the comment is not adopted.

The comment also stated the agency should revise the Appendices to inform borrowers that they can request a copy of the regulations and agency handbooks. The agency agrees with the second part of the comment and has revised the Appendices to state that regulatory text is included in the agency handbooks. The information had already been included on the availability of handbooks and forms. Regulations also are published in the Code of Federal Regulations.

Further, the comment stated the agency should inform borrowers that the negotiated appraisal non-appealability determination is appealable to the NAD Director. The comment stated the non-appealability determination of the negotiated appraisal is not statutory, and it should therefore be removed. Moreover, the comment stated the agency should remove the provision that only the balance of the 30 days will be available to the borrower to request an appeal on issues other than the negotiated appraisal since it is not statutory. According to section 353(c)(7) of the Act (7 U.S.C. 2001), the negotiated appraisal value by the appraiser mutually agreed upon becomes the final appraisal of the borrower's assets. Therefore, the negotiated appraisals are not appealable. The agency provides the borrower the opportunity to request a NAD Director review of non-appealability determinations in subsequent notices. In addition, 7 CFR 11.4(c)(1) provides if a borrower requests mediation prior to requesting an appeal to NAD, this stops the running of the 30-day period during which the borrower may appeal to NAD, and the borrower will have the balance of days remaining in that period to appeal to NAD once mediation has concluded. The agency, for consistency reasons, provides the borrower the balance of days remaining to request an appeal to NAD after the negotiation of the appraisal has concluded. Therefore, the comment is not adopted.

Another comment stated the agency should revise the Appendices by removing the last sentence under the reconsideration, mediation, negotiation and appeal rights subparagraph and include in FSA–2510 that the borrower may apply for debt settlement even if already applied for and rejected. The agency agrees with the first part of the comment and has revised all the Appendices accordingly. Further, the agency agrees with the last part of the comment and has revised FSA–2510, paragraph (i), accordingly.

One comment stated the agency should expressly provide, where not clear, that timeframes for borrower response commence from the time the agency's notice is received by the borrower. The agency believes that the borrower response timeframes are clearly stated in all the Appendices, so no change has been made in response to the comment.

Miscellaneous Comments on Part 766

Two comments were received requesting the agency continue to provide notification of primary loan servicing when a borrower's request to release proceeds of chattel security is denied. In addition, the comments stated that the agency has to release proceeds for essential family living and farm operating expenses until the loan is accelerated. The agency may deny a borrower's request to release proceeds of chattel security for expenses not considered essential family living or farm operating expenses. The agency is committed to helping borrowers resolve their financial distress at the earliest opportunity, before the financial condition of the operation deteriorates to the point that primary loan servicing is required. Such notification is not required by the Act; however, it was the agency's intent to continue notifying financially distressed and delinquent borrowers of primary loan servicing availability under § 766.101. However, the agency believes that initiating primary loan servicing in cases not related to financial distress or delinquency is a disservice to borrowers since the primary loan servicing process can be lengthy and complicated, when the benefits are not needed. Therefore, the comments are not adopted.

Three comments were received in support of the agency's decision not to provide appeal rights in the offer to restructure the account. The comments stated that the borrowers' rights are protected because borrowers are provided with appeal rights when the agency proposes to take adverse action. In addition, the comments stated that the agency and the taxpayers are benefiting from the change since it eliminates the inefficiencies and administrative expenses associated with multiple appeals. Two comments were received requesting the agency provide appeal rights with the offer to restructure a borrower's account. The agency's offer to restructure the account is a direct result of the borrower's request for loan servicing and the agency is granting the benefit. If a delinquent borrower does not accept the agency's offer to restructure the account, the agency will send notification of its intent to accelerate the account and will provide appeal rights. The borrower can then appeal both the offer to restructure and the intent to accelerate. Further, the borrower may seek NAD Director's review of the appealability determination or otherwise attempt to appeal without an adverse decision. Therefore, the comments are not adopted.

Part 767—Inventory Property Management

The following discussion addresses the comments received on Part 767.

Section 767.52 Disposition of Personal Property From Real Estate Inventory Property

One comment was received on the disposition of personal property from real estate inventory property. The comment stated the agency should clarify in the CFR how the former owner and any known lienholders will be notified when personal property has been left on the real estate inventory property. The agency believes the CFR as written adequately addresses the agency's obligation to provide notice, and the agency handbook will provide further guidance to agency personnel regarding the method for notifying former owners and prior lienholders. Therefore, the comment is not adopted.

Section 767.101 Leasing Real Estate Inventory Property

Two comments were received on leasing real estate inventory property. Both comments stated the agency should add that when the borrower or any other party remains in possession of the real estate property after the agency acquires the title to the property, that person does so without the benefit of a written lease agreement with the agency. Further, the comments stated, the agency, at its sole discretion, can remove such parties and property, pursue civil or criminal action, and pursue claims for use and occupancy of the agency's property. The agency agrees with the concerns expressed in the comments, and has revised § 766.357 to clarify that after the date of foreclosure, the former owner of the property does not retain any rights, except rights granted under state law. Since property can become inventory

only through foreclosure or voluntary conveyance, the agency believes it is more appropriate to revise § 766.353 similarly. Section 767.52 adequately addresses the removal of personal property. Lastly, 7 CFR 1955.61 provides that the agency will request OGC assistance when eviction is necessary. The agency will continue this policy in its handbook, since procedures may vary from state to state. Therefore, no change has been made to this section in response to these comments.

Section 767.151 General Requirements

Three comments were received on the general requirements for disposal of inventory property. All comments stated the proposed rule requires non-beginning farmers to make a 10 percent downpayment when purchasing inventory property. The comments stated non-beginning farmer applicants eligible for farm ownership loans should be able to purchase inventory property and the agency provide 100 percent of the financing as when a non-beginning farmer purchases real estate from a third party. The agency disagrees. Section 335 of the Act (7 U.S.C. 1985) requires the agency to ensure prompt sale of acquired inventory property, as well as the availability of acquired property to beginning farmers. The purchase of inventory property by beginning farmers may be financed with the agency's direct farm ownership loan allocation. As provided in section 346 of the Act (7 U.S.C. 1994), farm ownership funds are targeted for beginning farmers. Historically, non-targeted farm ownership funds are exhausted early in the fiscal year. While beginning farmer targeted farm ownership funds may also become exhausted, section 335(c)(5) of the Act authorizes the lease of inventory property only to beginning farmers when funds are not available to consummate the sale. Further, section 335(c)(1)(C) of the Act requires the sale of the property within 30 days after it is determined an acceptable offer has not been received from a qualified beginning farmer. To meet this timeframe, the purchaser generally is required to have funds available from sources other than the agency since non-targeted farm ownership funds are usually exhausted quickly. The 10 percent deposit is required to ensure only those with the necessary funds submit offers. Therefore, the comments are not adopted.

One comment stated the requirement in section 335(c)(1)(iv) of the Act that the Secretary will combine or subdivide inventory property, as appropriate, to maximize the opportunity for beginning farmers to purchase inventory property, was not included in the proposed rule. The agency agrees with the comment and has added the requirement in paragraph (a).

Lastly, the agency revised § 767.151(b) (renumbered from § 767.151(a)) by removing the last sentence of the paragraph that provided beginning farmers may apply up through 135 days after the advertisement to purchase inventory property. Section 335(c) of the Act, as well as existing regulations at 7 CFR 1955.107(a)(2)(i), provide that the agency has 135 days from acquisition to complete the sale to a beginning farmer. By providing beginning farmers up through 135 days after the advertisement to apply to purchase the inventory property, the proposed rule text would prohibit the agency from meeting the statutory deadline for closing the sale.

In addition, the agency revised § 767.151(d) (renumbered from 767.151(c)) which provided if no acceptable offer was received from a beginning farmer, the agency would offer to sell inventory property to the general public between days 136 and 165 after the agency obtained title to the property, As written, this requirement would prohibit the agency from selling the inventory property within the 165-day requirement as mandated under Section 335(c) of the Act.

Section 767.155 Selling Chattel Property

Five comments were received on selling chattel property. Three comments stated it may be in the agency's financial interest to sell specialty livestock and equipment by private contract instead of public auction. In addition, all three comments did not support the removal of the sealed bid method for selling chattel inventory property. One comment stated the agency should not make any changes to the way it currently sells chattel inventory property. The comment stated some small items must be sold through methods other than auction as the transportation costs to the auction site may be more than the value of the items to be auctioned. The agency believes its financial interests are protected when chattel inventory property is sold by public auction. However, the agency recognizes that a greater recovery may occur by selling specialty livestock and equipment by private contract. The agency agrees with the comments and has revised the section to provide for sealed bids.

One comment stated the agency should be prohibited from accepting chattels into inventory as the agency does not have the resources to manage the property and the property will depreciate while being held by the agency. As provided in § 766.354(b), the agency will only accept a conveyance of chattel property if the borrower has made every effort possible to sell the property voluntarily, the property is free of other liens, and it is in the agency's financial interest. Based on these requirements, the agency believes that the agency will rarely accept chattels into inventory. Therefore, the comment is not adopted.

Section 767.203 Inventory Real Property Containing Environmental Risks (Removed in Final Rule)

Three comments were received on the real estate inventory property containing environmental risks provisions. All comments stated the agency's proposed rule went far beyond the lender liability responsibilities as provided in applicable Federal and State laws. The comments stated the agency seems to take on the prior owner's responsibility for environmental problems and hazardous waste cleanup and provided the final rule should afford the lender liability protection to the agency as stated in all applicable statutes. The Comprehensive Environmental Response, Compensation, and Liability Act and other applicable laws specify actions the agency has to undertake when property held in inventory contains hazardous wastes and materials. The agency recognizes that this law provides some protection from lender liability for clean-up of hazardous waste. The agency, however, may choose to do more than legally required when such action is in the agency's best financial interests. The agency believes this matter is internal policy and has removed the section in the final rule. The agency handbook, however, will provide guidance to employees.

Miscellaneous Comments

Two comments were received supporting the elimination of the definitions for suitable and surplus property from the CFR. The comments stated the elimination of the definitions will help reduce unnecessary administrative burden placed on the agency and free employees' time to provide assistance to young and beginning farmers.

Miscellaneous CFR Parts

As stated in the preamble of the proposed rule, the agency intends to amend 7 CFR part 799 to incorporate environmental policies currently found in subpart G of 7 CFR part 1940. However, 7 CFR part 799 has not been

amended yet, therefore, the agency will refer to subpart G of 7 CFR part 1940 when environmental policies are discussed in the final rule. The agency will make conforming changes to subpart G when the final rule amending 7 CFR part 799 is published.

Further, as stated in the preamble of the proposed rule, the agency intends to amend 7 CFR part 792 to incorporate offset of Federal payments and debt settlement policies currently found in subpart C of 7 CFR part 1951 and subpart B of 7 CFR part 1956, respectively. However, 7 CFR part 792 has not been amended yet; therefore, the agency refers to subpart C of 7 CFR part 1951 and subpart B of 7 CFR part 1956 when offset of Federal payments and debt settlement policies are discussed in the final rule. The agency will make conforming changes to subpart C of 7 CFR part 1951 and subpart B of 7 CFR 1956 when the final rule amending 7 CFR part 792 is published.

The agency's policies on controlled substances and disqualification for Federal benefits due to Federal crop insurance violations are currently addressed in 7 CFR part 718. However, the agency determined that Farm Loan Programs were not adequately covered; therefore, the agency revised 7 CFR part 718 where appropriate. In addition, conforming changes were made to Commodity Credit Corporation regulations in 7 CFR 1405.8.

Executive Order 12866

This rule has been determined to be significant under Executive Order 12866 and was reviewed by OMB.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–602), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. This rule does not impose any new requirements on Agency applicants and borrowers. In some cases, existing information collections and regulatory requirements have been reduced as a result of streamlining the loan making and servicing application processes.

Environmental Assessment

FSA has completed an Environmental Assessment (EA) in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508) and the FSA regulations for compliance with NEPA, 7 CFR part 1940, subpart G. A finding of no significant impact (FONSI) was determined as a result of the EA process. The final EA and FONSI are available for review at *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=ecrc&topic=enl-ea*. The agency will accept comments on the final EA and FONSI for a period of 30 days from the date of publication of this rule.

Executive Order 13132

The policies contained in this rule do not have a substantial direct effect on 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. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. In accordance with this Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR parts 11 and 780 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Executive Order 12372

For reasons contained in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs within this rule are excluded from the scope of E.O. 12372, which requires intergovernmental consultation with State and local officials.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA requires FSA to prepare a written statement, including a cost benefit assessment, for proposed and final rules with ''Federal mandates'' that may result in such expenditures for State, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, as defined under Title II of the UMRA, for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

The Information Collection Packages for the amendments to 7 CFR parts 761, 764, 765, 766, and 767 contained in this final rule have been submitted to OMB for approval. A proposed rule containing an estimate of the burden impact of the rule was published on February 9, 2004 (69 FR 6055–6121). No comments regarding the burden estimates were received.

E-Government Act Compliance

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

The agency has posted online at *http://www.sc.egov.usda.gov* all the forms an applicant or borrower either has to complete in their entirety or review and execute. For forms the applicant or borrower is required to complete in their entirety, the fillable version of the form, as well as detailed instructions on completing the form, are included online. Forms prepared by the agency, that applicants or borrowers simply review and sign, are also provided on the e-Gov Web site, however, in lieu of detailed instructions for completing those forms, the instructions state that the forms are provided on the Web site for information purposes only. Applicants or borrowers may download and review forms required to apply for benefits from the agency.

Lastly, the agency provides access to the handbooks that implement the CFR parts included in the final rule and provide internal and administrative guidance to its employees, at *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=lare&topic=hbk*. Applicants or borrowers may download and review any agency handbook and become familiar with the requirements for applying for benefits.

Federal Assistance Programs

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans

10.406—Farm Operating Loans
10.407—Farm Ownership Loans

List of Subjects

7 CFR Part 718

Acreage allotments, Agricultural commodities, Reporting and recordkeeping requirements.

7 CFR Part 761

Administrative practice and procedure, Agriculture, Authority delegations, Credit, Loan programs—Agriculture.

7 CFR Part 762

Agriculture, Credit, Loan programs—Agriculture.

7 CFR Part 764

Agriculture, Agricultural commodities, Credit, Disaster assistance, Livestock, Loan programs—Agriculture, Mortgages.

7 CFR Part 765

Agriculture, Agricultural commodities, Credit, Livestock, Loan programs—Agriculture.

7 CFR Part 766

Agriculture, Agricultural commodities, Credit, Livestock, Loan programs—Agriculture.

7 CFR Part 767

Agriculture, Credit, Government property, Government property management, Indians—loans, Loan programs—Agriculture.

7 CFR Part 1405

Agricultural commodities, Feed grains, Grains, Loan programs ''Agriculture, Oilseeds, Price support programs, Reporting and record keeping requirements.

■ Accordingly, 7 CFR chapters VII and XIV are amended as follows:

7 CFR Chapter VII

PART 718—PROVISIONS APPLICABLE TO MULTIPLE PROGRAMS

■ 1. The authority citation for part 718 continues to read as follows:

Authority: 7 U.S.C. 1311 *et seq.*, 1501 *et seq.*, 1921 *et seq.*, 7201 *et seq.*, 15 U.S.C. 714b.

■ 2. Revise § 718.1 to read as follows:

§ 718.1 Applicability.

(a) This part:

(1) Is applicable to all programs set forth in chapters VII and XIV of this title which are administered by the Farm Service Agency (FSA), except that only §§ 718.6 and 718.11 are applicable to parts 761 through 774 of this chapter;

(2) Governs how FSA monitors marketing quotas, allotments, base acres and acreage reports. The regulations affected are those that establish procedures for measuring allotments and program eligible acreage, and determining program compliance.

(b) For all programs, except for those administered under parts 761 through 774 of this chapter:

(1) The provisions of this part will be administered under the general supervision of the Administrator, FSA, and carried out in the field by State and county FSA committees (State and county committees);

(2) State and county committees, and representatives and employees thereof, do not have authority to modify or waive any regulations in this part;

(3) No provisions or delegation herein to a State or county committee will preclude the Administrator, FSA, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee;

(4) The Deputy Administrator, FSA, may authorize State and county committees to waive or modify deadlines and other requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the program.

(c) The programs under parts 761 through 774 will be administered according to the part, or parts, applicable to the specific program.

■ 3. Revise § 718.6 to read as follows:

§ 718.6 Controlled substance.

(a) The following terms apply to this section:

(1) *USDA benefit* means the issuance of any grant, contract, loan, or payment by appropriated funds of the United States.

(2) *Person* means an individual.

(b) Notwithstanding any other provision of law, any person convicted under Federal or State law of:

(1) Planting, cultivating, growing, producing, harvesting, or storing a controlled substance in any crop year is ineligible during the crop year of conviction and the four succeeding crop years, for any of the following USDA benefits:

(i) Any payments or benefits under the Direct and Counter Cyclical Program (DCP) in accordance with part 1412 of this title;

(ii) Any payments or benefits for losses to trees, crops, or livestock covered under disaster programs administered by FSA;

(iii) Any price support loan available in accordance with part 1421 of this title;

(iv) Any price support or payment made under the Commodity Credit Corporation Charter Act;

(v) A farm storage facility loan made under section 4(h) of the Commodity Credit Corporation Charter Act or any other Act;

(vi) Crop Insurance under the Federal Crop Insurance Act;

(vii) A loan made or guaranteed under the Consolidated Farm and Rural Development Act or any other law administered by FSA's Farm Loan Programs.

(2) Possession or trafficking of a controlled substance, is ineligible for any or all USDA benefits:

(i) At the discretion of the court,

(ii) To the extent and for a period of time the court determines.

(c) If a person denied benefits under this section is a shareholder, beneficiary, or member of an entity or joint operation, benefits for which the entity or joint operation is eligible will be reduced, for the appropriate period, by a percentage equal to the total interest of the shareholder, beneficiary, or member.

■ 4. Revise § 718.11 to read as follows:

§ 718.11 Disqualification due to Federal crop insurance violation.

(a) Section 515(h) of the Federal Crop Insurance Act (FCIA) provides that a person who willfully and intentionally provides false or inaccurate information to the Federal Crop Insurance Corporation (FCIC) or to an approved insurance provider with respect to a policy or plan of FCIC insurance, after notice and an opportunity for a hearing on the record, will be subject to one or more of the sanctions described in section 515(h)(3). In section 515(h)(3), the FCIA specifies that in the case of a violation committed by a producer, the producer may be disqualified for a period of up to 5 years from receiving any monetary or non-monetary benefit under a number of programs. The list includes, but is not limited to, benefits under:

(1) The FCIA.

(2) The Agricultural Market Transition Act (7 U.S.C. 7201 *et seq.*), including the Noninsured Crop Disaster Assistance Program under section 196 of that Act (7 U.S.C. 7333).

(3) The Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*).

(4) The Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*).

(5) The Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 *et seq.*).

(6) Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*).

(7) The Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*).

(8) Any law that provides assistance to a producer of an agricultural commodity affected by a crop loss or a decline in prices of agricultural commodities.

(b) Violation determinations are made by FCIC. However, upon notice from FCIC to FSA that a producer has been found to have committed a violation to which paragraph (a) of this section applies, that person will be ineligible for payments under the programs specified in paragraph (a) of this section that are funded by FSA for the same period of time for which, as determined by FCIC, the producer will be ineligible for crop insurance benefits of the kind referred to in paragraph (a)(1) of this section. Appeals of the determination of ineligibility will be administered under the rules set by FCIC.

(c) Other sanctions may also apply.

■ 5. Revise part 761 to read as follows:

PART 761—GENERAL PROGRAM ADMINISTRATION

Subpart A—General Provisions

Sec.
761.1 Introduction.
761.2 Abbreviations and definitions.
761.3 Civil rights.
761.4 Conflict of interest.
761.5 Restrictions on lobbying.
761.6 Appeals.
761.7 Appraisals.
761.8 Loan limitations.
761.9 Interest rates for direct loans.
761.10 Planning and performing construction and other development.
761.11–761.50 [Reserved]

Subpart B—Supervised Bank Accounts

761.51 Establishing a supervised bank account.
761.52 Deposits into a supervised bank account.
761.53 Interest bearing accounts.
761.54 Withdrawals from a supervised bank account.
761.55 Closing a supervised bank account.
761.56–761.100 [Reserved]

Subpart C—Supervised Credit

761.101 Applicability.
761.102 Borrower recordkeeping, reporting, and supervision.
761.103 Farm assessment.
761.104 Developing the farm operating plan.
761.105 Year-end analysis.
761.106–761.200 [Reserved]

Subpart D—Allocation of Farm Loan Programs Funds to State Offices

761.201 Purpose.
761.202 Timing of allocations.
761.203 National reserves for Farm Ownership and Operating loans.
761.204 Methods of allocating funds to State Offices.
761.205 Computing the formula allocation.
761.206 Pooling of unobligated funds allocated to State Offices.
761.207 Distribution of loan funds by State Offices.
761.208 Target participation rates for socially disadvantaged groups.
761.209 Loan funds for beginning farmers.
761.210 Transfer of funds.

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart A—General Provisions

§ 761.1 Introduction.

(a) The Administrator delegates the responsibility to administer Farm Loan Programs of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*) to the Deputy Administrator for Farm Loan Programs subject to any limitations established in 7 CFR 2.16(a)(2) and 7 CFR 2.42.

(b) The Deputy Administrator may:

(1) Redelegate authorities received under subparagraph (a); and

(2) Establish procedures for further redelegation of authority.

(c) Parts 761 through 767 describe the Agency's policies for its Farm Loan Programs. The objective of these programs is to provide supervised credit and management assistance to eligible farmers to become owners or operators, or both, of family farms, to continue such operations when credit is not available elsewhere, or to return to normal farming operations after sustaining substantial losses as a result of a designated or declared disaster. These regulations apply to loan applicants, borrowers, lenders, holders, Agency personnel, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans.

(d) This part describes the Agency's general and administrative policies for its guaranteed and direct Farm Loan Programs. In general, this part addresses issues that affect both guaranteed and direct loan programs.

§ 761.2 Abbreviations and definitions.

The following abbreviations and definitions are applicable to the Farm Loan Programs addressed in parts 761 through 767 unless otherwise noted.

(a) *Abbreviations.*

CLP Certified Lender Program.

DSA Disaster Set-Aside.

EE Economic Emergency loan.

EM Emergency loan.

FLP Farm Loan Programs.

FO Farm Ownership loan.

FSA Farm Service Agency, an Agency of the USDA, including its personnel and any successor Agency.

Lo-Doc Low-Documentation Operating loan.

OGC Office of the General Counsel of the USDA.

OL Operating loan.

PLP Preferred Lender Program.

RHF Rural Housing loan for farm service buildings.

RL Recreation loan.

SAA Shared Appreciation Agreement.

SA Shared Appreciation loan.

SEL Standard Eligible Lender.

ST Softwood Timber loan.

SW Soil and Water loan.

USDA United States Department of Agriculture.

USPAP Uniform Standards of Professional Appraisal Practice.

(b) *Definitions.*

Abandoned security property is security property that a borrower is not occupying, is not in possession of, or has relinquished control of and has not made arrangements for its care or sale.

Accrued deferred interest is unpaid interest from past due installments posted to a borrower's loan account.

Act is the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*).

Additional security is property which provides security in excess of the amount of security value equal to the loan amount.

Adequate security is property which is required to provide security value at least equal to the direct loan amount.

Adjustment is a form of settlement that reduces the financial obligation to the Agency, conditioned upon the completion of payment of a specified amount at a future time. An adjustment is not a final settlement until all payments have been made under the agreement.

Administrative appraisal review is a review of an appraisal to determine if the appraisal:

(1) Meets applicable Agency requirements; and

(2) Is accurate outside the requirements of standard 3 of USPAP.

Agency is the FSA.

Agreement for the use of proceeds is an agreement between the borrower and the Agency that reflects how, when, and to whom the borrower will sell, exchange, or consume chattel security and the planned use of any proceeds during a specific production cycle.

Agricultural commodity is livestock, livestock products, grains, cotton, oilseeds, dry beans, tobacco, peanuts, sugar beets, sugar cane, fruit, vegetable, forage, tree farming, nursery crops, nuts, aquaculture species, and other plant and animal production, as determined by the Agency.

Allonge is an attachment or an addendum to a promissory note.

Allowable costs are those costs for replacement or repair that are supported

by acceptable documentation, including, but not limited to, written estimates, invoices, and bills.

Applicant is the individual or entity applying for a loan or loan servicing under either the direct or guaranteed loan program.

Aquaculture is the husbandry of any aquatic organisms (including fish, mollusks, crustaceans or other invertebrates, amphibians, reptiles, or aquatic plants) raised in a controlled or selected environment of which the applicant has exclusive rights to use.

Assignment of guaranteed portion is a process by which the lender transfers the right to receive payments or income on a guaranteed loan to another party, usually in return for payment in the amount of the loan's guaranteed principal. The lender retains the unguaranteed portion in its portfolio and receives a fee from the purchaser or assignee to service the loan and receive and remit payments according to a written assignment agreement. This assignment can be reassigned or sold multiple times.

Assignment of indemnity is the transfer of rights to compensation under an insurance contract.

Assistance is financial assistance in the form of a direct or guaranteed loan or interest subsidy or servicing action.

Assumption is the act of agreeing to be legally responsible for another party's indebtedness.

Assumption agreement is a written agreement on the appropriate Agency form to pay the FLP debt incurred by another.

Average agricultural loan customer is a conventional farm borrower who is required to pledge crops, livestock, other chattel and/or real estate security for the loan. This term does not include a high-risk farmer with limited security and management ability who is generally charged a higher interest rate by conventional agricultural lenders. Also, this term does not include a low-risk farm customer who obtains financing on a secured or unsecured basis, who is able to pledge as collateral for a loan items such as savings accounts, time deposits, certificates of deposit, stocks and bonds, and life insurance.

Basic part of an applicant's total farming operation is any single agricultural commodity or livestock production enterprise of an applicant's farming operation which normally generates sufficient income to be considered essential to the success of such farming operation.

Basic security is all farm machinery, equipment, vehicles, foundation and breeding livestock herds and flocks, including replacements, and real estate that serves as security for a loan made or guaranteed by the Agency.

Beginning farmer is an individual or entity who:

(1) Meets the loan eligibility requirements for a direct or guaranteed OL or FO loan, as applicable;

(2) Has not operated a farm for more than 10 years. This requirement applies to all members of an entity;

(3) Will materially and substantially participate in the operation of the farm:

(i) In the case of a loan made to an individual, individually or with the family members, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm, consistent with the practices in the county or State where the farm is located.

(ii) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm. Material and substantial participation requires that the member provide some amount of the management, or labor and management necessary for day-to-day activities, such that if the individual did not provide these inputs, operation of the farm would be seriously impaired;

(4) Agrees to participate in any loan assessment and borrower training required by Agency regulations;

(5) Except for an OL applicant, does not own real farm property or who, directly or through interests in family farm entities owns real farm property, the aggregate acreage of which does not exceed 30 percent of the acreage of the farms in the county where the property is located. If the farm is located in more than one county, the median farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the median farm acreage of the county where the major portion of the farm is located will be used. The median county farm acreage will be determined from the most recent Census of Agriculture;

(6) Demonstrates that the available resources of the applicant and spouse (if any) are not sufficient to enable the applicant to enter or continue farming on a viable scale; and

(7) In the case of an entity:

(i) All the members are related by blood or marriage; and

(ii) All the members are beginning farmers.

Beginning Farmer Downpayment Loan is a type of FO loan made to eligible applicants to finance a portion of a real estate purchase under part 764, subpart E of this chapter.

Borrower (or debtor) is an individual or entity that has an outstanding obligation to the Agency or to a lender under any direct or guaranteed FLP loan, without regard to whether the loan has been accelerated. The term ''borrower'' includes all parties liable for such obligation, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed, sold, or conveyed, or who have been discharged of all such obligations owed to the Agency or guaranteed lender.

Cancellation is the final discharge of, and release of liability for, a financial obligation to the Agency on which no settlement amount has been paid.

Cash flow budget is a projection listing all anticipated cash inflows (including all farm income, nonfarm income and all loan advances) and all cash outflows (including all farm and nonfarm debt service and other expenses) to be incurred during the period of the budget. Advances and principal repayments of lines of credit may be excluded from a cash flow budget. Cash flow budgets for guaranteed loans under $125,000 do not require income and expenses itemized by categories. A cash flow budget may be completed either for a 12-month period, a typical production cycle, or the life of the loan, as appropriate. It may also be prepared with a breakdown of cash inflows and outflows for each month of the review period and include the expected outstanding operating credit balance for the end of each month. The latter type is referred to as a ''monthly cash flow budget.''

Chattel or real estate essential to the operation is chattel or real estate that would be necessary for the applicant to continue operating the farm after the disaster in a manner similar to the manner in which the farm was operated immediately prior to the disaster, as determined by the Agency.

Chattel security is property that may consist of, but is not limited to: Crops; livestock; aquaculture species; farm equipment; inventory; accounts; contract rights; general intangibles; and supplies that are covered by financing statements and security agreements, chattel mortgages, and other security instruments.

Civil action is a court proceeding to protect the Agency's financial interests. A civil action does not include bankruptcy and similar proceedings to impound and distribute the bankrupt's assets to creditors, or probate or similar proceedings to settle and distribute

estates of incompetents or decedents, and pay claims of creditors.

Closing agent is the attorney or title insurance company selected by the applicant and approved by the Agency to provide closing services for the proposed loan or servicing action. Unless a title insurance company provides loan closing services, the term ''title company'' does not include ''title insurance company.''

Coastal barrier is an area of land identified as part of the national Coastal Barrier Resources System under the Coastal Barrier Resources Act of 1980.

Compromise is the settlement of an FLP debt or claim by a lump-sum payment of less than the total amount owed in satisfaction of the debt or claim.

Conditional commitment is the Agency's commitment to a lender that the material the lender has submitted is approved subject to the completion of all listed conditions and requirements.

Conservation Contract is a contract under which a borrower agrees to set aside land for conservation, recreation or wildlife purposes in exchange for reduction of a portion of an outstanding FLP debt.

Conservation Contract review team is comprised by the appropriate offices of FSA, the Natural Resources Conservation Service, U.S. Fish and Wildlife Service, State Fish and Wildlife Agencies, Conservation Districts, National Park Service, Forest Service, State Historic Preservation Officer, State Conservation Agencies, State Environmental Protection Agency, State Natural Resource Agencies, adjacent public landowner, and any other entity that may have an interest and qualifies to be a management authority for a proposed conservation contract.

Consolidation is the process of combining the outstanding principal and interest balance of two or more loans of the same type made for operating purposes.

Construction is work such as erecting, repairing, remodeling, relocating, adding to, or salvaging any building or structure, and the installing, repairing, or adding to heating and electrical systems, water systems, sewage disposal systems, walks, steps, and driveways.

Controlled is when a director or an employee has more than a 50 percent ownership in an entity or, the director or employee, together with relatives of the director or employee, have more than a 50 percent ownership.

Controlled substance is the term as defined in 21 U.S.C. 812.

Cooperative is an entity that has farming as its purpose, whose members have agreed to share the profits of the farming enterprise, and is recognized as a farm cooperative by the laws of the state in which the entity will operate a farm.

Corporation is a private domestic corporation created and organized under the laws of the state in which it will operate a farm.

Cosigner is a party, other than the applicant, who joins in the execution of a promissory note to assure its repayment. The cosigner becomes jointly and severally liable to comply with the repayment terms of the note, but is not authorized to severally receive loan servicing available under 7 CFR parts 765 and 766. In the case of an entity applicant, the cosigner cannot be a member of the entity.

County is a local administrative subdivision of a State or similar political subdivision of the United States.

County average yield is the historical average yield for an agricultural commodity in a particular political subdivision, as determined or published by a government entity or other recognized source.

Criminal action is the prosecution by the United States to exact punishment in the form of fines or imprisonment for alleged violation of criminal statutes.

Crop allotment or quota is a farm's share of an approved national tobacco or peanut allotment or quota.

Current market value buyout is the termination of a borrower's loan obligations to the Agency in exchange for payment of the current appraised value of the borrower's security property and non-essential assets, less any prior liens.

Debt forgiveness is a reduction or termination of a debt under the Act in a manner that results in a loss to the Agency, through:

(1) Writing down or writing off a debt pursuant to 7 U.S.C. 2001;

(2) Compromising, adjusting, reducing, or charging off a debt or claim pursuant to 7 U.S.C. 1981; or

(3) Paying a loss pursuant to 7 U.S.C. 2005 on a FLP loan guaranteed by the Agency.

Debt forgiveness does not include:

(1) Debt reduction through a conservation contract;

(2) Any writedown provided as part of the resolution of a discrimination complaint against the Agency;

(3) Prior debt forgiveness that has been repaid in its entirety; and

(4) Consolidation, rescheduling, reamortization, or deferral of a loan.

Debt settlement is a compromise, adjustment, or cancellation of an FLP debt.

Debt service margin is the difference between all of the borrower's expected expenditures in a planning period (including farm operating expenses, capital expenses, essential family living expenses, and debt payments) and the borrower's projected funds available to pay all expenses and payments.

Debt writedown is the reduction of the borrower's debt to that amount the Agency determines to be collectible based on an analysis of the security value and the borrower's ability to pay.

Default is the failure of a borrower to observe any agreement with the Agency, or the lender in the case of a guaranteed loan, as contained in promissory notes, security instruments, and similar or related instruments.

Deferral is a postponement of the payment of interest or principal, or both.

Delinquent borrower, for loan servicing purposes, is a borrower who has failed to make all scheduled payments by the due date.

Direct loan is a loan funded and serviced by the Agency as the lender.

Disaster is an event of unusual and adverse weather conditions or other natural phenomena, or quarantine, that has substantially affected the production of agricultural commodities by causing physical property or production losses in a county, or similar political subdivision, that triggered the inclusion of such county or political subdivision in the disaster area as designated by the Agency.

Disaster area is the county or counties declared or designated as a disaster area for EM loan assistance as a result of disaster related losses. This area includes counties contiguous to those counties declared or designated as disaster areas.

Disaster set-aside is the deferral of payment of an annual loan installment to the Agency to the end of the loan term in accordance with part 766, subpart B of this chapter.

Disaster yield is the per-acre yield of an agricultural commodity for the operation during the production cycle when the disaster occurred.

Economic Emergency loan is a loan that was made or guaranteed to an eligible applicant to allow for continuation of the operation during an economic emergency which was caused by a lack of agricultural credit or an unfavorable relationship between production costs and prices received for agricultural commodities. EE loans are not currently funded; however, such outstanding loans are serviced by the Agency or the lender in the case of a guaranteed EE loan.

Emergency loan is a loan made to eligible applicants who have incurred

substantial financial losses from a disaster.

Entity is a corporation, partnership, joint operation, cooperative, limited liability company or trust.

Essential family living and farm operating expenses:

(1) Are those that are basic, crucial or indispensable.

(2) Are determined by the Agency based on the following considerations:

(i) The specific borrower's operation;

(ii) What is typical for that type of operation in the area; and

(iii) What is an efficient method of production considering the borrower's resources.

(3) Include, but are not limited to, essential: Household operating expenses; food, including lunches; clothing and personal care; health and medical expenses, including medical insurance; house repair and sanitation; school and religious expenses; transportation; hired labor; machinery repair; farm building and fence repair; interest on loans and credit or purchase agreement; rent on equipment, land, and buildings; feed for animals; seed, fertilizer, pesticides, herbicides, spray materials and other necessary farm supplies; livestock expenses, including medical supplies, artificial insemination, and veterinarian bills; machinery hire; fuel and oil; taxes; water charges; personal, property and crop insurance; auto and truck expenses; and utility payments.

Established farmer is a farmer who operates the farm (in the case of an entity, its members as a group) who:

(1) Actively participated in the operation and the management, including, but not limited to, exercising control over, making decisions regarding, and establishing the direction of, the farming operation at the time of the disaster;

(2) Spends a substantial portion of time in carrying out the farming operation;

(3) Planted the crop, or purchased or produced the livestock on the farming operation;

(4) In the case of an entity, is primarily engaged in farming and has over 50 percent of its gross income from all sources from its farming operation based on the operation's projected cash flow for the next crop year or the next 12-month period, as mutually determined; and

(5) Is not:

(i) An entity whose members are themselves entities;

(ii) An integrated livestock, poultry, or fish processor who operates primarily and directly as a commercial business through contracts or business arrangements with farmers, except a grower under contract with an integrator or processor may be considered an established farmer, provided the farming operation is not managed by an outside full-time manager or management service and Agency loans shall be based on the applicant's share of the agricultural production as set forth in the contract; or

(iii) An operation which employs a full time farm manager.

False information is information provided by an applicant, borrower or other source to the Agency that the applicant or borrower knows to be incorrect.

Family farm is a farm that:

(1) Produces agricultural commodities for sale in sufficient quantities so that it is recognized as a farm rather than a rural residence;

(2) Has both physical labor and management provided as follows:

(i) The majority of day-to-day, operational decisions, and all strategic management decisions are made by:

(A) The borrower and persons who are either related to the borrower by blood or marriage, or are a relative, for an individual borrower; or

(B) The members responsible for operating the farm, in the case of an entity.

(ii) A substantial amount of labor to operate the farm is provided by:

(A) The borrower and persons who are either related to the borrower by blood or marriage, or are a relative, for an individual borrower; or

(B) The members responsible for operating the farm, in the case of an entity.

(3) May use full-time hired labor in amounts only to supplement family labor.

(4) May use reasonable amounts of temporary labor for seasonal peak workload periods or intermittently for labor intensive activities.

Family living expenses are the costs of providing for the needs of family members and those for whom the borrower has a financial obligation, such as alimony, child support, and care expenses of an elderly parent.

Family members are the immediate members of the family residing in the same household with the borrower.

Farm is a tract or tracts of land, improvements, and other appurtenances that are used or will be used in the production of crops, livestock, or aquaculture products for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term ''farm'' also includes the term ''ranch.'' It may also include land and improvements and facilities used in a non-eligible enterprise or the residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

Farmer is an individual, corporation, partnership, joint operation, cooperative, trust, or limited liability company that is the operator of a farm.

Farm income is the proceeds from the sale of agricultural commodities that are normally sold annually during the regular course of business, such as crops, feeder livestock, and other farm products.

Farm Loan Programs are Agency programs to make, guarantee, and service loans to family farmers authorized under the Act or Agency regulations.

Farm Ownership loan is a loan made to eligible applicants to purchase, enlarge, or make capital improvements to family farms, or to promote soil and water conservation and protection. It also includes the Beginning Farmer Downpayment loan.

Farm Program payments are benefits received from FSA for any commodity, disaster, or cost share program.

Feasible plan is when an applicant or borrower's cash flow budget or farm operating plan indicates that there is sufficient cash inflow to pay all cash outflow. If a loan approval or servicing action exceeds one production cycle and the planned cash flow budget or farm operating plan is atypical due to cash or inventory on hand, new enterprises, carryover debt, atypical planned purchases, important operating changes, or other reasons, a cash flow budget or farm operating plan must be prepared that reflects a typical cycle. If the request is for only one cycle, a feasible plan for only one production cycle is required for approval.

Financially distressed borrower is a borrower unable to develop a feasible plan for the current or next production cycle.

Financially viable operation, for the purposes of considering a waiver of OL term limits under § 764.252 of this chapter, is a farming operation that, with Agency assistance, is projected to improve its financial condition over a period of time to the point that the operator can obtain commercial credit without further Agency assistance. Such an operation must generate sufficient income to:

(1) Meet annual operating expenses and debt payments as they become due;

(2) Meet essential family living expenses to the extent they are not met by dependable non-farm income;

(3) Provide for replacement of capital items; and

(4) Provide for long-term financial growth.

Fixture is an item of personal property attached to real estate in such a way that it cannot be removed without defacing or dismantling the structure, or damaging the item itself.

Floodplains are lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year. The base floodplain is used to designate the 100-year floodplain (one percent chance floodplain). The critical floodplain is defined as the 500-year floodplain (0.2 percent chance floodplain).

Foreclosed is the completed act of selling security either under the power of sale in the security instrument or through judicial proceedings.

Foreclosure sale is the act of selling security either under the power of sale in the security instrument or through judicial proceedings.

Good faith is when an applicant or borrower provides current, complete, and truthful information when applying for assistance and in all past dealings with the Agency, and adheres to all written agreements with the Agency including, but not limited to, loan agreement, security instruments, farm operating plans, and agreements for use of proceeds. The Agency considers a borrower to act in good faith, however, if the borrower's inability to adhere to all agreements is due to circumstances beyond the borrower's control. In addition, the Agency will consider fraud, waste, or conversion actions, when substantiated by a legal opinion from OGC, when determining if an applicant or borrower has acted in good faith.

Graduation is the payment in full of all direct FLP loans made for operating, real estate, or both purposes by refinancing with other credit sources either with or without an Agency guarantee.

Guaranteed loan is a loan made and serviced by a lender for which the Agency has entered into a Lender's Agreement and for which the Agency has issued a Loan Guarantee. This term also includes guaranteed lines of credit except where otherwise indicated.

Guarantor is a party not included in the farming operation who assumes responsibility for repayment in the event of default.

Hazard insurance is insurance covering fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, builder's risk, public liability, property damage, flood or mudslide, workers compensation, or any similar insurance that is available and needed to protect the Agency security or that is required by law.

Highly erodible land is land as determined by Natural Resources Conservation Service to meet the requirements provided in section 1201 of the Food Security Act of 1985.

Holder is a person or organization other than the lender that holds all or a part of the guaranteed portion of an Agency guaranteed loan but has no servicing responsibilities. When the lender assigns a part of the guaranteed loan by executing an Agency assignment form, the assignee becomes a holder.

Homestead protection is the previous owner's right to lease with an option to purchase the principal residence and up to 10 acres of adjoining land which secured an FLP direct loan.

Homestead protection property is the principal residence that secured an FLP direct loan and is subject to homestead protection.

Household contents are essential household items necessary to maintain viable living quarters. Household contents exclude all luxury items such as jewelry, furs, antiques, paintings, etc.

Inaccurate information is incorrect information provided by an applicant, borrower, lender, or other source without the intent of fraudulently obtaining benefits.

Indian reservation is all land located within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; trust or restricted land located within the boundaries of a former reservation of a Federally recognized Indian Tribe in the State of Oklahoma; or all Indian allotments the Indian titles to which have not been extinguished if such allotments are subject to the jurisdiction of a Federally recognized Indian Tribe.

In-house expenses are expenses associated with credit management and loan servicing by the lender and the lender's contractor. In-house expenses include, but are not limited to, employee salaries, staff lawyers, travel, supplies, and overhead.

Interest Assistance Agreement is the appropriate Agency form executed by the Agency and the lender containing the terms and conditions under which the Agency will make interest assistance payments to the lender on behalf of the guaranteed loan borrower.

Inventory property is real estate or chattel property and related rights that formerly secured an FLP loan and to which the Federal Government has acquired title.

Joint financing arrangement is an arrangement in which two or more lenders make separate loans simultaneously to supply the funds required by one applicant.

Joint operation is an operation run by individuals who have agreed to operate a farm or farms together as an entity, sharing equally or unequally land, labor, equipment, expenses, or income, or some combination of these items. The real and personal property is owned separately or jointly by the individuals.

Leasehold is a right to use farm property for a specific period of time under conditions provided for in a lease agreement.

Lender is the organization making and servicing a loan, or advancing and servicing a line of credit that is guaranteed by the Agency. The lender is also the party requesting a guarantee.

Lender's Agreement is the appropriate Agency form executed by the Agency and the lender setting forth their loan responsibilities when the Loan Guarantee is issued.

Lien is a legally enforceable claim against real or chattel property of another obtained as security for the repayment of indebtedness or an encumbrance on property to enforce payment of an obligation.

Limited resource interest rate is an interest rate normally below the Agency's regular interest rate, which is available to applicants unable to develop a feasible plan at regular rates and are requesting:

(1) FO or OL loan assistance under part 764 of this title; or

(2) Primary loan servicing on an FO, OL, or SW loan under part 766 of this title.

Line of Credit Agreement is a contract between the borrower and the lender that contains certain lender and borrower conditions, limitations, and responsibilities for credit extension and acceptance where loan principal balance may fluctuate throughout the term of the contract.

Liquidation is the act of selling security for recovery of amounts owed to the Agency or lender.

Liquidation expenses are the costs of an appraisal, due diligence evaluation, environmental assessment, outside attorney fees, and other costs incurred as a direct result of liquidating the security for a direct or guaranteed loan. Liquidation expenses do not include internal Agency expenses for a direct loan or in-house expenses for a guaranteed loan.

Livestock is a member of the animal kingdom, or product thereof, as determined by the Agency.

Loan Agreement is a contract between the borrower and the lender that contains certain lender and borrower agreements, conditions, limitations, and responsibilities for credit extension and acceptance.

Loan servicing programs include any primary loan servicing program, conservation contract, current market value buyout, and homestead protection.

Loan transaction is any loan approval or servicing action.

Loss claim is a request made to the Agency by a lender to receive a reimbursement based on a percentage of the lender's loss on a loan covered by an Agency guarantee.

Loss rate is the net amount of loan loss claims paid on FSA guaranteed loans made in the previous 7 years divided by the total loan amount of all such loans guaranteed during the same period.

Low-Documentation Operating loan is an OL loan made to eligible applicants based on reduced documentation.

Major deficiency is a deficiency that directly affects the soundness of the loan.

Majority interest is more than a 50 percent interest in an entity held by an individual or group of individuals.

Market value is the amount that an informed and willing buyer would pay an informed and willing, but not forced, seller in a completely voluntary sale.

Mineral right is an ownership interest in minerals in land, with or without ownership of the surface of the land.

Minor deficiency is a deficiency that violates Agency regulations, but does not affect the soundness of the loan.

Mortgage is a legal instrument giving the lender a security interest or lien on real or personal property of any kind. The term ''mortgage'' also includes the terms ''deed of trust'' and ''security agreement.''

Natural disaster is unusual and adverse weather conditions or natural phenomena that have substantially affected farmers by causing severe physical or production, or both, losses.

Negligent servicing is servicing that fails to include those actions that are considered normal industry standards of loan management or comply with the lender's agreement or the guarantee. Negligent servicing includes failure to act or failure to act in a timely manner consistent with actions of a reasonable lender in loan making, servicing, and collection.

Negotiated sale is a sale in which there is a bargaining of price or terms, or both.

Net recovery value of security is the market value of the security property, assuming that the lender in the case of a guaranteed loan, or the Agency in the case of a direct loan, will acquire the property and sell it for its highest and best use, less the lender's or the Agency's costs of property acquisition, retention, maintenance, and liquidation.

Net recovery value of non-essential assets is the appraised market value of the non-essential assets less any prior liens and any selling costs that may include such items as taxes due, commissions, and advertising costs. However, no deduction is made for maintenance of the property while in inventory.

Non-capitalized interest is accrued interest on a loan that was not reclassified as principal at the time of restructuring. Between October 10, 1988, and November 27, 1990, the Agency did not capitalize interest that was less than 90 days past due when restructuring a direct loan.

Non-eligible enterprise is a business that meets the criteria in any one of the following categories:

(1) Produces exotic animals, birds, or aquatic organisms or their products which may be agricultural in nature, but are not normally associated with agricultural production, e.g. there is no established or stable market for them or production is speculative in nature.

(2) Produces non-farm animals, birds, or aquatic organisms ordinarily used for pets, companionship, or pleasure and not typically associated with human consumption, fiber, or draft use.

(3) Markets non-farm goods or provides services which might be agriculturally related, but are not produced by the farming operation.

(4) Processes or markets farm products when the majority of the commodities processed or marketed are not produced by the farming operation.

Non-essential assets are assets in which the borrower has an ownership interest, that:

(1) Do not contribute to:

(i) Income to pay essential family living expenses, or

(ii) The farming operation; and

(2) Are not exempt from judgment creditors or in a bankruptcy action.

Non-program loan is a loan on terms more stringent than terms for a program loan that is an extension of credit for the convenience of the Agency, because the applicant does not qualify for program assistance or the property to be financed is not suited for program purposes. Such loans are made or continued only when it is in the best interest of the Agency.

Normal income security is all security not considered basic security, including crops, livestock, poultry products, other property covered by Agency liens that is sold in conjunction with the operation of a farm or other business, and FSA Farm Program payments.

Normal production yield as used in 7 CFR part 764 for EM loans, is:

(1) The per acre actual production history of the crops produced by the farming operation used to determine Federal crop insurance payments or payment under the Noninsured Crop Disaster Assistance Program for the production year during which the disaster occurred;

(2) The applicant's own production records, or the records of production on which FSA Farm Program payments are made contained in the applicant's Farm Program file, if available, for the previous 3 years, when the actual production history in paragraph (1) of this definition is not available;

(3) The county average production yield, when the production records outlined in paragraphs (1) and (2) of this definition are not available.

Operating loan is a loan made to an eligible applicant to assist with the financial costs of operating a farm. The term also includes a Youth loan.

Operator is the individual or entity that provides the labor, management, and capital to operate the farm. The operator can be either an owner-operator or tenant-operator. Under applicable State law, an entity may have to receive authorization from the State in which the farm is located to be the owner and/or operator of the farm.

Participated in the business operations of a farm requires that an applicant has:

(1) Been the owner, manager or operator of a farming operation for the year's complete production cycle as evidenced by tax returns, FSA farm records or similar documentation;

(2) Been employed as a farm manager or farm management consultant for the year's complete production cycle; or

(3) Participated in the operation of a farm by virtue of being raised on a farm or having worked on a farm with significant responsibility for the day-to-day decisions for the year's complete production cycle, which may include selection of seed varieties, weed control programs, input suppliers, or livestock feeding programs or decisions to replace or repair equipment.

Partnership is any entity consisting of two or more individuals who have agreed to operate a farm as one business unit. The entity must be recognized as

a partnership by the laws of the State in which the partnership will operate a farm. It also must be authorized to own both real and personal property and to incur debt in its own name.

Past due is when a payment is not made by the due date.

Physical loss is verifiable damage or destruction with respect to real estate or chattel, excluding annual growing crops.

Potential liquidation value is the amount of a lender's protective bid at a foreclosure sale. Potential liquidation value is determined by an independent appraiser using comparables from other forced liquidation sales.

Present value is the present worth of a future stream of payments discounted to the current date.

Presidentially-designated emergency is a major disaster or emergency designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*).

Primary loan servicing programs include:

(1) Loan consolidation and rescheduling, or reamortization;

(2) Interest rate reduction, including use of the limited resource rate program;

(3) Deferral;

(4) Write-down of the principal or accumulated interest; or

(5) Any combination of paragraphs (1) through (4) of this definition.

Production cycle is the time it takes to produce an agricultural commodity from the beginning of the production process until it is normally disposed of or sold.

Production loss is verifiable damage or destruction with respect to annual growing crops.

Program loans include FO, OL, and EM. In addition, for loan servicing purposes the term includes existing loans for the following programs no longer funded: SW, RL, EE, ST, and RHF.

Promissory note is a written agreement to pay a specified sum on demand or at a specified time to the party designated. The terms ''promissory note'' and ''note'' are interchangeable.

Prospectus consists of a transmittal letter, a current balance sheet and projected year's budget which is sent to commercial lenders to determine their interest in financing or refinancing specific Agency direct loan applicants and borrowers.

Protective advance is an advance made by the Agency or a lender to protect or preserve the collateral from loss or deterioration.

Quarantine is a quarantine imposed by the Secretary under the Plant Protection Act or animal quarantine laws (as defined in section 2509 of the Food, Agriculture, Conservation and Trade Act of 1990).

Reamortization is the rewriting of rates or terms, or both, of a loan made for real estate purposes.

Reasonable rates and terms are those commercial rates and terms that other farmers are expected to meet when borrowing from a commercial lender or private source for a similar purpose and similar period of time. The ''similar period of time'' of available commercial loans will be measured against, but need not be the same as, the remaining or original term of the loan.

Recoverable cost is a loan cost expense chargeable to either a borrower or property account.

Recreation loan is a loan that was made to eligible applicants to assist in the conversion of all or a portion of the farm they owned or operated to outdoor income producing recreation enterprises to supplement or supplant farm income. RL's are no longer funded, however, such outstanding loans are serviced by the Agency.

Redemption right is a Federal or state right to reclaim property for a period of time established by law, by paying the amount paid at the involuntary sale plus accrued interest and costs.

Related by blood or marriage is being connected to one another as husband, wife, parent, child, brother, sister, uncle, aunt, or grandparent.

Relative is the spouse and anyone having one of the following relationships to an applicant or borrower: parent, son, daughter, sibling, stepparent, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, uncle, aunt, nephew, niece, cousin, grandparent, grandson, granddaughter, or the spouses of the foregoing.

Repossessed property is security property in the Agency's custody.

Rescheduling is the rewriting of the rates or terms, or both, of a loan made for operating purposes.

Restructuring is changing the terms of a debt through rescheduling, reamortization, deferral, writedown, or a combination thereof.

Rural youth is a person who has reached the age of 10 but has not reached the age of 21 and resides in a rural area or any city or town with a population of 50,000 or fewer people.

Security is property or right of any kind that is subject to a real or personal property lien. Any reference to ''collateral'' or ''security property'' will be considered a reference to the term ''security.''

Security instrument includes any document giving the Agency a security interest on real or personal property.

Security value is the market value of real estate or chattel property (less the value of any prior liens) used as security for an Agency loan.

Shared Appreciation Agreement is an agreement between the Agency, or a lender in the case of a guaranteed loan, and a borrower on the appropriate Agency form that requires the borrower who has received a writedown on a direct or guaranteed loan to repay the Agency or the lender some or all of the writedown received, based on a percentage of any increase in the value of the real estate securing an SAA at a future date.

Socially disadvantaged applicant is an applicant who is a member of a socially disadvantaged group. For entity applicants, the majority interest must be held by socially disadvantaged individuals. For married couples, the socially disadvantaged individual must have at least 50 percent ownership in the farm business and make most of the management decisions, contribute a significant amount of labor, and generally be recognized as the operator of the farm.

Socially disadvantaged group is a group whose members have been subject to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. These groups consist of: American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics, and women.

Softwood Timber Program loan was available to eligible financially distressed borrowers who would take marginal land, including highly erodible land, out of production of agricultural commodities other than the production of softwood timber. ST loans are no longer available, however, such outstanding loans are serviced by the Agency.

Soil and Water loan is a loan that was made to an eligible applicant to encourage and facilitate the improvement, protection, and proper use of farmland by providing financing for soil conservation, water development, conservation, and use; forestation; drainage of farmland; the establishment and improvement of permanent pasture; pollution abatement and control; and other related measures consistent with all Federal, State and local environmental standards. SW loans are no longer funded, however, such outstanding loans are serviced by the Agency.

Subordination is a creditor's temporary relinquishment of all or a portion of its lien priority in favor of another creditor, providing the other creditor with a priority right to collect a debt of a specific dollar amount from the sale of the same collateral.

Subsequent loan is any FLP loan processed by the Agency after an initial loan of the same type has been made to the same borrower.

Supervised bank account is an account with a financial institution established through a deposit agreement entered into between the borrower, the Agency, and the financial institution.

Technical appraisal review is a review of an appraisal to determine if such appraisal meets the requirements of USPAP pursuant to standard 3 of USPAP.

Transfer and assumption is the conveyance by a debtor to an assuming party of the assets, collateral, and liabilities of a loan in return for the assuming party's binding promise to pay the debt outstanding or the market value of the collateral.

Trust is an entity that under applicable state law meets the criteria of being a trust of any kind but does not meet the criteria of being a farm cooperative, private domestic corporation, partnership, or joint operation.

Unaccounted for security is security for a direct or guaranteed loan that was misplaced, stolen, sold, or otherwise missing, where replacement security was not obtained or the proceeds from its sale have not been applied to the loan.

Unauthorized assistance is any loan, loan servicing action, lower interest rate, loan guarantee, or subsidy received by a borrower, or lender, for which the borrower or lender was not eligible, which was not made in accordance with all Agency procedures and requirements, or which the Agency obligated from the wrong appropriation or fund. Unauthorized assistance may result from borrower, lender, or Agency error.

Uniform Standards of Professional Appraisal Practice are standards governing the preparation, reporting, and reviewing of appraisals established by the Appraisal Foundation pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

United States is any of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, Republic of Palau, Federated States of Micronesia, and the Republic of the Marshall Islands.

U. S. Attorney is an attorney for the United States Department of Justice.

Veteran is any person who served in the military, naval, or air service during any war as defined in section 101(12) of title 38, United States Code.

Wetlands are those lands or areas of land as determined by the Natural Resources Conservation Service to meet the requirements provided in section 1201 of the Food Security Act of 1985.

Working capital is cash available to conduct normal daily operations including, but not limited to, paying for feed, seed, fertilizer, pesticides, farm supplies, cooperative stock, and cash rent.

Youth loan is an operating type loan made to an eligible rural youth applicant to finance a modest income-producing agricultural project.

§ 761.3 Civil rights.

Part 15d of this title contains applicable regulations pertaining to civil rights and filing of discrimination complaints by program participants.

§ 761.4 Conflict of interest.

The Agency enforces conflict of interest policies to maintain high standards of honesty, integrity, and impartiality in the making and servicing of direct and guaranteed loans. These requirements are established in 5 CFR parts 2635 and 8301.

§ 761.5 Restrictions on lobbying.

A person who applies for or receives a loan made or guaranteed by the Agency must comply with the restrictions on lobbying in 7 CFR part 3018.

§ 761.6 Appeals.

Except as provided in 7 CFR part 762, appeal of an adverse decision made by the Agency will be handled in accordance with 7 CFR parts 11 and 780.

§ 761.7 Appraisals.

(a) *General.* This section describes Agency requirements for:

(1) Real estate and chattel appraisals made in connection with the making and servicing of direct FLP and Non-program loans; and

(2) Appraisal reviews conducted on appraisals made in connection with the making and servicing of direct and guaranteed FLP and Non-program loans.

(b) *Appraisal standards.* (1) Real estate appraisals, technical appraisal reviews and their respective forms must comply with the standards contained in USPAP, as well as applicable Agency regulations and procedures for the specific FLP activity involved. A current copy of USPAP along with other applicable procedures and regulations are available for review in each Agency State Office.

(2) When a chattel appraisal is required, it must be completed on an applicable Agency form (available in each Agency State Office) or other format containing the same information.

(c) *Use of an existing real estate appraisal.* Except where specified elsewhere, when a real estate appraisal is required, the Agency will use the existing real estate appraisal to reach loan making or servicing decisions under either of the following conditions:

(1) The appraisal was completed within the previous 12 months and the Agency determines that:

(i) The appraisal meets the provisions of this section and the applicable Agency loan making or servicing requirements; and

(ii) Market values have remained stable since the appraisal was completed; or

(2) The appraisal was not completed in the previous 12 months, but has been updated by the appraiser or appraisal firm that completed the appraisal, and both the update and the original appraisal were completed in accordance with USPAP.

(d) *Appraisal reviews.* (1) With respect to a real estate appraisal, the Agency may conduct a technical appraisal review or an administrative appraisal review, or both.

(2) With respect to a chattel appraisal, the Agency may conduct an administrative appraisal review.

§ 761.8 Loan Limitations.

(a) *Dollar limits.* The outstanding principal balances for an applicant or anyone who will sign the promissory note cannot exceed any of the following at the time of loan closing or assumption of indebtedness. If the outstanding principal balance exceeds any of the limits at the time of approval, the farm operating plan must reflect that funds will be available to reduce the indebtedness prior to loan closing or assumption of indebtedness.

(1) Farm Ownership loans, Beginning Farmer Down payment loans and Soil and Water loans:

(i) Direct—$200,000;

(ii) Guaranteed—$700,000 (for fiscal year 2000 and increased at the beginning of each fiscal year in accordance with paragraph (b) of this section);

(iii) Any combination of a direct Soil and Water loan, direct Farm Ownership loan, guaranteed Soil and Water loan, and guaranteed Farm Ownership loan—$700,000 (for fiscal year 2000 and increased each fiscal year in accordance with paragraph (b) of this section);

(2) Operating loans:

(i) Direct—$200,000;

(ii) Guaranteed—$700,000 (for fiscal year 2000 and increased each fiscal year in accordance with paragraph (b) of this section);

(iii) Any combination of a direct Operating loan and guaranteed Operating loan—$700,000 (for fiscal year 2000 and increased each fiscal year in accordance with paragraph (b) of this section);

(3) Any combination of guaranteed Farm Ownership loan, guaranteed Soil and Water loan, and guaranteed Operating loan—$700,000 (for fiscal year 2000 and increased each fiscal year in accordance with paragraph (b) of this section);

(4) Any combination of direct Farm Ownership loan, direct Soil and Water loan, direct Operating loan, guaranteed Farm Ownership loan, guaranteed Soil and Water loan, and guaranteed Operating loan—the amount in paragraph (a)(1)(ii) of this section plus $200,000;

(5) Emergency loans—$500,000;

(6) Any combination of direct Farm Ownership loan, direct Soil and Water loan, direct Operating loan, guaranteed Farm Ownership loan, guaranteed Soil and Water loan, guaranteed Operating loan, and Emergency loan—the amount in paragraph (a)(1)(ii) of this section plus $700,000.

(b) *Guaranteed loan limit.* The dollar limits of guaranteed loans will be increased each fiscal year based on the percentage change in the Prices Paid by Farmers Index as compiled by the National Agricultural Statistics Service, USDA. The maximum loan limits for the current fiscal year are available in any FSA office and on the FSA website at *http://www.fsa.usda.gov.*

(c) *Line of credit advances.* The total dollar amount of guaranteed line of credit advances and income releases cannot exceed the total estimated expenses, less interest expense, as indicated on the borrower's cash flow budget, unless the cash flow budget is revised and continues to reflect a feasible plan.

§ 761.9 Interest rates for direct loans.

Interest rates for all direct loans are set in accordance with the Act. A copy of the current interest rates may be obtained in any Agency office.

§ 761.10 Planning and performing construction and other development.

(a) *Purpose.* This section describes Agency policies regarding the planning and performing of construction and other development work performed with:

(1) Direct FLP loan funds; or

(2) Insurance or other proceeds resulting from damage or loss to direct loan security.

(b) *Funds for development work.* The applicant or borrower:

(1) Must provide the Agency with an estimate of the total cash cost of all planned development prior to loan approval;

(2) Must show proof of sufficient funds to pay for the total cash cost of all planned development at or before loan closing;

(3) Must not incur any debts for materials or labor or make any expenditures for development purposes prior to loan closing with the expectation of being reimbursed from Agency loan funds.

(c) *Scheduling, planning, and completing development work.* The applicant or borrower:

(1) Is responsible for scheduling and planning development work in a manner acceptable to the Agency and must furnish the Agency information fully describing the planned development, the proposed schedule, and the manner in which it will be accomplished;

(2) Is responsible for obtaining all necessary State and local construction approvals and permits prior to loan closing;

(3) Must ensure that all development work meets the environmental requirements established in subpart G of 7 CFR part 1940;

(4) Must schedule development work to start as soon as feasible after the loan is closed and complete work as quickly as practicable;

(5) Is responsible for obtaining any required technical services from qualified technicians, tradespeople, and contractors.

(d) *Construction and repair standards.* (1) The construction of a new building and the alteration or repair of an existing building must conform with industry-acceptable construction practices and standards.

(2) All improvements to a property must conform to applicable laws, ordinances, codes, and regulations.

(3) The applicant or borrower is responsible for selecting a design standard that meets all applicable local and state laws, ordinances, codes, and regulations, including building, plumbing, mechanical, electrical, water, and waste management.

(4) The Agency will require drawings, specifications, and estimates to fully describe the work as necessary to protect the Agency's financial interests. The drawings and specifications must identify any specific development standards being used. Such information must be sufficiently complete to avoid any misunderstanding as to the extent, kind, and quality of work to be performed.

(5) The Agency will require technical data, tests, or engineering evaluations to support the design of the development as necessary to protect its financial interests.

(6) The Agency will require the applicant or borrower to provide written certification that final drawings and specifications conform with the applicable development standard as necessary to protect its financial interests. Certification must be obtained from individuals or organizations trained and experienced in the compliance, interpretation, or enforcement of the applicable development standards, such as licensed architects, professional engineers, persons certified by a relevant national model code organization, authorized local building officials, or national code organizations.

(e) *Inspection.* (1) The applicant or borrower is responsible for inspecting development work as necessary to protect their interest.

(2) The applicant or borrower must provide the Agency written certification that the development conforms to the plans and good construction practices, and complies with applicable laws, ordinances, codes, and regulations.

(3) The Agency will require the applicant or borrower to obtain professional inspection services during construction as necessary to protect its financial interests.

(4) Agency inspections do not create or imply any duty or obligation of the Agency to the applicant or borrower.

(f) *Warranty and lien waivers.* The applicant or borrower must obtain and submit all lien waivers on any construction before the Agency will issue final payment.

(g) *Surety.* The Agency will require surety to guarantee both payment and performance for construction contracts as necessary to protect its financial interests.

(h) *Changing the planned development.* An applicant or borrower must request, in writing, Agency approval for any change to a planned development. The Agency will approve a change if all of the following are met:

(1) It will not reduce the value of the Agency's security;

(2) It will not adversely affect the soundness of the farming operation;

(3) It complies with all applicable laws and regulations;

(4) It is for an authorized loan purpose;

(5) It is within the scope of the original loan proposal;

(6) If required, documentation that sufficient funding for the full amount of the planned development is approved and available;

(7) If required, surety to cover the full revised development amount has been provided; and

(8) The modification is certified in accordance with paragraph (d) (6) of this section.

§§ 761.11–761.50 [Reserved]

Subpart B—Supervised Bank Accounts

§ 761.51 Establishing a supervised bank account.

(a) Supervised bank accounts will be used to:

(1) Assure correct use of funds planned for capital purchases or debt refinancing and perfection of the Agency's security interest in the assets purchased or refinanced when electronic funds transfer or treasury check processes are not practicable;

(2) Protect the Agency's security interest in insurance indemnities or other loss compensation resulting from loss or damage to loan security; or

(3) Assist borrowers with limited financial skills with cash management, subject to the following conditions:

(i) Use of a supervised bank for this purpose will be temporary and infrequent;

(ii) The need for a supervised bank account in this situation will be determined on a case-by-case basis; and

(iii) The borrower agrees to the use of a supervised bank account for this purpose by executing the deposit agreement.

(b) The borrower may select the financial institution in which the account will be established, provided the institution is Federally insured. If the borrower does not select an institution, the Agency will choose one.

(c) Only one supervised bank account will be established for any borrower.

(d) If both spouses sign an FLP note and security agreement, the supervised bank account will be established as a joint tenancy account with right of survivorship from which either borrower can withdraw funds.

(e) If the funds to be deposited into the account cause the balance to exceed $100,000, the financial institution must agree to pledge acceptable collateral with the Federal Reserve Bank for the excess over $100,000, before the deposit is made.

(1) If the financial institution is not a member of the Federal Reserve System, the institution must pledge acceptable collateral with a correspondent bank that is a member of the Federal Reserve System. The correspondent bank must inform the Federal Reserve Bank that it is holding securities pledged for the supervised bank account in accordance with 31 CFR part 202 (Treasury Circular 176).

(2) When the balance in the account has been reduced, the financial institution may request a release of part or all of the collateral, as applicable, from the Agency.

§ 761.52 Deposits into a supervised bank account.

(a) Checks or money orders may be deposited into a supervised bank account provided they are not payable:

(1) Solely to the Federal Government or any agency thereof; or

(2) To the Treasury of the United States as a joint payee.

(b) Loan proceeds may be deposited electronically.

§ 761.53 Interest bearing accounts.

(a) A supervised bank account, if possible, will be established as an interest bearing deposit account provided that the funds will not be immediately disbursed, and the account is held jointly by the borrower and the Agency if this arrangement will benefit the borrower.

(b) Interest earned on a supervised bank account will be treated as normal income security.

§ 761.54 Withdrawals from a supervised bank account.

(a) The Agency will authorize a withdrawal from the supervised bank account for an approved purpose after ensuring that:

(1) Sufficient funds in the supervised bank account are available;

(2) No loan proceeds are disbursed prior to confirmation of proper lien position, except to pay for lien search if needed;

(3) No checks are issued to ''cash;'' and

(4) The use of funds is consistent with the current farm operating plan or other agreement with the Agency.

(b) A check must be signed by the borrower with countersignature of the Agency, except as provided in paragraph (c) of this section. All checks must bear the legend ''countersigned, not as co-maker or endorser.''

(c) The Agency will withdraw funds from a supervised bank account without borrower counter-signature only for the following purposes:

(1) For application on Agency indebtedness;

(2) To refund Agency loan funds;

(3) To protect the Agency's lien or security;

(4) To accomplish a purpose for which such advance was made; or

(5) In the case of a deceased borrower, to continue to pay necessary farm expenses to protect Agency security in conjunction with the borrower's estate.

§ 761.55 Closing a supervised bank account.

(a) If the supervised bank account is no longer needed and the loan account is not paid in full, the Agency will determine the source of the remaining funds in the supervised bank account. If the funds are determined to be:

(1) Loan funds:

(i) From any loan type, except Youth loan, and the balance is less than $1,000, the Agency will provide the balance to the borrower to use for authorized loan purposes;

(ii) From a Youth loan, and the balance is less than $100, the Agency will provide the balance to the borrower to use for authorized loan purposes;

(2) Loan funds:

(i) From any loan type, except Youth loan, and the balance is $1,000 or greater, the Agency will apply the balance to the FLP loan;

(ii) From a Youth loan, and the balance is $100 or greater, the Agency will apply the balance to the FLP loan;

(3) Normal income funds, the Agency will apply the balance to the remaining current year's scheduled payments and pay any remaining balance to the borrower; and

(4) Basic security funds, the Agency will apply the balance to the FLP loan as an extra payment or the borrower may apply the balance toward the purchase of basic security, provided the Agency obtains a lien on such security and its security position is not diminished.

(b) If the borrower is uncooperative in closing a supervised bank account, the Agency will make written demand to the financial institution for the balance and apply it in accordance with paragraph (a) of this section.

(c) In the event of a borrower's death, the Agency may:

(1) Apply the balance to the borrower's FLP loan;

(2) Continue with a remaining borrower, provided the supervised bank account was established as a joint tenancy with right of survivorship account;

(3) Refund unobligated balances from other creditors in the supervised bank account for specific operating purposes in accordance with any prior written agreement between the Agency and the deceased borrower; or

(4) Continue to pay expenses from the supervised bank account in conjunction with the borrower's estate.

§§ 761.56–761.100 [Reserved]

Subpart C—Supervised Credit

§ 761.101 Applicability.

This subpart applies to all direct applicants and borrowers, except borrowers with only Non-program loans.

§ 761.102 Borrower recordkeeping, reporting, and supervision.

(a) A borrower must maintain accurate records sufficient to make informed management decisions and to allow the Agency to render loan making and servicing decisions in accordance with Agency regulations. These records must include the following:

(1) Production (e.g., total and per unit for livestock and crops);

(2) Revenues, by source;

(3) Other sources of funds, including borrowed funds;

(4) Operating expenses;

(5) Interest;

(6) Family living expenses;

(7) Profit and loss;

(8) Tax-related information;

(9) Capital expenses;

(10) Outstanding debt; and

(11) Debt repayment.

(b) A borrower also must agree in writing to:

(1) Cooperate with the Agency and comply with all supervisory agreements, farm assessments, farm operating plans, year-end analyses, and all other loan-related requirements and documents;

(2) Submit financial information and an updated farm operating plan when requested by the Agency;

(3) Immediately notify the Agency of any proposed or actual significant change in the farming operation, any significant changes in family income, expenses, or the development of problem situations, or any losses or proposed significant changes in security.

(c) If the borrower fails to comply with these requirements, unless due to reasons outside the borrower's control, the non-compliance may adversely impact future requests for assistance.

§ 761.103 Farm assessment.

(a) The Agency assesses each farming operation to determine the applicant's financial condition, organizational structure, management strengths and weaknesses, appropriate levels of Agency oversight, credit counseling needs, and training needs. The applicant will participate in developing the assessment.

(b) The initial assessment must evaluate, at a minimum, the:

(1) Farm organization and key personnel qualifications;

(2) Type of farming operation;

(3) Goals for the operation;

(4) Adequacy of real estate, including facilities, to conduct the farming operation;

(5) Adequacy of chattel property used to conduct the farming operation;

(6) Historical performance;

(7) Farm operating plan;

(8) Loan evaluation;

(9) Supervisory plan; and

(10) Training plan.

(c) An assessment update must be prepared for each subsequent loan. The update must include a farm operating plan, a loan evaluation, and any other items discussed in paragraph (b) of this section that have significantly changed since the initial assessment.

(d) The Agency reviews the assessment to determine a borrower's progress at least annually. The review will be in the form of an office visit, field visit, letter, phone conversation, or year-end analysis, as determined by the Agency.

§ 761.104 Developing the farm operating plan.

(a) An applicant or borrower must submit a farm operating plan to the Agency, upon request, for loan making or servicing purposes.

(b) An applicant or borrower may request Agency assistance in developing the farm operating plan.

(c) The farm operating plan will be based on accurate and verifiable information.

(1) Historical information will be used as a guide.

(2) Positive and negative trends, mutually agreed upon changes and improvements, and current input prices will be taken into consideration when arriving at reasonable projections.

(3) Projected yields will be calculated according to the following priorities:

(i) The applicant or borrower's own production records for the previous 3 years;

(ii) The per-acre actual production history of the crops produced by the farming operation used to determine Federal crop insurance payments, if available;

(iii) FSA Farm Program actual yield records;

(iv) County averages;

(v) State averages.

(4) If the applicant or borrower's production history has been substantially affected by a disaster declared by the President or designated by the Secretary of Agriculture, or the applicant or borrower has had a qualifying loss from such disaster but the farming operation was not located in a declared or designated disaster area, the applicant or borrower may:

(i) Use county average yields, or state average yields if county average yields are not available, in place of the disaster year yields; or

(ii) Exclude the production year with the lowest actual or county average yield if their yields were affected by disasters during at least 2 of the 3 years.

(d) Unit prices for agricultural commodities established by the Agency will generally be used. Applicants and borrowers that provide evidence that they will receive a premium price for a commodity may use a price above the price established by the Agency.

(e) Except as provided in paragraph (f) of this section, the applicant or borrower must sign the final farm operating plan prior to approval of any loan or servicing action.

(f) If the Agency believes the applicant or borrower's farm operating plan is inaccurate, or the information upon which it is based cannot be verified, the Agency will discuss and try to resolve the concerns with the applicant or borrower. If an agreement cannot be reached, the Agency will make loan approval and servicing determinations based on the Agency's revised farm operating plan.

§ 761.105 Year-end analysis.

(a) The Agency conducts a year-end analysis at its discretion or if the borrower:

(1) Has received any direct loan, chattel subordination, or primary loan servicing action within the last year;

(2) Is financially distressed or delinquent;

(3) Has a loan deferred, excluding deferral of an installment under subpart B of part 766; or

(4) Is receiving a limited resource interest rate on any loan.

(b) To the extent practicable, the year-end analysis will be completed within 60 days after the end of the business year or farm budget planning period and must include:

(1) An analysis comparing actual income, expenses, and production to projected income, expenses, and production for the preceding production cycle; and

(2) An updated farm operating plan.

§§ 761.106–761.200 [Reserved]

Subpart D—Allocation of Farm Loan Programs Funds to State Offices

§ 761.201 Purpose.

(a) This subpart addresses:

(1) The allocation of funds for direct and guaranteed FO and OL loans;

(2) The establishment of socially disadvantaged target participation rates; and

(3) The reservation of loan funds for beginning farmers.

(b) The Agency does not allocate EM loan funds to State Offices but makes funds available following a designated or declared disaster. EM loan funds are available on a first-come first-served basis.

(c) State funding information is available for review in any State Office.

§ 761.202 Timing of allocations.

The Agency's National Office allocates funds for FO and OL loans to the State Offices on a fiscal year basis, as made available by the Office of Management and Budget. However, the National Office will retain control over the funds when funding or administrative constraints make allocation to State Offices impractical.

§ 761.203 National reserves for Farm Ownership and Operating loans.

(a) *Reservation of funds.* At the start of each fiscal year, the National Office reserves a portion of the funds available for each direct and guaranteed loan program. These reserves enable the Agency to meet unexpected or justifiable program needs during the fiscal year.

(b) *Allocation of reserved funds.* The National Office distributes funds from the reserve to one or more State Offices to meet a program need or Agency objective.

§ 761.204 Methods of allocating funds to State Offices.

FO and OL loan funds are allocated to State Offices using one or more of the following allocation methods:

(a) Formula allocation, if data, as specified in § 761.205, is available to use the formula for the State.

(b) Administrative allocation, if the Agency cannot adequately meet program objectives with a formula allocation. The National Office determines the amount of an administrative allocation on a case-by-case basis.

(c) Base allocation, to ensure funding for at least one loan in each State, District, or County Office. In making a base allocation, the National Office may use criteria other than those used in the formula allocation, such as historical Agency funding information.

§ 761.205 Computing the formula allocation.

(a) The formula allocation for FO or OL loan funds is equal to:

(1) The amount available for allocation by the Agency minus the amounts held in the National Office reserve and distributed by base and administrative allocation, multiplied by

(2) The State Factor, which represents the percentage of the total amount of the funds for a loan program that the National Office allocates to a State Office.

formula allocation = (amount available for allocation – national reserve – base allocation – administrative allocation) × State Factor

(b) To calculate the State Factor, the Agency:

(1) Uses the following criteria, data sources, and weights:

Criteria	Loan type criterion is used for	Data source	Weight for FO loans (percent)	Weight for OL loans (percent)
Farm operators with sales of $2,500–$39,999 and less than 200 days work off the farm.	FO and OL loans	U.S. Census of Agriculture	15	15
Farm operators with sales of $40,000 or more and less than 200 days work off farm.	FO and OL loans	U.S. Census of Agriculture	35	35
Tenant farm operators	FO and OL loans	U.S. Census of Agriculture	25	20
3-year average net farm income	FO and OL loans	USDA Economic Research Service.	15	15
Value of farm real estate assets	FO loans	USDA Economic Research Service.	10	N/A
Value of farm non-real estate assets	OL loans	USDA Economic Research Service.	N/A	15

(2) Determines each State's percentage of the national total for each criterion;

(3) Multiplies the percentage for each State determined in paragraph (b)(2) of this section by the applicable weight for that criterion;

(4) Sums the weighted criteria for each State to obtain the State factor.

§ 761.206 Pooling of unobligated funds allocated to State Offices.

The Agency periodically pools unobligated FO and OL loan funds that have been allocated to State Offices. When pooling these funds, the Agency places all unobligated funds in the appropriate National Office reserve. The pooled funds may be retained in the national reserve or reallocated to the States.

§ 761.207 Distribution of loan funds by State Offices.

A State Office may distribute its allocation of loan funds to District or County level using the same allocation methods that are available to the National Office. State Offices may reserve a portion of the funds to meet unexpected or justifiable program needs during the fiscal year.

§ 761.208 Target participation rates for socially disadvantaged groups.

(a) *General.* (1) The Agency establishes target participation rates for providing FO and OL loans to members of socially disadvantaged groups.

(2) The Agency sets the target participation rates for State and County levels annually.

(3) When distributing loan funds in counties within Indian reservations, the Agency will allocate the funds on a reservation-wide basis.

(4) The Agency reserves and allocates sufficient loan funds to achieve these target participation rates. The Agency may also use funds that are not reserved and allocated for socially disadvantaged groups to make or guarantee loans to members of socially disadvantaged groups.

(b) *FO loans based on ethnicity or race.* The FO loan target participation rate based on ethnicity or race in each:

(1) State is equal to the percent of the total rural population in the State who are members of such socially disadvantaged groups.

(2) County is equal to the percent of rural population in the county who are members of such socially disadvantaged groups.

(c) *OL loans based on ethnicity or race.* The OL loan target participation rate based on ethnicity or race in each:

(1) State is equal to the percent of the total number of farmers in the State who are members of such socially disadvantaged groups.

(2) County is equal to the percent of the total number of farmers in the county who are members of socially disadvantaged ethnic groups.

(d) *Women farmers.* (1) The target participation rate for women farmers in each:

(i) State is equal to the percent of farmers in the State who are women.

(ii) County is equal to the percent of farmers in the county who are women.

(2) In developing target participation rates for women, the Agency will consider the number of women who are current farmers and potential farmers.

§ 761.209 Loan funds for beginning farmers.

Each fiscal year, the Agency reserves a portion of direct and guaranteed FO and OL loan funds for beginning farmers in accordance with section 346(b)(2) of the Act.

§ 761.210 Transfer of funds.

If sufficient unsubsidized guaranteed OL funds are available, then beginning on:

(a) August 1 of each fiscal year, the Agency will use available unsubsidized guaranteed OL loan funds to make approved direct FO loans to beginning farmers under the Beginning Farmer Downpayment loan program; and

(b) September 1 of each fiscal year the Agency will use available unsubsidized guaranteed OL loan funds to make approved direct FO loans to beginning farmers.

PART 762—GUARANTEED FARM LOANS

■ 6. The authority citation for part 762 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, 42 U.S.C. 1480.

PART 762—[AMENDED]

■ 7. Amend part 762 to read as follows:

■ a. Remove the phrase ''farm or ranch'' each time it appears and add in its place the term ''farm''.

■ b. Remove the phrase ''farmer or rancher'' each time it appears and add in its place the term ''farmer''.

■ c. Remove the phrase ''farmers or ranchers'' each time it appears and add in its place the term ''farmers''.

■ d. Remove the phrase ''Loan Applicant'' each time it appears and add in its place the term ''Applicant''.

■ e. Remove the phrase ''loan applicant'' each time it ppears and add in its place the term ''applicant''

■ f. Remove the phrase ''loan applicant's'' each time it appears and add in its place the term ''applicant's''.

■ g. Remove the phrase ''loan applicants'' each time it appears and add in its place the term ''applicants''.

■ h. Remove the phrase ''Non-farm enterprises'' each time it appears and add in its place the term ''Non-eligible enterprises''.

■ 8. Amend § 762.101 by revising paragraphs (b) and (c) to read as follows:

§ 762.101 Introduction.

* * * * *

(b) *Lender list.* The Agency maintains a current list of lenders who express a desire to participate in the guaranteed loan program. This list is made available to farmers upon request.

(c) *Lender classification.* Lenders who participate in the Agency guaranteed loan program will be classified into one of the following categories:

(1) Standard Eligible Lender under § 762.105;

(2) Certified Lender, or

(3) Preferred Lender under § 762.106.

* * * * *

■ 9. Revise § 762.102 to read as follows:

§ 762.102 Abbreviations and definitions.

Abbreviations and definitions for terms used in this part are provided in § 761.2 of this chapter.

§ 762.104 [Amended]

■ 10. Amend § 762.104 by removing paragraph (a) and redesignating paragraphs (b) through (d) as (a) through (c).

■ 11. Amend § 762.110 by adding a new paragraph (g) to to read as follows:

§ 762.110 Loan applications.

* * * * *

(g) *Market Placement Program.* When the Agency determines that a direct loan applicant or borrower may qualify for guaranteed credit, the Agency may submit the applicant or borrower's financial information to one or more guaranteed lenders. If a lender indicates interest in providing financing to the applicant or borrower through the guaranteed loan program, the Agency will assist in completing the application for a guarantee.

■ 12. Amend § 762.120 as follows:

■ a. In paragraph (a), remove the word ''CONACT'' everywhere it appears and add the word ''Act'' in its place.

■ b. Revise paragraph (l) to read as follows:

§ 762.120 Applicant eligibility.

* * * * *

(l) *Controlled substances.* The applicant, and anyone who will sign the promissory note, must not be ineligible as a result of a conviction for controlled substances according to 7 CFR part 718 of this chapter. If the lender uses the lender's Agency approved forms, the certification may be an attachment to the form.

§ 762.121 [Amended]

■ 13. Amend § 762.121(b)(1) by removing the words ''1943, subpart A of this title'' and adding the words ''764 of this chapter'' in their place.

■ 14. Amend § 762.122 by redesignating paragraphs (a) through (d) as (b) through (e) and adding a new paragraph (a) to read as follows.

§ 762.122 Loan limitations.

(a) *Dollar limits.* The Agency will not guarantee any loan that would result in the applicant's total indebtedness exceeding the limits established in § 761.8 of this chapter.

* * * * *

§ 762.123 [Amended]

■ 15. Amend § 762.123(a)(2)(ii) by removing the words ''1945, subpart D, of this title'' and adding the words ''764 of this chapter'' in their place.

§ 762.124 [Amended]

■ 16. Amend § 762.124(e)(3) by removing the words ''1943, subpart A, of this title'' and adding the words ''764 of this chapter'' in their place.

§ 762.128 [Amended]

■ 17. Amend § 762.128 as follows:

■ a. In paragraph (c)(3), remove the words, ''and part 1901, subpart F, of this title.''

■ b. In paragraph (c)(4), remove the word ''CONACT'' and add the word ''Act'' in its place.

§ 762.129 [Amended]

■ 18. Amend § 762.129(b)(1) by removing the words ''farm credit program'' in the second sentence.

§ 762.130 [Amended]

■ 19. Amend § 762.130(d)(4)(iii)(C) by removing the words ''beginning farmers or ranchers,'' and adding the words ''beginning farmers'' in their place.

■ 20. Revise § 762.130(e) by removing the words ''in Louisiana and Puerto Rico.''

§ 762.143 [Amended]

■ 21. Revise § 762.143(b)(3)(ii) by removing the words ''credit officer,'' wherever they appear and adding the word, ''official'' in their place.

PART 763—[RESERVED]

■ 22. Add and reserve part 763.
■ 23. Revise part 764 to read as follows:

PART 764—DIRECT LOAN MAKING

Subpart A—Overview

Sec.
764.1 Introduction.
764.2 Abbreviations and definitions.
764.3–764.50 [Reserved]

Subpart B—Loan Application Process

764.51 Loan application.
764.52 Processing an incomplete application.
764.53 Processing the complete application.
764.54 Preferences when there is limited funding.
764.55–764.100 [Reserved]

Subpart C—Requirements for All Direct Program Loans

764.101 General eligibility requirements.
764.102 General limitations.
764.103 General security requirements.
764.104 General real estate security requirements.
764.105 General chattel security requirements.
764.106 Exceptions to security requirements.
764.107 General appraisal requirements.
764.108 General insurance requirements.
764.109–764.150 [Reserved]

Subpart D—Farm Ownership Loan Program

764.151 Farm Ownership loan uses.
764.152 Eligibility requirements.
764.153 Limitations.
764.154 Rates and terms.
764.155 Security requirements.
764.156–764.200 [Reserved]

Subpart E—Beginning Farmer Downpayment Loan Program

764.201 Beginning Farmer Downpayment loan uses.
764.202 Eligibility requirements.
764.203 Limitations.
764.204 Rates and terms.
764.205 Security requirements.
764.206–764.250 [Reserved]

Subpart F—Operating Loan Program

764.251 Operating loan uses.
764.252 Eligibility requirements.
764.253 Limitations.
764.254 Rates and terms.
764.255 Security requirements.
764.256–764.300 [Reserved]

Subpart G—Youth Loan Program

764.301 Youth loan uses.
764.302 Eligibility requirements.
764.303 Limitations.
764.304 Rates and terms.
764.305 Security requirements.
764.306–764.350 [Reserved]

Subpart H—Emergency Loan Program

764.351 Emergency loan uses.
764.352 Eligibility requirements.
764.353 Limitations.
764.354 Rates and terms.
764.355 Security requirements.
764.356 Appraisal and valuation requirements.
764.357–764.400 [Reserved]

Subpart I—Loan Decision and Closing

764.401 Loan decision.
764.402 Loan closing.
764.403–764.450 [Reserved]

Subpart J—Borrower Training and Training Vendor Requirements

764.451 Purpose.
764.452 Borrower training requirements.
764.453 Agency waiver of training requirements.
764.454 Actions that an applicant must take when training is required.
764.455 Potential training vendors.
764.456 Applying to be a vendor.
764.457 Vendor requirements.
764.458 Vendor approval.
764.459 Evaluation of borrower progress.

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart A—Overview

§ 764.1 Introduction.

(a) *Purpose.* This part describes the Agency's policies for making direct FLP loans.

(b) *Types of loans.* The Agency makes the following types of loans:

(1) FO, including Beginning Farmer Downpayment loans;

(2) OL, including Youth loans; and

(3) EM.

§ 764.2 Abbreviations and definitions.

Abbreviations and definitions for terms used in this part are provided in § 761.2 of this chapter.

§§ 764.3–764.50 [Reserved]

Subpart B—Loan Application Process

§ 764.51 Loan application.

(a) A loan application must be submitted in the name of the actual operator of the farm. Two or more applicants applying jointly will be considered an entity applicant. The Agency will consider tax filing status and other business dealings as indicators of the operator of the farm.

(b) A complete loan application, except as provided in paragraphs (c) through (e) of this section, will include:

(1) The completed Agency application form;

(2) If the applicant is an entity:

(i) A complete list of entity members showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or stock held in the entity by each member, or the percentage of interest in the entity held by each member;

(ii) A current personal financial statement from each member of the entity;

(iii) A current financial statement from the entity itself;

(iv) A copy of the entity's charter or any entity agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (good standing), and a resolution adopted by the Board of Directors or entity members authorizing specified officers of the entity to apply for and obtain the desired loan and execute required debt, security and other loan instruments and agreements;

(v) In the form of married couples applying as a joint operation, items (i) and (iv) will not be required. The Agency may request copies of the marriage license, prenuptial agreement or similar documents as needed to verify loan eligibility and security. Items (ii) and (iii) are only required to the extent needed to show the individual and joint finances of the husband and wife without duplication.

(3) A written description of the applicant's farm training and experience, including each entity member who will be involved in managing or operating the farm;

(4) The last 3 years of farm financial records, including tax returns, unless the applicant has been farming less than three years;

(5) The last 3 years of farm production records, unless the applicant has been farming less than 3 years;

(6) Documentation that the applicant and each member of an entity applicant cannot obtain sufficient credit elsewhere on reasonable rates and terms, including a loan guaranteed by the Agency;

(7) Documentation of compliance with the Agency's environmental regulations contained in subpart G of 7 CFR part 1940;

(8) Verification of all non-farm income;

(9) A current financial statement and the operation's farm operating plan, including the projected cash flow budget reflecting production, income, expenses, and loan repayment plan;

(10) A legal description of the farm property owned or to be acquired and, if applicable, any leases, contracts, options, and other agreements with regard to the property;

(11) Payment to the Agency for ordering a credit report on the applicant;

(12) Verification of all debts;

(13) Any additional information deemed necessary by the Agency to effectively evaluate the applicant's eligibility and farm operating plan; and

(14) For EM loans, a statement of loss or damage on the appropriate Agency form.

(c) For a Lo-Doc OL request, the applicant must:

(1) Be current on all payments to all creditors including the Agency (if an Agency borrower);

(2) Have not received primary loan servicing on any FLP debt within the past 5 years; and

(3) Meet one of the following sets of criteria:

(i) The loan requested is $50,000 or less and the total outstanding Agency OL loan debt at the time of loan closing will be less than $100,000; or

(ii) The loan requested is to pay annual operating expenses and the applicant is an existing Agency borrower who has received and timely repaid at least two previous annual OL loans from the Agency.

(4) Submit items (1), (2), (7), (9), and (11) of paragraph (b) of this section. The Agency may require a Lo-Doc applicant to submit any other information listed in paragraph (b) of this section as needed to make a determination on the loan application.

(d) For a youth loan request:

(1) The applicant must submit items (1), (7), and (9) of paragraph (b) of this section.

(2) Applicants 18 years or older, must also provide items (11) and (12) of paragraph (b) of this section.

(3) The Agency may require a youth loan applicant to submit any other information listed in paragraph (b) of this section as needed to make a determination on the loan application.

(e) The applicant need not submit any information under this section that already exists in the applicant's Agency file and is still current.

§ 764.52 Processing an incomplete application.

(a) Within 10 days of receipt of an incomplete application, the Agency will provide the applicant written notice of any additional information which must be provided. The applicant must provide the additional information within 20 calendar days of the date of this notice.

(b) If the additional information is not received, the Agency will provide written notice that the application will be withdrawn if the information is not received within 10 calendar days of the date of this second notice.

§ 764.53 Processing the complete application.

Upon receiving a complete loan application, the Agency will:

(a) Consider the loan application in the order received, based on the date the application was determined to be complete.

(b) Provide written notice to the applicant that the application is complete.

(c) Within 60 calendar days after receiving a complete loan application, the Agency will complete the processing of the loan request and notify the applicant of the decision reached, and the reason for any disapproval.

(d) If, based on the Agency's review of the application, it appears the applicant's credit needs could be met through the guaranteed loan program, the Agency will assist the applicant in securing guaranteed loan assistance under the market placement program in accordance with § 762.110(g) of this chapter.

(e) In the absence of funds for a direct loan, the Agency will keep an approved loan application on file until funding is available. At least annually, the Agency will contact the applicant to determine if the Agency should retain the application or if the applicant wants the application withdrawn.

(f) If funding becomes available, the Agency will resume processing of approved loans in accordance with this part.

§ 764.54 Preferences when there is limited funding.

(a) *First priority.* When there is a shortage of loan funds, approved applications will be funded in the order of the date the application was received, whether or not complete.

(b) *Secondary priorities.* If two or more applications were received on the same date, the Agency will give preference to:

(1) First, an applicant who is a veteran of any war;

(2) Second, an applicant who is not a veteran, but:

(i) Has a dependent family;

(ii) Is able to make a downpayment; or

(iii) Owns livestock and farm implements necessary to farm successfully.

(3) Third, to other eligible applicants.

§§ 764.55–764.100 [Reserved]

Subpart C—Requirements for All Direct Program Loans

§ 764.101 General eligibility requirements.

The following requirements must be met unless otherwise provided in the eligibility requirements for the particular type of loan.

(a) *Controlled substances.* The applicant, and anyone who will sign the promissory note, must not be ineligible for loans as a result of a conviction for controlled substances according to 7 CFR part 718 of this chapter.

(b) *Legal capacity.* The applicant, and anyone who will sign the promissory note, must possess the legal capacity to incur the obligation of the loan. A Youth loan applicant will incur full personal liability upon execution of the promissory note without regard to the applicant's minority status.

(c) *Citizenship.* The applicant, and anyone who will sign the promissory note, must be a citizen of the United States, United States non-citizen national, or a qualified alien under applicable Federal immigration laws.

(d) *Credit history.* The applicant must have acceptable credit history demonstrated by debt repayment.

(1) As part of the credit history, the Agency will determine whether the applicant will carry out the terms and conditions of the loan and deal with the Agency in good faith. In making this determination, the Agency may examine whether the applicant has properly fulfilled its obligations to other parties, including other agencies of the Federal Government.

(2) When the applicant caused the Agency a loss by receiving debt forgiveness, the applicant may be ineligible for assistance in accordance with eligibility requirements for the specific loan type. If the debt forgiveness is cured by repayment of the Agency's loss, the Agency may still consider the debt forgiveness in determining the applicant's credit worthiness.

(3) A history of failures to repay past debts as they came due when the ability to repay was within the applicant's control will demonstrate unacceptable credit history. The following circumstances, for example, do not automatically indicate an unacceptable credit history:

(i) Foreclosures, judgments, delinquent payments of the applicant which occurred more than 36 months before the application, if no recent similar situations have occurred, or Agency delinquencies that have been resolved through loan servicing programs available under 7 CFR part 766.

(ii) Isolated incidents of delinquent payments which do not represent a general pattern of unsatisfactory or slow payment.

(iii) ''No history'' of credit transactions by the applicant.

(iv) Recent foreclosure, judgment, bankruptcy, or delinquent payment when the applicant can satisfactorily demonstrate that the adverse action or delinquency was caused by circumstances that were of a temporary nature and beyond the applicant's control; or the result of a refusal to make full payment because of defective goods or services or other justifiable dispute

relating to the purchase or contract for goods or services.

(e) *Availability of credit elsewhere.* The applicant, and all entity members in the case of an entity, must be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms. The Agency will evaluate the ability to obtain credit based on factors including, but not limited to:

(1) Loan amounts, rates, and terms available in the marketplace; and

(2) Property interests, income, and significant non-essential assets.

(f) *Not in delinquent status on Federal debt.* As provided in 31 CFR part 285, except for EM loan applicants, the applicant, and anyone who will sign the promissory note, must not be in delinquent status on any Federal debt, other than a debt under the Internal Revenue Code of 1986 at the time of loan closing. All delinquent debts, however, will be considered in determining credit history and ability to repay under this part.

(g) *Outstanding judgments.* The applicant, and anyone who will sign the promissory note, must have no outstanding unpaid judgments obtained by the United States in any court. Such judgments do not include those filed as a result of action in the United States Tax Courts.

(h) *Federal crop insurance violation.* The applicant, and all entity members in the case of an entity, must not be ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718.

(i) *Managerial ability.* The applicant must have sufficient managerial ability to assure reasonable prospects of loan repayment, as determined by the Agency. The applicant must demonstrate this managerial ability by:

(1) Education. For example, the applicant obtained a 4-year college degree in agricultural business, horticulture, animal science, agronomy, or other agricultural-related field.

(2) On-the-job training. For example, the applicant is currently working on a farm as part of an apprenticeship program.

(3) Farming experience. For example, the applicant has been an owner, manager, or operator of a farm business for at least one entire production cycle. The farming experience must have been obtained within the last 5 years.

(j) *Borrower training.* The applicant must agree to meet the training requirements in subpart J of this part.

(k) *Operator of a family farm.* (1) The applicant must be the operator of a family farm after the loan is closed.

(2) For an entity applicant, if the entity members holding a majority interest are:

(i) Related by blood or marriage, at least one member must be the operator of a family farm;

(ii) Not related by blood or marriage, the entity members holding a majority interest must be operators of a family farm.

(3) Except for EM loans, the collective interests of the members may be larger than a family farm only if:

(i) Each member's ownership interest is not larger than a family farm;

(ii) All of the members of the entity are related by blood or marriage; and

(iii) All of the members are or will become operators of the family farm; and

(4) If the entity applicant has an operator and ownership interest for farm ownership loans and emergency loans for farm ownership loan purposes, in any other farming operation, that farming operation must not exceed the requirements of a family farm.

(l) *Entity composition.* If the applicant is an entity, the entity members are not themselves entities.

§ 764.102 General limitations.

(a) Limitations specific to each loan program are contained in subparts D through H of this part.

(b) The total principal balance owed to the Agency at any one time by the applicant, or any one who will sign the promissory note, cannot exceed the limits established in § 761.8 of this chapter.

(c) The funds from the FLP loan must be used for farming operations located in the United States.

(d) The Agency will not make a loan if the proceeds will be used:

(1) For any purpose that contributes to excessive erosion of highly erodible land, or to the conversion of wetlands;

(2) To drain, dredge, fill, level, or otherwise manipulate a wetland; or

(3) To engage in any activity that results in impairing or reducing the flow, circulation, or reach of water, except in the case of activity related to the maintenance of previously converted wetlands as defined in the Food Security Act of 1985.

(e) Any construction financed by the Agency must comply with the standards established in § 761.10 of this chapter.

(f) Loan funds will not be used to establish or support a non-eligible enterprise, even if the non-eligible enterprise contributes to the farm.

§ 764.103 General security requirements.

(a) Security requirements specific to each loan program are outlined in subparts D through H of this part.

(b) All loans must be secured by assets having a security value of at least 100 percent of the loan amount, except for EM loans as provided in subpart H of this part. If the applicant's assets do not provide adequate security, the Agency may accept:

(1) A pledge of security from a third party; or

(2) Interests in property not owned by the applicant (such as leases that provide a mortgageable value, water rights, easements, mineral rights, and royalties).

(c) An additional amount of security up to 150 percent of the loan amount will be taken when available, except for beginning farmer downpayment loans and youth loans.

(d) The Agency will choose the best security available when there are several alternatives that meet the Agency's security requirements.

(e) The Agency will take a lien on all assets that are not essential to the farming operation and are not being converted to cash to reduce the loan amount when each such asset, or aggregate value of like assets (such as stocks), has a value in excess of $5,000. The value of this security is not included in the Agency's additional security requirement stated in paragraph (c) of this section. This requirement does not apply to beginning farmer downpayment loans and youth loans.

§ 764.104 General real estate security requirements.

(a) *Agency lien position requirements.* If real estate is pledged as security for a loan, the Agency must obtain a first lien, if available. When a first lien is not available, the Agency may take a junior lien under the following conditions:

(1) The prior lien does not contain any provisions that may jeopardize the Agency's interest or the applicant's ability to repay the FLP loan;

(2) Prior lienholders agree to notify the Agency prior to foreclosure;

(3) The applicant must agree not to increase an existing prior lien without the written consent of the Agency; and

(4) Equity in the collateral exists.

(b) *Real estate held under a purchase contract.* If the real estate offered as security is held under a recorded purchase contract:

(1) The applicant must provide a security interest in the real estate;

(2) The applicant and the purchase contract holder must agree in writing that any insurance proceeds received for real estate losses will be used only for one or more of the following purposes:

(i) To replace or repair the damaged real estate improvements which are essential to the farming operation;

(ii) To make other essential real estate improvements; or

(iii) To pay any prior real estate lien, including the purchase contract.

(3) The purchase contract must provide the applicant with possession, control and beneficial use of the property, and entitle the applicant to marketable title upon fulfillment of the contract terms.

(4) The purchase contract must not:

(i) Be subject to summary cancellation upon default;

(ii) Contain provisions which jeopardize the Agency's security position or the applicant's ability to repay the loan.

(5) The purchase contract holder must agree in writing to:

(i) Not sell or voluntarily transfer their interest without prior written consent of the Agency;

(ii) Not encumber or cause any liens to be levied against the property;

(iii) Not take any action to accelerate, forfeit, or foreclose the applicant's interest in the security property until a specified period of time after notifying the Agency of the intent to do so;

(iv) Consent to the Agency making the loan and taking a security interest in the applicant's interest under the purchase contract as security for the FLP loan;

(v) Not take any action to foreclose or forfeit the interest of the applicant under the purchase contract because the Agency has acquired the applicant's interest by foreclosure or voluntary conveyance, or because the Agency has subsequently sold or assigned the applicant's interest to a third party who will assume the applicant's obligations under the purchase contract;

(vi) Notify the Agency in writing of any breach by the applicant; and

(vii) Give the Agency the option to rectify the conditions that amount to a breach within 30 days after the date the Agency receives written notice of the breach.

(6) If the Agency acquires the applicant's interest under the purchase contract by foreclosure or voluntary conveyance, the Agency will not be deemed to have assumed any of the applicant's obligations under the contract, provided that if the Agency fails to perform the applicant's obligations while it holds the applicant's interest is grounds for terminating the purchase contract.

(c) *Tribal lands held in trust or restricted.* The Agency may take a lien on Indian Trust lands as security provided the applicant requests the Bureau of Indian Affairs to furnish Title Status Reports to the agency and the Bureau of Indian Affairs provides the reports and approves the lien.

(d) *Security for more than one loan.* The same real estate may be pledged as security for more than one direct or guaranteed loan.

(e) *Loans secured by leaseholds.* A loan may be secured by a mortgage on a leasehold, if the leasehold has negotiable value and can be mortgaged.

§ 764.105 General chattel security requirements.

The same chattel may be pledged as security for more than one direct or guaranteed loan.

§ 764.106 Exceptions to security requirements.

Notwithstanding any other provision of this part, the Agency will not take a security interest:

(a) When adequate security is otherwise available and the lien will prevent the applicant from obtaining credit from other sources;

(b) When the property could have significant environmental problems or costs as described in subpart G of 7 CFR part 1940;

(c) When the Agency cannot obtain a valid lien;

(d) When the property is the applicant's personal residence and appurtenances and:

(1) They are located on a separate parcel; and

(2) The real estate that serves as security for the FLP loan plus crops and chattels are greater than or equal to 150 percent of the unpaid balance due on the loan;

(e) When the property is subsistence livestock, cash, working capital accounts the applicant uses for the farming operation, retirement accounts, personal vehicles necessary for family living, household contents, or small equipment such as hand tools and lawn mowers; or

(f) On marginal land and timber that secures an outstanding ST loan.

§ 764.107 General appraisal requirements.

(a) *Establishing value for real estate.* The value of real estate will be established by an appraisal completed in accordance with § 761.7 of this chapter.

(b) *Establishing value for chattels.* The value of chattels will be established as follows:

(1) *Annual production.* The security value of annual livestock and crop production is presumed to be 100 percent of the amount loaned for annual operating and family living expenses, as outlined in the approved farm operating plan.

(2) *Livestock and equipment.* The value of livestock and equipment will be established by an appraisal completed in accordance with § 761.7 of this chapter.

§ 764.108 General insurance requirements.

The applicant must obtain and maintain insurance, equal to the lesser of the value of the security at the time of loan closing or the principal of all FLP and non-FLP loans secured by the property, subject to the following:

(a) All security, except growing crops, must be covered by hazard insurance if it is readily available (sold by insurance agents in the applicant's normal trade area) and insurance premiums do not exceed the benefit. The Agency must be listed as loss payee for the insurance indemnity payment or as a beneficiary in the mortgagee loss payable clause.

(b) Real estate security located in flood or mudslide prone areas must be covered by flood or mudslide insurance. The Agency must be listed as a beneficiary in the mortgagee loss payable clause.

(c) Growing crops used to provide adequate security must be covered by crop insurance if such insurance is available. The Agency must be listed as loss payee for the insurance indemnity payment.

(d) Prior to closing the loan, the applicant must have obtained at least the catastrophic risk protection level of crop insurance coverage for each crop which is a basic part of the applicant's total operation, if such insurance is available, unless the applicant executes a written waiver of any emergency crop loss assistance with respect to such crop. The applicant must execute an assignment of indemnity in favor of the Agency for this coverage.

§§ 764.109–764.150 [Reserved]

Subpart D—Farm Ownership Loan Program

§ 764.151 Farm Ownership loan uses.

FO loan funds may only be used to:

(a) Acquire or enlarge a farm or make a down payment on a farm;

(b) Make capital improvements to a farm owned by the applicant, for construction, purchase or improvement of farm dwellings, service buildings or other facilities and improvements essential to the farming operation. In the case of leased property, the applicant must have a lease to ensure use of the improvement over its useful life or to ensure that the applicant receives compensation for any remaining economic life upon termination of the lease;

(c) Promote soil and water conservation and protection;

(d) Pay loan closing costs;

(e) Refinance a bridge loan if the following conditions are met:

(1) The applicant obtained the loan to be refinanced to purchase a farm after a direct FO was approved;

(2) Direct FO funds were not available to fund the loan at the time of approval;

(3) The loan to be refinanced is temporary financing; and

(4) The loan was made by a commercial or cooperative lender.

§ 764.152 Eligibility requirements.

The applicant:

(a) Must comply with the general eligibility requirements established at § 764.101;

(b) And anyone who will sign the promissory note, must not have received debt forgiveness from the Agency on any direct or guaranteed loan;

(c) Must be the owner-operator of the farm financed with Agency funds after the loan is closed. In the case of an entity:

(1) The entity is controlled by farmers engaged primarily and directly in farming in the United States, after the loan is made;

(2) The entity must be authorized to own and operate the farm in the State in which the farm is located;

(3) If the entity members holding a majority interest are:

(i) Related by blood or marriage, at least one member of the entity must operate the farm;

(ii) Not related by blood or marriage, the entity members holding a majority interest must own and operate the farm.

(d) And in the case of an entity, one or more members constituting a majority interest, must have participated in the business operations of a farm for at least 3 years out of the 10 years prior to the date the application is submitted.

(e) And anyone who will sign the promissory note, must satisfy at least one of the following conditions:

(1) Meet the definition of a beginning farmer;

(2) Have not had a direct FO loan outstanding for more than a total of 10 years prior to the date the new FO loan is closed;

(3) Have never received a direct FO loan.

§ 764.153 Limitations.

The applicant must:

(a) Comply with the general limitations established at § 764.102;

(b) Have dwellings and other buildings necessary for the planned operation of the farm available for use after the loan is made.

§ 764.154 Rates and terms.

(a) *Rates.* (1) The interest rate is the Agency's Direct Farm Ownership rate, available in each Agency office.

(2) The limited resource Farm Ownership interest rate is available to applicants who are unable to develop a feasible plan at regular interest rates.

(3) If the FO loan is part of a joint financing arrangement and the amount of the Agency's loan does not exceed 50 percent of the total amount financed, the Agency will use the Farm Ownership participation rate, available in each Agency office.

(4) The interest rate charged will be the lower of the rate in effect at the time of loan approval or loan closing.

(b) *Terms.* The Agency schedules repayment of an FO loan based on the applicant's ability to repay and the useful life of the security. In no event will the term be more than 40 years from the date of the note.

§ 764.155 Security requirements.

An FO loan must be secured:

(a) In accordance with §§ 764.103 through 764.106;

(b) At a minimum, by the real estate being purchased or improved.

§§ 764.156–764.200 [Reserved]

Subpart E—Beginning Farmer Downpayment Loan Program

§ 764.201 Beginning Farmer Downpayment loan uses.

Beginning Farmer Downpayment loan funds may be used to partially finance the purchase of a family farm by an eligible beginning farmer.

§ 764.202 Eligibility requirements.

The applicant must:

(a) Comply with the general eligibility requirements established at § 764.101 and the FO eligibility requirements of § 764.152; and

(b) Be a beginning farmer.

§ 764.203 Limitations.

(a) The applicant must:

(1) Comply with the general limitations established at § 764.102; and

(2) Provide a minimum downpayment of 10 percent of the purchase price of the farm.

(b) The purchase price or appraised value of the farm, whichever is lower, must not exceed $250,000.

(c) Beginning Farmer Downpayment loans will not exceed 40 percent of the lesser of the purchase price or appraised value of the farm to be acquired.

(d) Financing provided by the Agency and all other creditors must not exceed 90 percent of the lesser of the purchase price or appraised value of the farm and may be guaranteed by the Agency under part 762 of this chapter.

§ 764.204 Rates and terms.

(a) *Rates.* The interest rate for Beginning Farmer Downpayment loans shall be 4 percent.

(b) *Terms.* (1) The Agency schedules repayment of Beginning Farmer Downpayment loans in equal, annual installments over a term not to exceed 15 years.

(2) The non-Agency financing must have an amortization period of at least 30 years and cannot have a balloon payment due within the first 15 years of the loan.

§ 764.205 Security requirements.

A Beginning Farmer Downpayment loan must:

(a) Be secured in accordance with §§ 764.103 through 764.106;

(b) Be secured by a lien on the property being acquired with the loan funds and junior only to the party financing the balance of the purchase price.

§§ 764.206–764.250 [Reserved]

Subpart F—Operating Loan Program

§ 764.251 Operating loan uses.

(a) Except as provided in paragraph (b), OL loan funds may only be used for:

(1) Costs associated with reorganizing a farm to improve its profitability;

(2) Purchase of livestock, including poultry, farm equipment, quotas and bases, and cooperative stock for credit, production, processing or marketing purposes;

(3) Farm operating expenses, including, but not limited to, feed, seed, fertilizer, pesticides, farm supplies, repairs and improvements which are to be expensed, cash rent and family living expenses;

(4) Scheduled principal and interest payments on term debt provided the debt is for authorized FO or OL purposes;

(5) Other farm needs;

(6) Costs associated with land and water development, use, or conservation;

(7) Loan closing costs;

(8) Costs associated with Federal or State-approved standards under the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 667) if the applicant can show that compliance or non-compliance with the standards will cause substantial economic injury;

(9) Borrower training costs required or recommended by the Agency;

(10) Refinancing farm-related debts other than real estate to improve the farm's profitability provided the applicant has refinanced direct or guaranteed OL loans four times or fewer

and one of the following conditions is met:

(i) A designated or declared disaster caused the need for refinancing; or

(ii) The debts to be refinanced are owed to a creditor other than the USDA;

(11) Costs for minor real estate repairs or improvements, provided the loan can be repaid within 7 years.

(b) Lo-Doc funds approved under:

(1) Section 764.51(c)(3)(i) may be used for any OL purpose except for refinancing debt under paragraph (a)(10);

(2) Section 764.51(c)(3)(ii) may only be used for expenses under paragraph (a)(3).

§ 764.252 Eligibility requirements.

The applicant:

(a) Must comply with the general eligibility requirements established at § 764.101.

(b) And anyone who will sign the promissory note, except as provided in paragraph (c) of this section, must not have received debt forgiveness from the Agency on any direct or guaranteed loan.

(c) And anyone who will sign the promissory note, may receive direct OL loans to pay annual farm operating and family living expenses, provided that the applicant meets all other applicable requirements under this part, if the applicant:

(1) Received a write-down under section 353 of the Act;

(2) Is current on payments under a confirmed reorganization plan under Chapter 11, 12, or 13 of Title 11 of the United States Code; or

(3) Received debt forgiveness on not more than one occasion after April 4, 1996, resulting directly and primarily from a Presidentially-designated emergency for the county or contiguous county in which the applicant operates. Only applicants who were current on all existing direct and guaranteed FLP loans prior to the beginning date of the incidence period of a Presidentially-designated emergency and received debt forgiveness on that debt within 3 years after the designation of such emergency meet this exception.

(d) And in the case of an entity, the entity must be:

(1) Controlled by farmers engaged primarily and directly in farming in the United States; and

(2) Authorized to operate the farm in the State in which the farm is located.

(e) And anyone who will sign the promissory note, may close an OL loan in no more than 7 calendar years, either as an individual or as a member of an entity, except as provided in paragraphs (e)(1) through (4) of this section. The years may be consecutive or nonconsecutive, and there is no limit on the number of loans closed in a year. Youth loans are not counted toward this limitation. The following exceptions are applicable.

(1) This limitation does not apply if the applicant and anyone who will sign the promissory note is a beginning farmer.

(2) This limitation does not apply if the applicant's land is subject to the jurisdiction of an Indian tribe, the loan is secured by one or more security instruments subject to the jurisdiction of an Indian tribe, and commercial credit is generally not available to such farm operations.

(3) If the applicant, and anyone who will sign the promissory note, has closed direct OL loans in four or more previous calendar years as of April 4, 1996, the applicant is eligible to close OL loans in any three additional years after that date.

(4) On a case-by-case basis, may be granted a one-time waiver of OL term limits for a period of 2 years, not subject to administrative appeal, if the applicant:

(i) Has a financially viable operation;

(ii) And in the case of an entity, the members holding the majority interest, applied for commercial credit from at least two lenders and were unable to obtain a commercial loan, including an Agency-guaranteed loan; and

(iii) Has successfully completed, or will complete within one year, borrower training. Previous waivers to the borrower training requirements are not applicable under this paragraph.

§ 764.253 Limitations.

The applicant must comply with the general limitations established at § 764.102.

§ 764.254 Rates and terms.

(a) *Rates.* (1) The interest rate is the Agency's Direct Operating Loan rate, available in each Agency office.

(2) The limited resource Operating Loan interest rate is available to applicants who are unable to develop a feasible plan at regular interest rates.

(3) The interest rate charged will be the lower rate in effect at the time of loan approval or loan closing.

(b) *Terms.* (1) The Agency schedules repayment of annual OL loans made for family living and farm operating expenses when planned income is projected to be available.

(i) The term of the loan may not exceed 18 months from the date of the note.

(ii) The term of the loan may exceed 18 months in unusual situations such as establishing a new enterprise, developing a farm, purchasing feed while crops are being established, marketing plans, or recovery from a disaster or economic reverse. In no event will the term of the loan exceed 7 years from the date of the note. Crops and livestock produced for sale will not be considered adequate security for such loans.

(2) The Agency schedules the repayment of all other OL loans based on the applicant's ability to repay and the useful life of the security. In no event will the term of the loan exceed 7 years from the date of the note. Repayment schedules may include equal, unequal, or balloon installments if needed to establish a new enterprise, develop a farm, or recover from a disaster or economic reversal. Loans with balloon installments:

(i) Must have adequate security at the time the balloon installment comes due. Crops, livestock other than breeding stock, or livestock products produced are not adequate collateral for such loans;

(ii) Are only authorized when the applicant can project the ability to refinance the remaining debt at the time the balloon payment comes due based on the expected financial condition of the operation, the depreciated value of the collateral, and the principal balance on the loan;

(iii) Are not authorized when loan funds are used for real estate repairs or improvements.

§ 764.255 Security requirements.

An OL loan must be secured:

(a) In accordance with §§ 764.103 through 764.106.

(b) By a:

(1) First lien on all property or products acquired or produced with loan funds;

(2) Lien of equal or higher position of that held by the creditor being refinanced with loan funds.

§§ 764.256–764.300 [Reserved]

Subpart G—Youth Loan Program

§ 764.301 Youth loan uses.

Youth loan funds may only be used to finance a modest, income-producing, agriculture-related, educational project while participating in 4–H, FFA, or a similar organization.

§ 764.302 Eligibility requirements.

The applicant:

(a) Must comply with the general eligibility requirements established at § 764.101(a) through (g);

(b) And anyone who will sign the promissory note, must not have received

debt forgiveness from the Agency on any direct or guaranteed loan;

(c) Must be at least 10 but not yet 21 years of age at the time the loan is closed;

(d) Must reside in a rural area, city or town with a population of 50,000 or fewer people;

(e) Must be recommended and continuously supervised by a project advisor, such as a 4–H Club advisor, a vocational teacher, a county extension agent, or other agriculture-related organizational sponsor; and

(f) Must obtain a written recommendation and consent from a parent or guardian if the applicant has not reached the age of majority under state law.

§ 764.303 Limitations.

(a) The applicant must comply with the general limitations established at § 764.102.

(b) The total principal balance owed by the applicant to the Agency on all Youth loans at any one time cannot exceed $5,000.

§ 764.304 Rates and terms.

(a) *Rates.* (1) The interest rate is the Agency's Direct Operating Loan rate, available in each Agency office.

(2) The limited resource Operating Loan interest rate is not available for Youth loans.

(3) The interest rate charged will be the lower rate in effect at the time of loan approval or loan closing.

(b) *Terms.* Youth loan terms are the same as for an OL established at § 764.254(b).

§ 764.305 Security requirements.

A first lien will be obtained on property or products acquired or produced with loan funds.

§§ 764.306–764.350 [Reserved]

Subpart H—Emergency Loan Program

§ 764.351 Emergency loan uses.

(a) *Physical losses*—(1) *Real estate losses.* EM loan funds for real estate physical losses may only be used to repair or replace essential property damaged or destroyed as a result of a disaster as follows:

(i) For any FO purpose, as specified in § 764.151, except subparagraph (e) of that section;

(ii) To establish a new site for farm dwelling and service buildings outside of a flood or mudslide area; and

(iii) To replace land from the farm that was sold or conveyed, if such land is necessary for the farming operation to be effective.

(2) *Chattel losses.* EM loan funds for chattel physical losses may only be used to repair or replace essential property damaged or destroyed as a result of a disaster as follows:

(i) Purchase livestock, farm equipment, quotas and bases, and cooperative stock for credit, production, processing, or marketing purposes;

(ii) Pay customary costs associated with obtaining and closing a loan that an applicant cannot pay from other sources (e.g., fees for legal, architectural, and other technical services, but not fees for agricultural management consultation, or preparation of Agency forms);

(iii) Repair or replace household contents damaged in the disaster;

(iv) Pay the costs to restore perennials, which produce an agricultural commodity, to the stage of development the damaged perennials had obtained prior to the disaster;

(v) Pay essential family living and farm operating expenses, in the case of an operation that has suffered livestock losses not from breeding stock, or losses to stored crops held for sale; and

(vi) Refinance farm-related debts other than real estate to improve farm profitability, if the applicant has refinanced direct or guaranteed loans four times or fewer and one of the following conditions is met:

(A) A designated or declared disaster caused the need for refinancing; or

(B) The debts to be refinanced are owed to a creditor other than the USDA.

(b) *Production losses.* EM loan funds for production losses to agricultural commodities (except the losses associated with the loss of livestock) may be used to:

(1) Pay costs associated with reorganizing the farm to improve its profitability except that such costs must not include the payment of bankruptcy expenses;

(2) Pay annual operating expenses, which include, but are not limited to, feed, seed, fertilizer, pesticides, farm supplies, and cash rent;

(3) Pay costs associated with Federal or State-approved standards under the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 667) if the applicant can show that compliance or non-compliance with the standards will cause substantial economic injury;

(4) Pay borrower training costs required or recommended by the Agency;

(5) Pay essential family living expenses;

(6) Refinance farm-related debts other than real estate to improve farm profitability, if the applicant has refinanced direct or guaranteed loans four times or fewer and one of the following conditions is met:

(i) A designated or declared disaster caused the need for refinancing; or

(ii) The debts to be refinanced are owed to a creditor other than the USDA; and

(7) Replace lost working capital.

§ 764.352 Eligibility requirements.

The applicant:

(a) Must comply with the general eligibility requirements established at § 764.101;

(b) Must be an established farmer;

(c) Must be the owner-operator or tenant-operator as follows:

(1) For a loan made under § 764.351(a)(1), must have been:

(i) The owner-operator of the farm at the time of the disaster; or

(ii) The tenant-operator of the farm at the time of the disaster whose lease on the affected real estate exceeds the term of the loan. The operator will provide prior notification to the Agency if the lease is proposed to terminate during the term of the loan. The lessor will provide the Agency a mortgage on the real estate as security for the loan;

(2) For a loan made under § 764.351(a)(2) or (b), must have been the operator of the farm at the time of the disaster; and

(3) In the case of an entity, the entity must be:

(i) Engaged primarily and directly in farming in the United States;

(ii) Authorized to operate and own the farm, if the funds are used for farm ownership loan purposes, in the State in which the farm is located;

(d) Must demonstrate the intent to continue the farming operation after the designated or declared disaster;

(e) And all entity members must be unable to obtain sufficient credit elsewhere at reasonable rates and terms. To establish this, the applicant must obtain written declinations of credit, specifying the reasons for declination, from legally organized commercial lending institutions within reasonable proximity of the applicant as follows:

(1) In the case of a loan in excess of $300,000, two written declinations of credit are required;

(2) In the case of a loan of $300,000 or less, one written declination of credit is required; and

(3) In the case of a loan of $100,000 or less, the Agency may waive the requirement for obtaining a written declination of credit, if the Agency determines that it would pose an undue burden on the applicant, the applicant certifies that they cannot get credit elsewhere, and based on the applicant's circumstances credit is not likely to be available;

(4) Notwithstanding the applicant's submission of the required written

declinations of credit, the Agency may contact other commercial lending institutions within reasonable proximity of the applicant and make an independent determination of the applicant's ability to obtain credit elsewhere;

(f) And all entity members in the case of an entity, must not have received debt forgiveness from the Agency on more than one occasion on or before April 4, 1996, or any time after April 4, 1996.

(g) Must submit an application to be received by the Agency no later than 8 months after the date the disaster is declared or designated in the county of the applicant's operation.

(h) For production loss loans, must have a disaster yield that is at least 30 percent below the normal production yield of the crop, as determined by the Agency, which comprises a basic part of an applicant's total farming operation.

(i) For physical loss loans, must have suffered disaster-related damage to chattel or real estate essential to the farming operation, or to household contents that must be repaired or replaced, to harvested or stored crops, or to perennial crops.

(j) Must meet all of the following requirements if the ownership structure of the family farm changes between the time of a qualifying loss and the time an EM loan is closed:

(1) The applicant, including all owners must meet all of the eligibility requirements;

(2) The individual applicant, or all owners of a entity applicant, must have had an ownership interest in the farming operation at the time of the disaster; and

(3) The amount of the loan will be based on the percentage of the former farming operation transferred to the applicant and in no event will the individual portions aggregated equal more than would have been authorized for the former farming operation.

(k) Must agree to repay any duplicative Federal assistance to the agency providing such assistance. An applicant receiving Federal assistance for a major disaster or emergency is liable to the United States to the extent that the assistance duplicates benefits available to the applicant for the same purpose from another source.

§ 764.353 Limitations.

(a) EM loans must comply with the general limitations established at § 764.102.

(b) EM loans may not exceed the lesser of:

(1) The amount of credit necessary to restore the farming operation to its pre-disaster condition;

(2) In the case of a physical loss loan, the total eligible physical losses caused by the disaster; or

(3) In the case of a production loss loan, 100 percent of the total actual production loss sustained by the applicant as calculated in paragraph (c) of this section.

(c) For production loss loans, the applicant's actual crop production loss will be calculated as follows:

(1) Subtract the disaster yield from the normal yield to determine the per acre production loss;

(2) Multiply the per acre production loss by the number of acres of the farming operation devoted to the crop to determine the volume of the production loss;

(3) Multiply the volume of the production loss by the market price for such crop as determined by the Agency to determine the dollar value for the production loss; and

(4) Subtract any other disaster related compensation or insurance indemnities received or to be received by the applicant for the production loss.

(d) For a physical loss loan, the applicant's total eligible physical losses will be calculated as follows:

(1) Add the allowable costs associated with replacing or repairing chattel covered by hazard insurance (excluding labor, machinery, equipment, or materials contributed by the applicant to repair or replace chattel);

(2) Add the allowable costs associated with repairing or replacing real estate, covered by hazard insurance;

(3) Add the value of replacement livestock and livestock products for which the applicant provided:

(i) Written documentation of inventory on hand immediately preceding the loss;

(ii) Records of livestock product sales sufficient to allow the Agency to establish a value;

(4) Add the allowable costs to restore perennials to the stage of development the damaged perennials had obtained prior to the disaster;

(5) Add, in the case of an individual applicant, the allowable costs associated with repairing or replacing household contents, not to exceed $20,000; and

(6) Subtract any other disaster related compensation or insurance indemnities received or to be received by the applicant for the loss or damage to the chattel or real estate.

(e) EM loan funds may not be used for physical loss purposes unless:

(1) The physical property was covered by general hazard insurance at the time that the damage caused by the natural disaster occurred. The level of the coverage in effect at the time of the disaster must have been the tax or cost depreciated value, whichever is less. Chattel property must have been covered at the tax or cost depreciated value, whichever is less, when such insurance was readily available and the benefit of the coverage was greater than the cost of the insurance; or

(2) The loan is to a poultry farmer to cover the loss of a chicken house for which the applicant did not have hazard insurance at the time of the loss and the applicant:

(i) Applied for, but was unable to obtain hazard insurance for the chicken house;

(ii) Uses the loan to rebuild the chicken house in accordance with industry standards in effect on the date the applicant submits an application for the loan;

(iii) Obtains, for the term of the loan, hazard insurance for the full market value of the chicken house; and

(iv) Meets all other requirements for the loan.

(f) EM loan funds may not be used to refinance consumer debt, such as automobile loans, or credit card debt unless such credit card debt is directly attributable to the farming operation.

§ 764.354 Rates and terms.

(a) *Rates.* (1) The interest rate is the Agency's Emergency Loan Actual Loss rate, available in each Agency office.

(2) The interest rate charged will be the lower rate in effect at the time of loan approval or loan closing.

(b) *Terms.* (1) The Agency schedules repayment of EM loans based on the useful life of the security, the applicant's repayment ability, and the type of loss.

(2) The repayment schedule must include at least one payment every year.

(3) EM loans for annual operating expenses, except expenses associated with establishing a perennial crop that are subject to paragraph (b)(4), must be repaid within 12 months. The Agency may extend this term to not more than 18 months to accommodate the production cycle of the agricultural commodities.

(4) EM loans for production losses or physical losses to chattel (including, but not limited to, assets with an expected life between one and 7 years) may not exceed 7 years. The Agency may extend this term up to a total length not to exceed 20 years, if necessary to improve the applicant's repayment ability and real estate security is available.

(5) The repayment schedule for EM loans for physical losses to real estate is

based on the applicant's repayment ability and the useful life of the security, but in no case will the term exceed 40 years.

§ 764.355 Security requirements.

(a) EM loans made under § 764.351(a)(1) must comply with the general security requirements established at §§ 764.103, 764.104 and 764.155(b).

(b) EM loans made under § 764.351(a)(2) and (b) must comply with the general security requirements established at §§ 764.103, 764.104 and 764.255(b).

(c) Notwithstanding the requirements of paragraphs (a) and (b) of this section, when adequate security is not available because of the disaster, the loan may be approved if the Agency determines, based on an otherwise feasible plan, there is a reasonable assurance that the applicant has the ability to repay the loan provided:

(1) The applicant has pledged as security for the loan all available personal and business security, except as provided in § 764.106;

(2) The farm operating plan, approved by the Agency, indicates the loan will be repaid based upon the applicant's production and income history; addresses applicable pricing risks through the use of marketing contracts, hedging, options, or other revenue protection mechanisms, and includes a marketing plan or similar risk management practice;

(3) The applicant has had positive net cash farm income in at least 3 of the past 5 years; and

(4) The applicant has provided the Agency an assignment on any USDA program payments to be received.

(d) For loans over $25,000, title clearance is required when real estate is taken as security.

(e) For loans of $25,000 or less, when real estate is taken as security, a certification of ownership in real estate is required. Certification of ownership may be in the form of an affidavit which is signed by the applicant, names the record owner of the real estate in question and lists the balances due on all known debts against the real estate. Whenever the Agency is uncertain of the record owner or debts against the real estate security, a title search is required.

§ 764.356 Appraisal and valuation requirements.

(a) In the case of physical losses associated with livestock, the applicant must have written documentation of the inventory of livestock and records of livestock product sales sufficient to allow the Agency to value such livestock or livestock products just prior to the loss.

(b) In the case of farm assets damaged by the disaster, the value of such security shall be established as of the day before the disaster occurred.

§§ 764.357–764.400 [Reserved]

Subpart I—Loan Decision and Closing

§ 764.401 Loan decision.

(a) *Loan approval.* (1) The Agency will approve a loan only if it determines that:

(i) The applicant's farm operating plan reflects a feasible plan, which includes repayment of the proposed loan and demonstrates that all other credit needs can be met;

(ii) The proposed use of loan funds is authorized for the type of loan requested;

(iii) The applicant has been determined eligible for the type of loan requested;

(iv) All security requirements for the type of loan requested have been, or will be met before the loan is closed;

(v) The applicant's total indebtedness to the Agency, including the proposed loan, will not exceed the maximum limits established in § 761.8 of this chapter;

(vi) There have been no significant changes in the farm operating plan or the applicant's financial condition since the time the Agency received a complete application; and

(vii) All other pertinent requirements have been, or will be met before the loan is closed.

(2) The Agency will place conditions upon loan approval it determines necessary to protect its interest and maximize the applicant's potential for success.

(b) *Loan denial.* The Agency will not approve a loan if it determines that:

(1) The applicant's farm operating plan does not reflect a feasible plan;

(2) The proposed use of loan funds is not authorized for the type of loan requested;

(3) The applicant does not meet the eligibility requirements for the type of loan requested;

(4) There is inadequate security for the type of loan requested;

(5) Approval of the loan would cause the applicant's total indebtedness to the Agency to exceed the maximum limits established in § 761.8 of this chapter;

(6) The applicant's circumstances may not permit continuous operation and management of the farm; or

(7) The applicant, the farming operation, or other circumstances surrounding the loan are inconsistent with the authorizing statutes, other Federal laws, or Federal credit policies.

(c) *Overturn of an Agency decision by appeal.* If an FLP loan denial is overturned on administrative appeal, the Agency will not automatically approve the loan. Unless prohibited by the final appeal determination or otherwise advised by the Office of General Counsel, the Agency will:

(1) Request current financial information from the applicant as necessary to determine whether any changes in the applicant's financial condition or agricultural conditions which occurred after the Agency's adverse decision was made will adversely affect the applicant's farming operation;

(2) Approve a loan for crop production:

(i) Only if the Agency can determine that the applicant will be able to produce a crop in the production cycle for which the loan is requested; or

(ii) For the next production cycle, upon review of current financial data and a farm operating plan for the next production cycle, if the Agency determines the loan can be repaid. The new farm operating plan must reflect any financial issues resolved in the appeal.

(3) Determine whether the applicant's farm operating plan, as modified based on the appeal decision, reflects a feasible plan, which includes repayment of the proposed loan and demonstrates that all other credit needs can be met.

§ 764.402 Loan closing.

(a) *Signature requirements.* Signatures on loan documents are required as follows:

(1) For individual applicants, only the applicant is required to sign the promissory note.

(2) For entity applicants, the promissory note will be executed to evidence the liability of the entity and the individual liability of all members of the entity.

(3) Despite minority status, a youth executing a promissory note for a Youth loan will incur full personal liability for the debt.

(4) A cosigner will be required to sign the promissory note if they assist the applicant in meeting the repayment requirements for the loan requested.

(5) All signatures needed for the Agency to acquire the required security interests will be obtained according to State law.

(b) *Payment of fees.* The applicant, or in the case of a real estate purchase, the applicant and seller, must pay all filing, recording, notary, lien search, and any

other fees necessary to process and close a loan.

(c) *Chattel-secured loans.* The following requirements apply to loans secured by chattel:

(1) The Agency will close a chattel loan only when it determines the Agency requirements for the loan have been satisfied;

(2) A financing statement is required for every loan except when a filed financing statement covering the applicant's property is still effective, covers all types of chattel property that will serve as security for the loan, describes the land on which crops and fixtures are or will be located, and complies with the law of the jurisdiction where filed;

(3) A new security agreement is required for new loans, as necessary to secure the loan under State law, prior to the disbursement of loan funds.

(d) *Real estate-secured loans.* (1) The Agency will close a real estate loan only when it determines that the Agency requirements for the loan have been satisfied and the closing agent can issue a policy of title insurance or final title opinion as of the date of closing. The title insurance or final title opinion requirement may be waived:

(i) For loans of $10,000 or less;

(ii) As provided in § 764.355 for EM loans;

(iii) When the real estate is considered additional security by the Agency; or

(iv) When the real estate is a non-essential asset.

(2) The title insurance or final title opinion must show title vested as required by the Agency, the lien of the Agency's security instrument in the priority required by the Agency, and title to the security property, subject only to those exceptions approved in writing by the Agency.

(3) The Agency must approve agents who will close FLP loans. Closing agents must meet all of the following requirements to the Agency's satisfaction:

(i) Be licensed in the state where the loan will be closed;

(ii) Not be debarred or suspended from participating in any Federal programs;

(iii) Maintain liability insurance;

(iv) Have a fidelity bond that covers all employees with access to loan funds;

(v) Have current knowledge of the requirements of State law in connection with the loan closing and title clearance;

(vi) Not represent both the buyer and seller in the transaction;

(vii) Not be related as a family member or business associate with the applicant; and

(viii) Act promptly to provide required services.

(e) *Disbursement of funds.* (1) Loan funds will be made available to the applicant within 15 days of loan approval, subject to the availability of funding.

(2) If the loan is not closed within 90 days of loan approval or if the applicant's financial condition changes significantly, the Agency must reconfirm the requirements for loan approval prior to loan closing. The applicant may be required to provide updated information for the Agency to reconfirm approval and proceed with loan closing.

(3) The Agency or closing agent will be responsible for disbursing loan funds. The electronic funds transfer process, followed by Treasury checks, are the Agency's preferred methods of loan funds disbursement. The Agency will use these processes on behalf of borrowers to disburse loan proceeds directly to creditors being refinanced with loan funds or to sellers of chattel property that is being acquired with loan funds. A supervised bank account will be used according to subpart B of part 761 of this chapter when these processes are not practicable.

§§ 764.403–764.450 [Reserved]

Subpart J—Borrower Training and Training Vendor Requirements

§ 764.451 Purpose.

The purpose of production and financial management training is to help an applicant develop and improve skills necessary to:

(a) Successfully operate a farm;

(b) Build equity in the operation; and

(c) Become financially successful and prepared to graduate from Agency financing to commercial sources of credit.

§ 764.452 Borrower training requirements.

(a) The applicant must agree to complete production and financial management training, unless the Agency provides a waiver in accordance with § 764.453, or the applicant has previously satisfied the training requirements. In the case of an entity:

(1) Any individual member holding a majority interest in the entity or who is operating the farm must complete training on behalf of the entity, except as provided in paragraph (a)(2) of this section;

(2) If one entity member is solely responsible for production or financial management, then only that member will be required to complete training.

(b) When the Agency determines that production training is required, the applicant must agree to complete course work covering production management in each crop or livestock enterprise the Agency determines necessary.

(c) When the Agency determines that financial management training is required, the applicant must agree to complete course work covering all aspects of farm accounting and integrating accounting elements into a financial management system.

(d) An applicant who applies for a loan to finance a new enterprise, such as a new crop or a new type of livestock, must agree to complete production training with regard to that enterprise, even if production training requirements were waived or satisfied under a previous loan request, unless the Agency provides a waiver in accordance with § 764.453.

(e) Even if a waiver is granted, the borrower must complete borrower training as a condition for future loans if and when Agency supervision provided in 7 CFR part 761 subpart C reflects that such training is needed.

(f) The Agency cannot reject a request for a direct loan based solely on an applicant's need for training.

(g) The Agency will provide written notification of required training or waiver of training.

§ 764.453 Agency waiver of training requirements.

(a) The applicant must request the waiver in writing.

(b) The Agency will grant a waiver for training in production, financial management, or both, under the following conditions:

(1) The applicant submits evidence of successful completion of a course similar to a course approved under section § 764.457 and the Agency determines that additional training is not needed; or

(2) The applicant submits evidence which demonstrates to the Agency's satisfaction the applicant's experience and training necessary for a successful and efficient operation.

(c) If the production and financial functions of the operation are shared among individual entity members, the Agency will consider the collective knowledge and skills of those individuals when determining whether to waive training requirements.

§ 764.454 Actions that an applicant must take when training is required.

(a) *Deadline for completion of training.* (1) If the Agency requires an applicant to complete training, at loan closing the applicant must agree in writing to complete all required training within 2 years.

(2) The Agency will grant a one-year extension to complete training if the

applicant is unable to complete training within the 2-year period due to circumstances beyond the applicant's control.

(3) The Agency will grant an extension longer than one year for extraordinary circumstances as determined by the Agency.

(4) An applicant who does not complete the required training within the specified time-period will be ineligible for additional direct FLP loans until the training is completed.

(b) *Arranging training with a vendor.* The applicant must select and contact an Agency approved vendor and make all arrangements to begin training.

(c) *Payment of training fees.* (1) The applicant is responsible for the cost of training and must include training fees in the farm operating plan as a farm operating expense.

(2) The payment of training fees is an authorized use of OL funds.

(3) The Agency is not a party to fee or other agreements between the applicant and the vendor.

(d) *Evaluation of a vendor.* Upon completion of the required training, the applicant will complete an evaluation of the course and submit it to the vendor. The vendor will forward the completed evaluation forms to the Agency.

§ 764.455 Potential training vendors.

The Agency will contract for training services with State or private providers of production and financial management training services.

§ 764.456 Applying to be a vendor.

(a) A vendor for borrower training services must apply to the Agency for approval.

(b) The vendor application must include:

(1) A sample of the course materials and a description of the vendor's training methods;

(2) Specific training objectives for each section of the course;

(3) A detailed course agenda specifying the topics to be covered, the time devoted to each topic, and the number of sessions to be attended;

(4) A list of instructors and their qualifications;

(5) The criteria by which additional instructors will be selected;

(6) The proposed locations where training will take place;

(7) The cost per participant, including cost for additional members of a farming operation;

(8) The minimum and maximum class size;

(9) The vendor's experience in developing and administering training to farmers;

(10) The monitoring and quality control methods the vendor will use;

(11) The policy on allowing Agency employees to attend the course for monitoring purposes;

(12) A plan of how the needs of applicants with physical, mental, or learning disabilities will be met; and

(13) A plan of how the needs of applicants who do not speak English as their primary language will be met.

§ 764.457 Vendor requirements.

(a) *Minimum experience.* The vendor must demonstrate a minimum of 3 years of experience in conducting training courses or teaching the subject matter.

(b) *Training objectives.* The courses provided by a vendor must enable the applicant to accomplish one or more of the following objectives:

(1) Describe the specific goals of the farming operation, any changes required to attain the goals, and outline how these changes will occur using present and projected cash flow budgets;

(2) Maintain and use a financial management information system to make financial decisions;

(3) Understand and use an income statement;

(4) Understand and use a balance sheet;

(5) Understand and use a cash flow budget; and

(6) Use production records and other production information to identify problems, evaluate alternatives, and correct current production practices to improve efficiency and profitability.

(c) *Curriculum.* At least one of the following subjects must be covered:

(1) Business planning courses, covering general goal setting, risk management, and planning.

(2) Financial management courses, covering all aspects of farm accounting and focusing on integrating accounting elements into a financial management system.

(3) Crop and livestock production courses focusing on improving the profitability of the farm.

(d) *Instructor qualifications.* All instructors must have:

(1) Sufficient knowledge of the material and experience in adult education;

(2) A bachelor's degree or comparable experience in the subject area to be taught; and

(3) A minimum of 3 years experience in conducting training courses or teaching.

§ 764.458 Vendor approval.

(a) *Agreement to conduct training.* (1) Upon approval, the vendor must sign an agreement to conduct training for the Agency's borrowers.

(2) The agreement to conduct training is valid for 3 years.

(3) Any changes in curriculum, instructor, or cost require prior approval by the Agency.

(4) The vendor may revoke the agreement by giving the Agency a written 30-day notice.

(5) The Agency may revoke the agreement if the vendor does not comply with the responsibilities listed in the agreement by giving the vendor a written 30-day notice.

(b) *Renewal of agreement to conduct training.* (1) To renew the agreement to conduct training, the vendor must submit in writing to the Agency:

(i) A request to renew the agreement;

(ii) Any changes in curricula, instructor, or cost; and

(iii) Documentation that the vendor is providing effective training.

(2) The Agency will review renewal requests in accordance with § 764.457.

§ 764.459 Evaluation of borrower progress.

(a) The vendor must provide the Agency with a periodic progress report for each borrower enrolled in training in accordance with the agreement to complete training. The reports will indicate whether the borrower is attending sessions, completing the training program, and demonstrating an understanding of the course material.

(b) Upon borrower completion of the training, the vendor must provide the Agency with an evaluation of the borrower's knowledge of the course material and assign a score. The following table lists the possible scores, the criteria used to assign each score, and Agency consideration of each score:

Score	Criteria used to determine score	Agency consideration
1	If the borrower: • Attended sessions as agreed, ... • Satisfactorily completed all assignments, and • Demonstrated an understanding of the course material.	Training requirement associated with course is complete.
2	If the borrower:	

Score	Criteria used to determine score	Agency consideration
	• Attended sessions as agreed, and • Attempted to complete all assignments, but • Does not demonstrate an understanding of the course material.	Training requirement associated with couse is complete. Additional Agency supervision may be necessary.
3	If the borrower did not: • Attend sessions as agreed, or • Attempt to complete assignments, or • Otherwise make a good faith effort to complete the training.	Training requirement associated with course is not complete. The borrower is ineligible for future direct loans until the training is completed.

■ 24. Add part 765 to read as follows:

PART 765—DIRECT LOAN SERVICING—REGULAR

Sec.

Subpart A—Overview

765.1 Introduction.
765.2 Abbreviations and definitions.
765.3–765.50 [Reserved]

Subpart B—Borrowers with Limited Resource Interest Rate Loans

765.51 Annual review.
765.52–765.100 [Reserved]

Subpart C—Borrower Graduation

765.101 Borrower graduation requirements.
765.102 Borrower noncompliance with graduation requirements.
765.103 Transfer and assignment of Agency liens.
765.104—765.150 [Reserved]

Subpart D—Borrower Payments

765.151 Handling payments.
765.152 Types of payments.
765.153 Application of payments.
765.154 Distribution of payments.
765.155 Final loan payments.
765.156–765.200 [Reserved]

Subpart E—Protecting the Agency's Security Interest

765.201 General policy.
765.202 Borrower responsibilities.
765.203 Protective advances.
765.204 Notifying potential purchasers.
765.205 Subordination of liens.
765.206 Junior liens.
765.207 Conditions for severance agreements.
765.208–765.250 [Reserved]

Subpart F—Required Use and Operation of Agency Security

765.251 General.
765.252 Lease of security.
765.253 Ceasing to operate security.
765.254–765.300 [Reserved]

Subpart G—Disposal of Chattel Security

765.301 General.
765.302 Use and maintenance of the agreement for the use of proceeds.
765.303 Use of proceeds from chattel security.
765.304 Unapproved disposition.
765.305 Release of security interest.
765.306–765.350 [Reserved]

Subpart H—Partial Release of Real Estate Security

765.351 Requirements to obtain Agency consent.
765.352 Use of proceeds.
765.353 Determining market value.
765.354–765.400 [Reserved]

Subpart I—Transfer of Security and Assumption of Debt

765.401 Conditions for transfer of real estate and chattel security.
765.402 Transfer of security and loan assumption on same rates and terms.
765.403 Transfer of security to and assumption of debt by eligible applicants.
765.404 Transfer of security to and assumption of debt by ineligible applicants.
765.405 Payment of costs associated with transfers.
765.406 Release of transferor from liability.
765.407–765.450 [Reserved]

Subpart J—Deceased Borrowers

765.451 Continuation of FLP debt and transfer of security.
765.452 Borrowers with Non-program loans.
765.453–765.500 [Reserved]

Subpart K—Exception Authority

765.501 Agency exception authority.

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart A—Overview

§ 765.1 Introduction.

(a) *Purpose.* This part describes the policies for servicing direct FLP loans, except for borrowers who are delinquent, financially distressed, or otherwise in default on their loan.

(b) *Servicing actions.* Servicing actions described in this part include:

(1) Limited resource reviews;

(2) Graduation to commercial credit;

(3) Application of payments;

(4) Maintaining and disposing of security;

(5) Transfer of security and assumption of debt; and

(6) Servicing accounts of deceased borrowers.

(c) *Loans covered.* The Agency services direct FLP loans under the policies contained in this part. This part is not applicable to Non-program loans, except where noted.

§ 765.2 Abbreviations and definitions.

Abbreviations and definitions for terms used in this part are provided in § 761.2 of this chapter.

§§ 765.3–765.50 [Reserved]

Subpart B—Borrowers With Limited Resource Interest Rate Loans

§ 765.51 Annual review.

(a) A borrower with limited resource interest rate loans is required to provide the Agency annually the operation's financial information to determine if the borrower can afford to pay a higher interest rate on the loan. The Agency will review the information provided in accordance with § 761.105 of this chapter.

(b) If the borrower's farm operating plan shows that the debt service margin exceeds 110 percent, the Agency will increase the interest rate on the loans with a limited resource interest rate until:

(1) A further increase in the interest rate results in a debt service margin of less than 110 percent; or

(2) The interest rate is equal to the interest rate currently in effect for the type of loan.

(c) Except as provided in paragraph (d) of this section, the Agency will increase the limited resource interest rate to the current interest rate for the type of loan, if the borrower:

(1) Purchases items not planned during the term of the loan;

(2) Refuses to submit information the Agency requests for use in reviewing the borrower's financial condition;

(3) Ceases farming, as described in § 765.253; or

(4) Is ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718.

(d) If the borrower has limited resource interest rate loans that are deferred, the Agency will not change the interest rate during the deferral period.

§ 765.52–765.100 [Reserved]

Subpart C—Borrower Graduation

§ 765.101 Borrower graduation requirements.

(a) In accordance with the promissory note and security instruments, the borrower must graduate to another source of credit if the Agency determines that:

(1) The borrower has the ability to obtain credit from other sources; and

(2) Adequate credit is available from other sources at reasonable rates and terms.

(b) The Agency may require partial or full graduation.

(1) In a partial graduation, all FLP loans of one type (i.e. all chattel loans or all real estate loans) must be paid in full by refinancing with other credit with or without an Agency guarantee.

(2) In a full graduation, all FLP loans are paid in full by refinancing with other credit with or without an Agency guarantee.

(3) A loan made for chattel and real estate purposes will be categorized according to how the majority of the loan's funds are expended.

(c) The borrower must submit all information that the Agency requests in conjunction with the review of the borrower's financial condition.

(d) The Agency may provide a borrower's prospectus to lenders in an attempt to identify sources of non-Agency credit and assess the lenders' interest in refinancing the borrower's loan. The Agency will notify the borrower when the borrower's prospectus is provided to one or more lenders.

(e) If a lender expresses an interest in refinancing the borrower's FLP loan, the borrower must:

(1) Apply for a loan from the interested lender within 30 days of notice; or

(2) Seek guaranteed loan assistance under the market placement program in accordance with § 762.110(g) of this chapter.

(f) The borrower will be responsible for any application fees or purchase of stock in conjunction with graduation.

§ 765.102 Borrower noncompliance with graduation requirements.

Borrower failure to fulfill all graduation requirements within the time-period specified by the Agency constitutes default on the loan. The Agency will accelerate the borrower's loan without offering servicing options provided in 7 CFR part 766.

§ 765.103 Transfer and assignment of Agency liens.

The Agency may assign its lien to the new lender when the borrower is graduating and all FLP debt will be paid in full.

§§ 765.104–765.150 [Reserved]

Subpart D—Borrower Payments

§ 765.151 Handling payments.

(a) *Borrower payments.* Borrowers must submit their loan payments in a form acceptable to the Agency, such as checks, cash, and money orders. Forms of payment not acceptable to the Agency include, but are not limited to, foreign currency, foreign checks, and sight drafts.

(b) *Crediting account.* The Agency credits the borrower's account as of the date the Agency receives payment.

§ 765.152 Types of payments.

(a) *Regular payments.* Regular payments are derived from, but are not limited to:

(1) The sale of normal income security;

(2) The sale of farm products;

(3) Lease income, including mineral lease signing bonus;

(4) Program or disaster-related disbursements from USDA or crop insurance entities; and

(5) Non-farm income.

(b) *Extra payments.* Extra payments are derived from any of the following:

(1) Sale of chattel security other than normal income security;

(2) Sale of real estate security;

(3) Refinancing of FLP debt;

(4) Cash proceeds of insurance claims received on Agency security, if not being used to repair or replace the security;

(5) Any transaction that results in a loss in the value of any Agency basic security;

(6) Refunds of duplicate disaster program benefits to be applied on an EM loan; or

(7) Refunds of unused loan funds.

(c) *Payments from sale of real estate.* Notwithstanding any other provision of this section, payments derived from the sale of real estate security will be treated as regular payments at the Agency's discretion, if the FLP loans will be adequately secured after the transaction.

§ 765.153 Application of payments.

(a) *Regular payments.* A regular payment is credited to a scheduled installment on program and non-program loans. Regular payments are applied to loans in the following order:

(1) Annual operating loan;

(2) Delinquent FLP installments, paying least secured loans first;

(3) Non-delinquent FLP installments due in the current production cycle in order of security priority, paying least secured loans first;

(4) Any future installments due.

(b) *Extra payments.* An extra payment is not credited to a scheduled installment and does not relieve the borrower's responsibility to make scheduled loan installments, but will reduce the borrower's FLP indebtedness. Extra payments are applied to FLP loans in order of lien priority except for refunds of unused loan funds, which shall be applied to the loan for which the funds were advanced.

§ 765.154 Distribution of payments.

The Agency applies both regular and extra payments to each loan in the following order, as applicable:

(a) Recoverable costs and protective advances plus interest;

(b) Deferred non-capitalized interest;

(c) Accrued deferred interest;

(d) Interest accrued to date of payment; and

(e) Loan principal.

§ 765.155 Final loan payments.

(a) *General.* (1) Unless the Agency has reservations regarding the validity of the payment, the Agency may release the borrower's security instruments at the time payment is made, if the borrower makes a final payment by one of the following methods:

(i) Cash;

(ii) U.S. Treasury check;

(iii) Cashier's check; or

(iv) Certified check.

(2) Security instruments will only be released when all loans secured by the instruments have been paid in full or otherwise satisfied.

(3) The Agency will return the paid note and satisfied security instruments to the borrower after the Agency processes the final payment and determines that the total indebtedness is paid in full.

(b) *Borrower refunds.* If the borrower refunds the entire loan after the loan is closed, the borrower must pay interest from the date of the note to the date the Agency received the funds.

(c) *Overpayments.* If an Agency miscalculation of a final payment results in an overpayment by the borrower of less than $10, the borrower must request a refund from the Agency in writing. Overpayments of $10 or more automatically will be refunded by the Agency.

(d) *Underpayments.* If an Agency miscalculation of a final payment amount results in an underpayment, the Agency may collect all account balances

resulting from its error. If the Agency cannot collect an underpayment from the borrower, the Agency will attempt to settle the debt in accordance with subpart B of 7 CFR part 1956.

§§ 765.156–765.200 [Reserved]

Subpart E—Protecting the Agency's Security Interest

§ 765.201 General policy.

All Agency servicing actions regarding preservation and protection of Agency security will be consistent with the covenants and agreements contained in all loan agreements and security instruments.

§ 765.202 Borrower responsibilities.

The borrower must:

(a) Comply with all provisions of the loan agreements;

(1) Non-compliance with the provisions of loan agreements and documents, other than failure to meet scheduled loan repayment installments contained in the promissory note, constitutes non-monetary default on FLP loans by the borrower;

(2) Borrower non-compliance will be considered by the Agency when making eligibility determinations for future requests for assistance and may adversely impact such requests;

(b) Maintain, protect, and account for all security;

(c) Pay the following, unless State law requires the Agency to pay:

(1) Fees for executing, filing or recording financing statements, continuation statements or other security instruments; and

(2) The cost of lien search reports;

(d) Pay taxes on property securing FLP loans when they become due;

(e) Maintain insurance coverage in an amount specified by the Agency;

(f) Protect the interests of the Agency when a third party brings suit or takes other action that could affect Agency security.

§ 765.203 Protective advances.

When necessary to protect the Agency's security interest, costs incurred for the following actions will be charged to the borrower's account:

(a) Maintain abandoned security property;

(b) Preserve inadequately maintained security;

(c) Pay real estate taxes and assessments;

(d) Pay property, hazard, or flood insurance;

(e) Pay harvesting costs;

(f) Maintain Agency security instruments;

(g) Pay ground rents;

(h) Pay expenses for emergency measures to protect the Agency's collateral; and

(i) Protect the Agency from actions by third parties.

§ 765.204 Notifying potential purchasers.

(a) *States with Central Filing System (CFS).* The Agency participates and complies with central filing systems in States where CFS has been organized. In a State with a CFS, the Agency is not required to additionally notify potential purchasers that the Agency has a lien on a borrower's chattel security, unless specifically required by State law.

(b) *States without CFS.* In a State without CFS, the Agency follows the filing requirements specified for perfecting a lien on a borrower's chattel security under State law. The Agency will distribute the list of chattel and crop borrowers to sale barns, warehouses, and other businesses that buy or sell chattels or crops. In addition, the Agency may provide the list of borrowers to potential purchasers upon request.

§ 765.205 Subordination of liens.

(a) *Borrower application requirements.* The borrower must submit the following, unless it already exists in the Agency's file and is still current as determined by the Agency:

(1) Completed Agency application for subordination form;

(2) A current financial statement, including, in the case of an entity, financial statements from all entity members;

(3) Documentation of compliance with the Agency's environmental regulations contained in subpart G of 7 CFR part 1940;

(4) Verification of all non-farm income;

(5) The farm's operating plan, including a projected cash flow budget reflecting production, income, expenses, and debt repayment plan; and

(6) Verification of all debts.

(b) *Real estate security.* For loans secured by real estate, the Agency will approve a request for subordination if all of the following conditions are met:

(1) The borrower is not in default or will not be in default on FLP loans by the time the subordination closing is complete;

(2) The loan will be used for an authorized loan purpose or is made in conjunction with a guaranteed loan;

(3) The credit is essential to the farming operation, and the borrower cannot obtain the credit without a subordination;

(4) The borrower can demonstrate, through a current farm operating plan, the ability to repay all debt payments scheduled, and to be scheduled, during the production cycle;

(5) The FLP loan is still adequately secured after the subordination, or the value of the loan security will be increased by an amount at least equal to the advance to be made under the subordination;

(6) The borrower is not able to graduate;

(7) If the borrower is an entity and the Agency has taken real estate as additional security on property owned by a member, a subordination for any authorized loan purpose may be approved when it is needed for the entity member to finance a separate farming operation, provided the subordination does not cause the unpaid principal and interest on the FLP loans to exceed the value of loan security or otherwise adversely affect the security;

(8) The borrower must not be ineligible as a result of a conviction for controlled substances according to 7 CFR part 718 of this chapter;

(9) The borrower must not be ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718 of this chapter;

(10) The borrower will not use loan funds in a way that will contribute to erosion of highly erodible land or conversion of wetlands as described in subpart G of 7 CFR part 1940;

(11) There is no other subordination outstanding with another lender in connection with the same security;

(12) The subordination is limited to a specific amount; the loan made in conjunction with the subordination will be closed within a reasonable time and has a definite maturity date;

(13) In the case of real property purchase or exchange, the Agency will obtain a valid mortgage and the required lien position on the real property. The Agency will require title clearance and loan closing for the property in accordance with § 764.402 of this chapter;

(14) Any planned development of real estate security will be performed as directed by the creditor, approved by the Agency, and will comply with the terms and conditions of § 761.10 of this chapter;

(15) Subordinations of SAA mortgages may only be approved when there is no increase in the debt which is prior to the SAA debt; and

(16) If a borrower has only a Non-program loan, the Agency does not permit subordination. The Agency may subordinate Non-program security when it is also security for a program loan

with the same borrower in accordance with this section.

(c) *Chattel security.* (1) For loans secured by chattel, the subordination must meet the conditions contained in paragraphs (b)(1) through (12) of this section.

(2) The Agency will approve a request for a second subordination to enable a borrower to obtain crop insurance, if the following conditions are met:

(i) The creditor to whom the first subordination was given did not provide for payment of the current year's crop insurance premium, and consents in writing to the provisions of the second subordination to pay insurance premiums from the crop or insurance proceeds;

(ii) The borrower assigns the insurance proceeds to the Agency or names the Agency in the loss payable clause of the policy; and

(iii) The subordination meets the conditions under paragraphs (b)(1) through (12) of this section.

(d) *Appraisals.* An appraisal of the property that secures the FLP loan will be required when the Agency determines it necessary to protect its interest. Appraisals will be obtained in accordance with § 761.7 of this chapter.

§ 765.206 Junior liens.

(a) *General policy.* The borrower will not give a lien on Agency security without the consent of the Agency. Failure to obtain Agency consent will be considered by the Agency when making eligibility determinations for future requests for assistance and may adversely impact such requests.

(b) *Conditions for consent.* The Agency will consent to the terms of a junior lien if all of the following conditions are met:

(1) The borrower's ability to make scheduled loan payments is not jeopardized;

(2) The borrower provides the Agency a copy of the farm operating plan submitted to the junior lienholder, and the plan is consistent with the Agency operating plan;

(3) The total debt against the security does not exceed the security's market value;

(4) The junior lienholder agrees in writing not to foreclose the security instrument unless written notice is provided to the Agency;

(5) The borrower is unable to graduate; and

(6) The junior lien will not otherwise adversely impact the Agency's financial interests.

§ 765.207 Conditions for severance agreements.

For loans secured by real estate, a borrower may request Agency consent to a severance agreement or similar instrument so that future chattel acquired by the borrower will not become part of the real estate securing the FLP debt. The Agency will consent to severance agreements if all of the following conditions are met:

(a) The financing arrangements are in the financial interest of the Agency and the borrower;

(b) The transaction will not adversely affect the Agency's security position;

(c) The borrower is unable to graduate;

(d) The transaction will not jeopardize the borrower's ability to pay all outstanding debts to the Agency and other creditors; and

(e) The property acquired is consistent with authorized loan purposes.

§§ 765.208–765.250 [Reserved]

Subpart F—Required Use and Operation of Agency Security

§ 765.251 General.

(a) A borrower is required to be the operator of Agency security in accordance with loan purposes, loan agreements, and security instruments.

(b) A borrower who fails to operate the security without Agency consent is in violation of loan agreements and security instruments.

(c) The Agency will consider a borrower's request to lease or cease to operate the security as provided in §§ 765.252 and 765.253.

§ 765.252 Lease of security.

(a) *Real estate leases.* The borrower may lease real estate security provided the following conditions are met:

(1) The Agency approves the borrower's request;

(2) The term of consecutive leases does not exceed 3 years, or 5 years if the borrower and the lessee are related by blood or marriage;

(3) The lease does not contain an option to purchase; and

(4) The requirements of § 765.253 have been met.

(b) *Mineral leases.* The borrower must request Agency consent to lease any mineral rights used as security for FLP loans.

(1) For loans secured by real estate before December 23, 1985, the Agency has a security interest in any mineral rights the borrower has on the real estate pledged as collateral.

(2) For loans secured by real estate on or after December 23, 1985, the Agency has a security interest in any mineral rights if the mineral rights were included in an appraisal.

(3) The Agency may consent to a mineral lease if the proposed use of the leased rights will not adversely affect either:

(i) The Agency's security interest; or

(ii) Compliance with any applicable environmental requirements of subpart G of 7 CFR part 1940.

(c) *Lease of chattel security.* Lease of chattel security is not authorized.

(d) *Lease proceeds.* Lease proceeds are considered normal income security and may be used in accordance with § 765.303.

(e) *Lease of allotments.* (1) The Agency will not approve any crop allotment lease that will adversely affect its security interest in the allotment.

(2) The borrower must assign all rental proceeds from an allotment lease to the Agency.

§ 765.253 Ceasing to operate security.

If the borrower requests Agency consent to cease operating the security or if the Agency discovers that the borrower is failing to operate the security, the Agency will give consent if:

(a) Such action is in the Agency's best interests;

(b) The borrower is unable to graduate;

(c) The borrower is not ineligible as a result of disqualification for Federal crop insurance violation according to 7 CFR part 718;

(d) The borrower has leased the security according to § 765.252(a)(2); and

(e) Any one of the following conditions is met:

(1) The borrower is involved in the day-to-day operational activities, management decisions, costs and returns of the farming operation, and will continue to reside in the immediate farming community for reasonable management and operation involvement;

(2) The borrower's failure to operate the security is due to age or poor health, and the borrower continues to reside in the immediate farming community for reasonable management and operation involvement; or

(3) The borrower's failure to operate the security is beyond the borrower's control, and the borrower will resume the farming operation within 3 years.

§§ 765.254–765.300 [Reserved]

Subpart G—Disposal of Chattel Security

§ 765.301 General.

(a) The borrower must account for all security.

(b) The borrower may not dispose of chattel security for an amount less than its market value. All proceeds, including any amount in excess of the market value, must be distributed to lienholders for application to the borrower's account in the order of lien priority.

(1) The Agency considers the market value of normal income security to be the prevailing market price of the commodity in the area in which the farm is located.

(2) The market value for basic security is determined by an appraisal obtained in accordance with § 761.7 of this chapter.

(c) When the borrower sells chattel security, the property and proceeds remain subject to the Agency lien until the lien is released by the Agency.

(d) The Agency and all other lienholders must provide written consent before a borrower may use proceeds for a purpose other than payment of lienholders in the order of lien priority.

(e) The transaction must not interfere with the borrower's farming operation or jeopardize the borrower's ability to repay the FLP loan.

(f) The disposition must enhance the program objectives of the FLP loan.

(g) When the borrower exchanges security property for other property or purchases new property with sale proceeds, the acquisition must be essential to the farming operation as well as meet the program objectives, purposes, and limitations for the type of loan.

(h) All checks, drafts, or money orders which the borrower receives from the sale of Agency security must be payable to the borrower and the Agency. If all FLP loan installments and any past due installments, for the period of the agreement for the use of proceeds have been paid, however, these payments from the sale of normal income security may be payable solely to the borrower.

§ 765.302 Use and maintenance of the agreement for the use of proceeds.

(a) The borrower and the Agency will execute an agreement for the use of proceeds for each production cycle, including proceeds from the sale of milk, crops on hand or in storage, planned proceeds from Government payments, crop insurance and insurance proceeds derived from the loss of security.

(b) The agreement for the use of proceeds will remain in effect until the proper disposition of all listed chattel security has been accomplished, or the remaining chattel security has been transferred to a new agreement for the use of proceeds.

(c) The borrower must report any disposition of basic or normal income security immediately to the Agency.

(d) If a borrower wants to dispose of chattel security not listed or in a way different than provided on the agreement for the use of proceeds, the borrower must obtain the Agency's consent before the disposition.

(e) If the borrower sells security to a purchaser not listed in the agreement for the use of proceeds, the borrower must immediately notify the Agency of what property has been sold and of the name and business address of the purchaser.

(f) The borrower must provide the Agency with the necessary information to update the farm operating plan and the agreement for the use of proceeds in accordance with § 761.102 of this chapter.

(g) Changes to the agreement on the use of proceeds will be recorded, dated and initialed by the borrower and the Agency.

(h) The borrower must maintain records of dispositions of chattel security and the actual use of proceeds. The borrower must make these records available to the Agency at the end of the period covered by the agreement for the use of proceeds.

§ 765.303 Use of proceeds from chattel security.

(a) *General.* (1) Proceeds from the sale of basic security and normal income security must be remitted to lienholders in order of lien priority.

(2) Proceeds remitted to the Agency may be used as follows:

(i) Applied to the FLP loan;

(ii) Pay customary costs appropriate to the transaction.

(3) With the concurrence of all lienholders, proceeds may be used to preserve the security because of a natural disaster or other severe catastrophe, when funds cannot be obtained by other means in time to prevent the borrower and the Agency from suffering a substantial loss.

(4) Security may be consumed as follows:

(i) Livestock may be used by the borrower's family for subsistence;

(ii) If crops serve as security and usually would be marketed, the Agency may allow such crops to be fed to the borrower's livestock, if this is preferable to marketing, provided the Agency obtains a lien or assignment on the livestock, and livestock products, at least equal to the lien on the crops.

(b) *Proceeds from the sale of normal income security.* In addition to the uses specified in paragraph (a) of this section, the agreement for the use of proceeds will allow for release of proceeds from the sale of normal income security to be used to pay essential family living and farm operating expenses. Such releases will be terminated when an account is accelerated.

(c) *Proceeds from the sale of basic security.* In addition to the uses specified in paragraph (a) of this section:

(1) Proceeds from the sale of basic security may not be used for any family living and farm operating expenses.

(2) Security may be exchanged for chattel property better suited to the borrower's needs if the Agency will acquire a lien on the new property at least equal in value to the lien held on the property exchanged.

(3) Proceeds may be used to purchase chattel property better suited to the borrower's needs if the Agency will acquire a lien on the purchased property. The value of the purchased property, together with any proceeds applied to the FLP loan, must at least equal the value of the Agency lien on the old security.

§ 765.304 Unapproved disposition.

(a) If a borrower disposes of chattel security without Agency approval, or misuses proceeds, the borrower must:

(1) Make restitution to the Agency within 30 days of Agency notification; or

(2) Provide disposition or use information to enable the Agency to consider post-approval within 30 days of Agency notification.

(b) Failure to cure the first unauthorized disposition in accordance with paragraph (a) of this section, or a second unauthorized disposition, whether or not cured, constitutes a non-monetary default, will be considered by the Agency when making eligibility determinations for future requests for assistance, may adversely impact such requests, and may result in civil or criminal action.

§ 765.305 Release of security interest.

(a) When Agency security is sold, exchanged, or consumed in accordance with the agreement for the use of proceeds, the Agency will release its security interest to the extent of the value of the security disposed.

(b) Security interests on wool and mohair may be released when the

security is marketed by consignment, provided all of the following conditions are met:

(1) The borrower assigns to the Agency the proceeds of any advances made, or to be made, on the wool or mohair by the broker, less shipping, handling, processing, and marketing costs;

(2) The borrower assigns to the Agency the proceeds of the sale of the wool or mohair, less any remaining costs in shipping, handling, processing, and marketing, and less the amount of any advance (including any interest which may have accrued on the advance) made by the broker against the wool or mohair; and

(3) The borrower and broker agree that the net proceeds of any advances on, or sale of, the wool or mohair will be paid by checks made payable jointly to the borrower and the Agency.

§§ 765.306–765.350 [Reserved]

Subpart H—Partial Release of Real Estate Security

§ 765.351 Requirements to obtain Agency consent.

The borrower must obtain prior consent from the Agency for any transactions affecting the real estate security, including, but not limited to, sale or exchange of security, a right-of-way across security, and a partial release. The Agency may consent to such transactions provided the conditions in this section are met.

(a) *General.* The following conditions apply to all transactions affecting real estate:

(1) The transaction will enhance the objectives for which the FLP loan or loans were made;

(2) The transaction will not jeopardize the borrower's ability to repay the FLP loan, or is necessary to place the borrower's farming operation on a sound basis;

(3) The amount received for the security being disposed of or the rights being granted is not less than the market value;

(4) Any proceeds in excess of the market value are remitted to lienholders in the order of lien priority;

(5) The transaction must not interfere with the borrower's farming operation;

(6) The market value of the remaining security is adequate to secure the FLP loans, or if the market value of the security before the transaction was inadequate to fully secure the FLP loans, the Agency's equity in the security is not diminished;

(7) The environmental requirements of subpart G of 7 CFR part 1940 must be met;

(8) The borrower cannot graduate to other credit;

(9) The borrower must not be ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718; and

(10) The disposition of real estate security for an outstanding ST loan will only be authorized if the transaction will result in full repayment of the loan.

(b) *Sale of timber, gravel, oil, gas, coal, or other minerals.* (1) Agency security instruments require that the borrower request and receive written consent from the Agency prior to certain transactions, including, but not limited to, cutting, removal, or lease of timber, gravel, oil, gas, coal, or other minerals, except small amounts used by the borrower for ordinary household purposes.

(i) The sale of timber from real estate that secures an FLP loan will be considered a disposition of a portion of the security.

(ii) For loans secured by real estate before December 23, 1985, the Agency has a security interest in mineral products, gravel, oil, gas, coal, or other resources and the sale by unit or lump sum payment will be considered a disposition of security.

(iii) For loans secured by real estate on or after December 23, 1985, the Agency has a security interest in mineral products, gravel, oil, gas, coal, or other resources if the value of such products was included in an appraisal. When the Agency has a security interest, the sale of such products will be considered a disposition of a portion of the security.

(2) Any compensation the borrower may receive for damages to the surface of the real estate security resulting from exploration for, or recovery of, minerals must be assigned to the Agency. Such proceeds will be used to repair the damage, and any remaining funds must be remitted to lienholders in the order of lien priority or, with all lienholders' consent, used for an authorized loan purpose.

(c) *Exchange of security property.* (1) When an exchange of security results in a balance owing to the borrower, the proceeds must be used in accordance with § 765.352.

(2) Property acquired by the borrower must meet program objectives, purposes and limitations relating to the type of loan involved as well as applicable requirements for appraisal, title clearance and security.

(d) *Sale under contract for deed.* A borrower may sell a portion of the security for not less than its market value under a contract for deed subject to the following:

(1) Not less than 10 percent of the purchase price will be paid as a down payment and remitted to lienholders in the order of lien priority;

(2) Payments will not exceed 10 annual installments of principal plus interest or the remaining term of the FLP loan, whichever is less. The interest rate will be the current rate being charged on a regular FO loan plus 1 percent or the rate on the borrower's notes, whichever is greater. Payments may be in equal or unequal installments with a balloon final installment;

(3) The Agency's security rights, including the right to foreclose on either the portion being sold or retained, will not be impaired;

(4) Any subsequent payments must be assigned to the lienholders and remitted in order of lien priority, or with lienholder's approval, used in accordance with § 765.352;

(5) The mortgage on the property sold will not be released prior to either full payment of the borrower's account or receipt of the full amount of sale proceeds;

(6) The sale proceeds applied to the borrower's loan accounts will not relieve the borrower from obligations under the terms of the note or other agreements approved by the Agency;

(7) All other requirements of this section are met.

(e) *Transfer of allotments.* (1) The Agency will not approve any crop allotment lease that will adversely affect its security interest.

(2) The sale of an allotment must comply with all conditions of this subpart.

(3) The borrower may transfer crop allotments to another farm owned or controlled by the borrower. Such transfer will be treated as a lease under § 765.252.

§ 765.352 Use of proceeds.

(a) Proceeds from transactions affecting the real estate security may only be used as follows:

(1) Applied on liens in order of priority;

(2) To pay customary costs appropriate to the transaction, which meet the following conditions:

(i) Are reasonable in amount;

(ii) Cannot be paid by the borrower;

(iii) Will not be paid by the purchaser;

(iv) Must be paid to consummate the transaction; and

(v) May include postage and insurance when it is necessary for the Agency to present the promissory note to the recorder to obtain a release of a portion of the real estate from the mortgage.

(3) For development or enlargement of real estate owned by the borrower as follows:

(i) Development or enlargement must be necessary to improve the borrower's debt repayment ability, place the borrower's farming operation on a sound basis, or otherwise enhance the objectives of the loan;

(ii) Such use will not conflict with the loan purposes, restrictions or requirements of the type of loan involved;

(iii) Funds will be deposited in a supervised bank account in accordance with subpart B of part 761 of this chapter;

(iv) The Agency has, or will obtain, a lien on the real estate developed or enlarged;

(v) Construction and development will be completed in accordance with § 761.10 of this chapter.

(b) After acceleration, the Agency may approve transactions only when all the proceeds will be applied to the liens against the security in the order of their priority, after deducting customary costs appropriate to the transaction. Such approval will not cancel or delay liquidation, unless all loan defaults are otherwise cured.

§ 765.353 Determining market value.

(a) *Security proposed for disposition.* (1) The Agency will obtain an appraisal of the security proposed for disposition.

(2) The Agency may waive the appraisal requirement when the estimated value is less than $25,000.

(b) *Security remaining after disposition.* The Agency will obtain an appraisal of the remaining security if it determines that the transaction will reduce the value of the remaining security.

(c) *Appraisal requirements.* Appraisals, when required, will be conducted in accordance with § 761.7 of this chapter.

§§ 765.354–765.400 [Reserved]

Subpart I—Transfer of Security and Assumption of Debt

§ 765.401 Conditions for transfer of real estate and chattel security.

(a) *General conditions.* (1) Approval of a security transfer and corresponding loan assumption obligates a new borrower to repay an existing FLP debt.

(2) All transferees will become personally liable for the debt and assume the full responsibilities and obligations of the debt transferred when the transfer and assumption is complete. If the transferee is an entity, the entity and each member must assume personal liability for the loan.

(3) A transfer and assumption will only be approved if the Agency determines it is in the Agency's financial interest.

(b) *Agency consent.* A borrower must request and obtain written Agency consent prior to selling or transferring security to another party.

§ 765.402 Transfer of security and loan assumption on same rates and terms.

An eligible applicant may assume an FLP loan on the same rates and terms as the original note if:

(a) The original borrower has died and the spouse, other relative, or joint tenant who is not obligated on the note inherits the security property;

(b) A family member of the borrower or an entity comprised solely of family members of the borrower assumes the debt along with the original borrower;

(c) An individual with an ownership interest in the borrower entity buys the entire ownership interest of the other members and continues to operate the farm in accordance with loan requirements. The new owner must assume personal liability for the loan;

(d) A new entity buys the borrower entity and continues to operate the farm in accordance with loan requirements; or

(e) The original loan is an EM loan for physical or production losses and persons who were directly involved in the farm's operation at the time of the loss will assume the loan. If the original loan was made to:

(1) An individual borrower, the transferee must be a family member of the original borrower or an entity that is comprised solely of family members of the original borrower.

(2) A trust, partnership or joint operation, the transferee must have been a member, partner or joint operator when the Agency made the original loan or remain an entity comprised solely of people who were original members, partners or joint operators when the entity received the original loan.

(3) A corporation, including limited liability company, or cooperative, the transferee must:

(i) Have been a corporate stockholder or a cooperative member when the Agency made the original loan or will be an entity comprised solely of people who were corporate stockholders or cooperative members when the entity received the loan; and

(ii) Assume only the portion of the physical or production loss loan equal to the transferee's percentage of ownership. In the case of entity transferees, the transferee must assume that portion of the loan equal to the combined percentages of ownership of the individual stockholders or members in the transferee.

§ 765.403 Transfer of security to and assumption of debt by eligible applicants.

(a) *Transfer of real estate and chattel security.* The Agency may approve transfers of security with assumption of FLP debt, other than EM loans for physical or production losses, by transferees eligible for the type of loan being assumed if:

(1) The transferee meets all loan and security requirements in part 764 of this chapter for the type of loan being assumed; and

(2) The outstanding loan balance (principal and interest) does not exceed the maximum loan limit for the type of loan as contained in § 761.8 of this chapter.

(b) *Assumption of Non-program loans.* Applicants eligible for FO loans under part 764 of this chapter may assume Non-program loans made for real estate purposes if the Agency determines the property meets program requirements. In such case, the Agency will reclassify the Non-program loan as an FO loan.

(c) *Loan types that the Agency no longer makes.* Real estate loan types the Agency no longer makes (*i.e.* EE, RL, RHF) may be assumed and reclassified as FO loans if the transferee is eligible for an FO loan under part 764 of this chapter and the property proposed for transfer meets program requirements.

(d) *Amount of assumption.* The transferee must assume the lesser of:

(1) The outstanding balance of the transferor's loan; or

(2) The market value of the security, less prior liens and authorized costs, if the outstanding loan balance exceeds the market value of the property.

(e) *Rates and terms.* The interest rate and loan term will be determined according to rates and terms established in part 764 of this chapter for the type of loan being assumed.

§ 765.404 Transfer of security to and assumption of debt by ineligible applicants.

(a) *General.* (1) The Agency will allow the transfer of real estate and chattel security property to applicants who are ineligible for the type of loan being assumed only on Non-program loan rates and terms.

(2) The Agency will reclassify the assumed loan as a Non-program loan.

(b) *Eligibility.* Transferees must:

(1) Provide written documentation verifying their credit worthiness and debt repayment ability;

(2) Not have received debt forgiveness from the Agency;

(3) Not be ineligible for loans as a result of a conviction for controlled

substances according to 7 CFR part 718; and

(4) Not be ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718.

(c) *Assumption amount.* The transferee must assume the total outstanding FLP debt or if the value of the property is less than the entire amount of debt, an amount equal to the market value of the security less any prior liens. The total outstanding FLP debt will include any unpaid deferred interest that accrued on the loan to the extent that the debt does not exceed the security's market value.

(d) *Downpayment.* Non-program transferees must make a downpayment to the Agency of not less than 10 percent of the lesser of the market value or unpaid debt.

(e) *Interest rate.* The interest rate will be the Non-program interest rate in effect at the time of loan approval.

(f) *Loan terms.* (1) For a Non-program loan secured by real estate, the Agency schedules repayment in 25 years or less, based on the applicant's repayment ability.

(2) For a Non-program loan secured by chattel property only, the Agency schedules repayment in 5 years or less, based on the applicant's repayment ability.

§ 765.405 Payment of costs associated with transfers.

The transferor and transferee are responsible for paying transfer costs such as real estate taxes, title examination, attorney's fees, surveys, and title insurance. When the transferor is unable to pay its portion of the transfer costs, the transferee, with Agency approval, may pay these costs provided:

(a) Any cash equity due the transferor is applied first to payment of costs and the transferor does not receive any cash payment above these costs;

(b) The transferee's payoff of any junior liens does not exceed $5,000;

(c) Fees are customary and reasonable;

(d) The transferee can verify that personal funds are available to pay transferor and transferee fees; and

(e) Any equity due the transferor is held in escrow by an Agency designated closing agent and is disbursed at closing.

§ 765.406 Release of transferor from liability.

(a) *General.* Agency approval of an assumption does not automatically release the transferor from liability.

(b) *Requirements for release.* (1) The Agency may release the transferor from liability when all of the security is transferred and the total outstanding debt is assumed.

(2) If an outstanding debt balance will remain and only part of the transferor's Agency security is transferred, the written request for release of liability will not be approved, unless the deficiency is otherwise resolved to the Agency's satisfaction.

(3) If an outstanding balance will remain and all of the transferor's security has been transferred, the transferor may pay the remaining balance or request debt settlement in accordance with subpart B of 7 CFR part 1956.

(4) Except for loans in default being serviced under 7 CFR part 766, if an individual who is jointly liable for repayment of an FLP loan withdraws from the farming operation and conveys all of their interest in the security to the remaining borrower, the withdrawing party may be released from liability under the following conditions:

(i) A divorce decree or property settlement states that the withdrawing party is no longer responsible for repaying the loan;

(ii) All of the withdrawing party's interests in the security are conveyed to the persons with whom the loan will be continued; and

(iii) The persons with whom the loan will be continued can demonstrate the ability to repay all of the existing and proposed debt obligations.

§§ 765.407–765.450 [Reserved]

Subpart J—Deceased Borrowers

§ 765.451 Continuation of FLP debt and transfer of security.

(a) *Individuals who are liable.* Following the death of a borrower, the Agency will continue the loan with any individual who is liable for the indebtedness provided that the individual complies with the obligations of the loan and security instruments.

(b) *Individuals who are not liable.* The Agency will continue the loan with a person who is not liable for the indebtedness in accordance with subpart I of this part.

§ 765.452 Borrowers with Non-program loans.

(a) *Loan continuation.* (1) The Agency will continue the loan with a jointly liable borrower if the remaining borrower continues to pay the deceased borrower's loan in accordance with the loan and security instruments.

(2) The Agency may continue the loan with an individual who inherits title to the property and is not liable for the indebtedness provided the individual makes payments as scheduled and fulfills all other responsibilities of the borrower according to the loan and security instruments.

(b) *Loan assumption.* A deceased borrower's loan may be assumed by an individual not liable for the indebtedness in accordance with subpart I of this part.

(c) *Loan discontinuation.* (1) The Agency will not continue a loan for any subsequent transfer of title by the heirs, or sale of interests between heirs to consolidate title; and

(2) The Agency treats any subsequent transfer of title as a sale subject to requirements listed in subpart I of this part.

§§ 765.453–765.500 [Reserved]

Subpart K—Exception Authority

§ 765.501 Agency exception authority.

On an individual case basis, the Agency may consider granting an exception to any regulatory requirement or policy of this part if:

(a) The exception is not inconsistent with the authorizing statute or other applicable law; and

(b) The Agency's financial interest would be adversely affected by acting in accordance with published regulations or policies and granting the exception would resolve or eliminate the adverse effect upon the Agency's financial interest.

■ 25. Add part 766 to read as follows:

PART 766—DIRECT LOAN SERVICING—SPECIAL

Sec.

Subpart A—Overview

766.1 Introduction.
766.2 Abbreviations and definitions.
766.3–766.50 [Reserved]

Subpart B—Disaster Set-Aside

766.51 General.
766.52 Eligibility.
766.53 Disaster Set-Aside amount limitations.
766.54 Borrower application requirements.
766.55 Eligibility determination.
766.56 Security requirements.
766.57 Borrower acceptance of Disaster Set-Aside.
766.58 Installment to be set aside.
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766.60 Canceling a Disaster Set-Aside.
766.61 Reversal of a Disaster Set-Aside.
766.62–766.100 [Reserved]

Subpart C—Loan Servicing Programs

766.101 Initial Agency notification to borrower of loan servicing programs.
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766.106 Agency notification of decision regarding a complete application.
766.107 Consolidation and rescheduling.
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766.109 Deferral.
766.110 Conservation Contract.
766.111 Writedown.
766.112 Additional security for restructured loans.
766.113 Buyout of loan at current market value.
766.114 State-certified mediation and voluntary meeting of creditors.
766.115 Challenging the Agency appraisal.
766.116–766.150 [Reserved]
Appendix A to Subpart C of Part 766—FSA–2512, Notice of Availability of Loan Servicing to Borrowers Who Are Current, Financially Distressed, or Less Than 90 Days Past Due
Appendix B to Subpart C of Part 766—FSA–2510, Notice of Availability of Loan Servicing to Borrowers Who Are 90 Days Past Due
Appendix C to Subpart C of Part 766—FSA–2514, Notice of Availability of Loan Servicing to Borrowers in Non-Monetary Default

Subpart D—Homestead Protection Program

766.151 Applying for Homestead Protection.
766.152 Eligibility.
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Subpart E—Servicing Shared Appreciation Agreements and Net Recovery Buyout Agreements

766.201 Shared Appreciation Agreement.
766.202 Determining the shared appreciation due.
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766.207–766.250 [Reserved]

Subpart F—Unauthorized Assistance

766.251 Repayment of unauthorized assistance.
766.252 Unauthorized assistance resulting from submission of false information.
766.253 Unauthorized assistance resulting from submission of inaccurate information by borrower or Agency error.
766.254–766.300 [Reserved]

Subpart G—Loan Servicing For Borrowers in Bankruptcy

766.301 Notifying borrower in bankruptcy of loan servicing.
766.302 Loan servicing application requirements for borrowers in bankruptcy.
766.303 Processing loan servicing requests from borrowers in bankruptcy.
766.304–766.350 [Reserved]

Subpart H—Loan Liquidation

766.351 Liquidation.
766.352 Voluntary sale of real property and chattel.
766.353 Voluntary conveyance of real property.
766.354 Voluntary conveyance of chattel.
766.355 Acceleration of loans.
766.336 Acceleration of loans to American Indian borrowers.
766.357 Involuntary liquidation of real property and chattel.
766.358–766.400 [Reserved]

Subpart I—Exception Authority

766.401 Agency exception authority.

Authority: 5 U.S.C. 301 and 7 U.S.C. 1981d and 1989.

Subpart A—Overview

§ 766.1 Introduction.

(a) This part describes the Agency's servicing policies for direct loan borrowers who:

(1) Are financially distressed;

(2) Are delinquent in paying direct loans or otherwise in default;

(3) Have received unauthorized assistance;

(4) Have filed bankruptcy or are involved in other civil or criminal cases affecting the Agency; or

(5) Have loan security being liquidated voluntarily or involuntarily.

(b) The Agency services direct FLP loans under the policies contained in this part.

(1) Youth loans:

(i) May not receive Disaster Set-Aside under subpart B of this part;

(ii) Will only be considered for rescheduling according to § 766.107 and deferral according to § 766.109.

(2) The Agency does not service Non-program loans under this part except where noted.

(c) The Agency requires the borrower to make every reasonable attempt to make payments and comply with loan agreements before the Agency considers special servicing.

§ 766.2 Abbreviations and definitions.

Abbreviations and definitions for terms used in this part are provided in § 761.2 of this chapter.

§§ 766.3–766.50 [Reserved]

Subpart B—Disaster Set-Aside

§ 766.51 General.

(a) DSA is available to borrowers with program loans who suffered losses as a result of a natural disaster.

(b) DSA is not intended to circumvent other servicing available under this part.

(c) Non-program loans may be serviced under this subpart for borrowers who also have program loans.

§ 766.52 Eligibility.

(a) *Borrower eligibility*. The borrower must meet all of the following requirements to be eligible for a DSA:

(1) The borrower must have operated the farm in a county designated or declared a disaster area or a contiguous county at the time of the disaster. Farmers who have rented out their land base for cash are not operating the farm.

(2) The borrower must have acted in good faith, and the borrower's inability to make the upcoming scheduled loan payments must be for reasons not within the borrower's control.

(3) The borrower cannot have more than one installment set aside on each loan.

(4) As a direct result of the natural disaster, the borrower does not have sufficient income available to pay all family living and farm operating expenses, other creditors, and debts to the Agency. This determination will be based on:

(i) The borrower's actual production, income and expense records for the year the natural disaster occurred;

(ii) Any other records required by the Agency;

(iii) Compensation received for losses; and

(iv) Increased expenses incurred because of the natural disaster.

(5) For the next production cycle, the borrower must develop a feasible plan showing that the borrower will at least be able to pay all operating expenses and taxes due during the year, essential family living expenses, and meet scheduled payments on all debts, including FLP debts. The borrower must provide any documentation required to support the farm operating plan.

(6) The borrower must not be in non-monetary default.

(7) The borrower must not be ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718.

(8) The borrower must not become 165 days past due before the appropriate Agency DSA documents are executed.

(b) *Loan eligibility*. (1) Any FLP loan to be considered for DSA must have been outstanding at the time the natural disaster occurred.

(2) All of the borrower's program and non-program loans must be current after the Agency completes a DSA of the scheduled installment.

(3) All FLP loans must be current or less than 90 days past due at the time the application for DSA is complete.

(4) The Agency has not accelerated or applied any special servicing action under this part to the loan since the natural disaster occurred.

(5) For any loan that will receive a DSA, the remaining term of the loan

must equal or exceed 2 years from the due date of the installment set-aside.

(6) The loan must not have a DSA in place.

§ 766.53 Disaster Set-Aside amount limitations.

(a) The DSA amount is limited to the lesser of:

(1) The first or second scheduled annual installment on the FLP loans due after the disaster occurred; or

(2) The amount the borrower is unable to pay the Agency due to the disaster. Borrowers are required to pay any portion of an installment they are able to pay.

(b) The amount set aside will be the unpaid balance remaining on the installment at the time the DSA is complete. This amount will include the unpaid interest and any principal that would be credited to the account as if the installment were paid on the due date, taking into consideration any payments applied to principal and interest since the due date.

(c) Recoverable cost items may not be set aside.

§ 766.54 Borrower application requirements.

(a) *Requests for DSA.* (1) A borrower must submit a request for DSA in writing within eight months from the date the natural disaster was designated.

(2) All borrowers must sign the DSA request.

(b) *Required financial information.* (1) The borrower must submit actual production, income, and expense records for the production cycle in which the disaster occurred unless the Agency already has this information.

(2) The Agency may request other information needed to make an eligibility determination.

§ 766.55 Eligibility determination.

Within 30 days of a complete DSA application, the Agency will determine if the borrower meets the eligibility requirements for DSA.

§ 766.56 Security requirements.

If, prior to executing the appropriate DSA Agency documents, the borrower is not current on all FLP loans, the borrower must execute and provide to the Agency a best lien obtainable on all of their assets except those listed under § 766.112(b).

§ 766.57 Borrower acceptance of Disaster Set-Aside.

The borrower must execute the appropriate Agency documents within 45 days after the borrower receives notification of Agency approval of DSA.

§ 766.58 Installment to be set aside.

(a) The Agency will set-aside the first installment due immediately after the disaster occurred.

(b) If the borrower has already paid the installment due immediately after the disaster occurred, the Agency will set-aside the next annual installment.

§ 766.59 Payments toward set-aside installments.

(a) *Interest accrual.* (1) Interest will accrue on any principal portion of the set-aside installment at the same rate charged on the balance of the loan.

(2) If the borrower's set-aside installment is for a loan with a limited resource rate and the Agency modifies that limited resource rate, the interest rate on the set-aside portion will be modified concurrently.

(b) *Due date.* The amount set-aside, including interest accrued on the principal portion of the set-aside, is due on or before the final due date of the loan.

(c) *Applying payments.* The Agency will apply borrower payments toward set-aside installments first to interest and then to principal.

§ 766.60 Canceling a Disaster Set-Aside.

The Agency will cancel a DSA if:

(a) The Agency takes any primary loan servicing action on the loan;

(b) The borrower pays the current market value buyout in accordance with § 766.113; or

(c) The borrower pays the set-aside installment.

§ 766.61 Reversal of a Disaster Set-Aside.

If the Agency determines that the borrower received an unauthorized DSA, the Agency will reverse the DSA after all appeals are concluded.

§§ 766.62–766.100 [Reserved]

Subpart C—Loan Servicing Programs

§ 766.101 Initial Agency notification to borrower of loan servicing programs.

(a) *Borrowers notified.* The Agency will provide servicing information under this section to borrowers who:

(1) Have a current farm operating plan that demonstrates the borrower is financially distressed;

(2) Are 90 days or more past due on loan payments, even if the borrower has submitted an application for loan servicing as a financially distressed borrower;

(3) Are in non-monetary default on any loan agreements;

(4) Have filed bankruptcy;

(5) Request this information;

(6) Request voluntary conveyance of security;

(7) Have only delinquent SA; or

(8) Are subject to any other collection action, except when such action is a result of failure to graduate. Borrowers who fail to graduate when required and are able to do so, will be accelerated without providing notification of loan servicing options.

(b) *Form of notification.* The Agency will notify borrowers of the availability of primary loan servicing programs, conservation contract, current market value buyout, debt settlement programs, and homestead protection as follows:

(1) A borrower who is financially distressed, or current and requesting servicing will be provided FSA–2512 (Appendix A to this subpart);

(2) A borrower who is 90 days past due will be sent FSA–2510 (Appendix B to this subpart);

(3) A borrower who is in non-monetary or both monetary and non-monetary default will receive FSA–2514 (Appendix C to this subpart);

(4) A borrower who has only delinquent SA will be notified of available loan servicing;

(5) Notification to a borrower who files bankruptcy will be provided in accordance with subpart G of this part.

(c) *Mailing.* Notices to delinquent borrowers or borrowers in non-monetary default will be sent by certified mail to the last known address of the borrower. If the certified mail is not accepted, the notice will be sent immediately by first class mail to the last known address. The appropriate response time will begin three days following the date of the first class mailing. For all other borrowers requesting the notices, the notices will be sent by regular mail or hand-delivered.

(d) *Borrower response timeframes.* To be considered for loan servicing, a borrower who is:

(1) Current or financially distressed may submit a complete application any time prior to becoming 90 days past due;

(2) Ninety (90) days past due must submit a complete application within 60 days from receipt of FSA–2510;

(3) In non-monetary default with or without monetary default must submit a complete application within 60 days from receipt of FSA–2514.

§ 766.102 Borrower application requirements.

(a) Except as provided in paragraph (e) of this section, an application for primary loan servicing, conservation contract, current market value buyout, homestead protection, or some combination of these options, must include the following to be considered complete:

(1) Completed acknowledgment form provided with the Agency notification and signed by all borrowers;

(2) Completed Agency application form;

(3) Financial records for the 3 most recent years, including income tax returns;

(4) The farming operation's production records for the 3 most recent years or the years the borrower has been farming, whichever is less;

(5) Documentation of compliance with the Agency's environmental regulations contained in subpart G of 7 CFR part 1940;

(6) Verification of all non-farm income;

(7) A current financial statement and the operation's farm operating plan, including the projected cash flow budget reflecting production, income, expenses, and debt repayment plan. In the case of an entity, the entity and all entity members must provide current financial statements; and

(8) Verification of all debts and collateral.

(b) In addition to the requirements contained in paragraph (a) of this section, the borrower must submit an aerial photo delineating any land to be considered for a conservation contract.

(c) To be considered for debt settlement, the borrower must provide the appropriate Agency form, and any additional information required under subpart B of 7 CFR part 1956.

(d) If a borrower who submitted a complete application while current or financially distressed is renotified as a result of becoming 90 days past due, the borrower must only submit a request for servicing in accordance with paragraph (a)(1) of this section, provided all other information is less than 90 days old and is based on the current production cycle. Any information 90 or more days old or not based on the current production cycle must be updated.

(e) The borrower need not submit any information under this section that already exists in the Agency's file and is still current as determined by the Agency.

(f) When jointly liable borrowers have been divorced and one has withdrawn from the farming operation, the Agency may release the withdrawing individual from liability, provided:

(1) The remaining individual submits a complete application in accordance with this section;

(2) Both parties have agreed in a divorce decree or property settlement that only the remaining individual will be responsible for all FLP loan payments;

(3) The withdrawing individual has conveyed all ownership interest in the security to the remaining individual; and

(4) The withdrawing individual does not have repayment ability and does not own any non-essential assets.

§ 766.103 Borrower does not respond or does not submit a complete application.

(a) If a borrower, who is financially distressed or current, requested loan servicing and received FSA–2512, but fails to respond timely and subsequently becomes 90 days past due, the Agency will notify the borrower in accordance with § 766.101(a)(2).

(b) If a borrower who is 90 days past due and received FSA–2510, or is in non-monetary, or both monetary and non-monetary default and received FSA–2514, and fails to timely respond or does not submit a complete application within the 60-day timeframe, the Agency will notify the borrower by certified mail of the following:

(1) The Agency's intent to accelerate the loan; and

(2) The borrower's right to request reconsideration, mediation and appeal in accordance with 7 CFR parts 11 and 780.

§ 766.104 Borrower eligibility requirements.

(a) A borrower must meet the following eligibility requirements to be considered for primary loan servicing:

(1) The delinquency or financial distress is the result of reduced repayment ability due to one of the following circumstances beyond the borrower's control:

(i) Illness, injury, or death of a borrower or other individual who operates the farm;

(ii) Natural disaster, adverse weather, disease, or insect damage which caused severe loss of agricultural production;

(iii) Widespread economic conditions such as low commodity prices;

(iv) Damage or destruction of property essential to the farming operation; or

(v) Loss of, or reduction in, the borrower or spouse's essential non-farm income.

(2) The borrower does not have non-essential assets for which the net recovery value is sufficient to resolve the financial distress or pay the delinquent portion of the loan.

(3) If the borrower is in non-monetary default, the borrower will resolve the non-monetary default prior to closing the servicing action.

(4) The borrower has acted in good faith.

(5) Financially distressed or current borrowers requesting servicing must pay a portion of the interest due on the loans.

(6) The borrower must not be ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718.

(b) Debtors with SA only must:

(1) Be delinquent due to circumstances beyond their control;

(2) Have acted in good faith.

§ 766.105 Agency consideration of servicing requests.

(a) *Order in which Agency considers servicing options.* The Agency will consider loan servicing options and combinations of options to maximize loan repayment and minimize losses to the Agency. The Agency will consider loan servicing options in the following order for each eligible borrower who requests servicing:

(1) Conservation Contract, if requested;

(2) Consolidation and rescheduling or reamortization;

(3) Deferral;

(4) Writedown; and

(5) Current market value buyout.

(b) *Debt service margin.* (1) The Agency will attempt to achieve a 110 percent debt service margin for the servicing options listed in paragraphs (a)(2) through (4) of this section.

(2) If the borrower cannot develop a feasible plan with the 110 percent debt service margin, the Agency will reduce the debt service margin by one percent and reconsider all available servicing authorities. This process will be repeated until a feasible plan has been developed or it has been determined that a feasible plan is not possible with a 100 percent margin.

(3) The borrower must be able to develop a feasible plan with at least a 100 percent debt service margin to be considered for the servicing options listed in paragraphs (a)(1) through (4) of this section.

(c) *Appraisal of borrower's assets.* The Agency will obtain an appraisal on:

(1) All Agency security, non-essential assets, and real property unencumbered by the Agency that does not meet the criteria established in § 766.112(b), when:

(i) A writedown is required to develop a feasible plan;

(ii) The borrower will be offered current market value buyout.

(2) The borrower's non-essential assets when their net recovery value may be adequate to bring the delinquent loans current.

§ 766.106 Agency notification of decision regarding a complete application.

The Agency will send the borrower notification of the Agency's decision

within 60 calendar days after receiving a complete application for loan servicing.

(a) *Notification to financially distressed or current borrowers.* (1) If the borrower can develop a feasible plan and is eligible for primary loan servicing, the Agency will offer to service the account.

(i) The borrower will have 45 days to accept the offer of servicing. After accepting the Agency's offer, the borrower must execute loan agreements and security instruments, as appropriate.

(ii) If the borrower does not accept the offer, the Agency will send the borrower another notification of the availability of loan servicing if the borrower becomes 90 days past due in accordance with § 766.101(a)(2).

(2) If the borrower cannot develop a feasible plan, or is not eligible for loan servicing, the Agency will send the borrower the calculations used and the reasons for the adverse decision.

(i) The borrower may request reconsideration, mediation and appeal in accordance with 7 CFR parts 11 and 780 of this title.

(ii) The Agency will send the borrower another notification of the availability of loan servicing if the borrower becomes 90 days past due in accordance with § 766.101(a)(2).

(b) *Notification to borrowers 90 days past due or in non-monetary default.* (1) If the borrower can develop a feasible plan and is eligible for primary loan servicing, the Agency will offer to service the account.

(i) The borrower will have 45 days to accept the offer of servicing. After accepting the Agency's offer, the borrower must execute loan agreements and security instruments, as appropriate.

(ii) If the borrower does not timely accept the offer, or fails to respond, the Agency will notify the borrower of its intent to accelerate the account.

(2) If the borrower cannot develop a feasible plan, or is not eligible for loan servicing, the Agency will send the borrower notification within 15 days, including the calculations used and reasons for the adverse decision, of its intent to accelerate the account in accordance with subpart H of this part, unless the account is resolved through any of the following options:

(i) The borrower may request reconsideration, mediation or voluntary meeting of creditors, or appeal in accordance with 7 CFR parts 11 and 780.

(ii) The borrower may request negotiation of appraisal within 30 days in accordance with § 766.115.

(iii) If the net recovery value of non-essential assets is sufficient to pay the account current, the borrower has 90 days to pay the account current.

(iv) The borrower, if eligible in accordance with § 766.113, may buy out the loans at the current market value within 90 days.

(v) The borrower may request homestead protection if the borrower's primary residence was pledged as security by providing the information required under § 766.151.

§ 766.107 Consolidation and rescheduling.

(a) *Loans eligible for consolidation.* The Agency may consolidate OL loans if:

(1) The borrower meets the loan servicing eligibility requirements in § 766.104;

(2) The Agency determines that consolidation will assist the borrower to repay the loans;

(3) Consolidating the loans will bring the borrower's account current or prevent the borrower from becoming delinquent;

(4) The Agency has not referred the borrower's account to OGC or the U.S. Attorney, and the Agency does not plan to refer the account to either of these two offices in the near future;

(5) The borrower is in compliance with the Highly Erodible Land and Wetland Conservation requirements of 7 CFR part 12, if applicable;

(6) The loans are not secured by real estate;

(7) The Agency holds the same lien position on each loan;

(8) The Agency has not serviced the loans for unauthorized assistance under subpart F of this part; and

(9) The loan is not currently deferred, as described in § 766.109, or set-aside, as described in subpart B of this part. The Agency may consolidate loans upon cancellation of the deferral or DSA.

(b) *Loans eligible for rescheduling.* The Agency may reschedule loans made for chattel purposes, including OL, SW, RL, EE, or EM if:

(1) The borrower meets the loan servicing eligibility requirements in § 766.104;

(2) Rescheduling the loans will bring the borrower's account current or prevent the borrower from becoming delinquent;

(3) The Agency determines that rescheduling will assist the borrower to repay the loans;

(4) The Agency has not referred the borrower's account to OGC or the U.S. Attorney, and the Agency does not plan to refer the account to either of these two offices in the near future;

(5) The borrower is in compliance with the Highly Erodible Land and Wetland Conservation requirements of 7 CFR part 12, if applicable; and

(6) The loan is not currently deferred, as described in § 766.109, or set-aside, as described in subpart B of this part. The Agency may reschedule loans upon cancellation of the deferral or DSA.

(c) *Consolidated and rescheduled loan terms.* (1) The Agency determines the repayment schedule for consolidated and rescheduled loans according to the borrower's repayment ability.

(2) The repayment period cannot exceed 15 years from the date of the consolidation and rescheduling, except that the repayment schedule for RL loans may not exceed 7 years from the date of rescheduling.

(d) *Consolidated and rescheduled loan interest rate.* The interest rate of consolidated and rescheduled loans will be as follows:

(1) The interest rate for loans made at the regular interest rate will be the lesser of:

(i) The interest rate for that type of loan on the date a complete servicing application was received;

(ii) The interest rate for that type of loan on the date of restructure; or

(iii) The lowest original loan note rate on any of the original notes being consolidated and rescheduled.

(2) The interest rate for loans made at the limited resource interest rate will be the lesser of:

(i) The limited resource interest rate for that type of loan on the date a complete servicing application was received;

(ii) The limited resource interest rate for that type of loan on the date of restructure; or

(iii) The lowest original loan note rate on any of the original notes being consolidated and rescheduled.

(3) At the time of consolidation and rescheduling, the Agency may reduce the interest rate to a limited resource rate, if available, if:

(i) The borrower meets the requirements for the limited resource interest rate; and

(ii) A feasible plan cannot be developed at the regular interest rate and maximum terms permitted in this section.

(4) Loans consolidated and rescheduled at the limited resource interest rate will be subject to annual limited resource review in accordance with § 765.51 of this chapter.

(e) *Capitalizing accrued interest and adding protective advances to the loan principal.* (1) The Agency capitalizes the amount of outstanding accrued interest on the loan at the time of consolidation and rescheduling.

(2) The Agency adds protective advances for the payment of real estate taxes to the principal balance at the time of consolidation and rescheduling.

(3) The borrower must resolve all other protective advances not capitalized prior to closing the servicing actions.

(f) *Installments.* If there are no deferred installments, the first installment payment under the consolidation and rescheduling will be at least equal to the interest amount which will accrue on the new principal between the date the promissory note is executed and the next installment due date.

§ 766.108 Reamortization.

(a) *Loans eligible for reamortization.* The Agency may reamortize loans made for real estate purposes, including FO, SW, RL, SA, EE, RHF, and EM if:

(1) The borrower meets the loan servicing eligibility requirements in § 766.104;

(2) Reamortization will bring the borrower's account current or prevent the borrower from becoming delinquent;

(3) The Agency determines that reamortization will assist the borrower to repay the loan;

(4) The Agency has not referred the borrower's account to OGC or the U.S. Attorney, and the Agency does not plan to refer the account to either of these two offices in the near future;

(5) The borrower is in compliance with the Highly Erodible Land and Wetland Conservation requirements of 7 CFR part 12, if applicable; and

(6) The loan is not currently deferred, as described in § 766.109, or set-aside, as described in subpart B of this part. The Agency may reamortize loans upon cancellation of the deferral or DSA.

(b) *Reamortized loan terms.* (1) Except as provided in paragraph (b)(2), the Agency will reamortize loans within the remaining term of the original loan or assumption agreement unless a feasible plan cannot be developed or debt forgiveness will be required to develop a feasible plan.

(2) If the Agency extends the loan term, the repayment period from the original loan date may not exceed the maximum number of years for the type of loan being reamortized in paragraphs (2)(i) through (iv), or the useful life of the security, whichever is less.

(i) FO, SW, RL, EE real estate-type, and EM loans made for real estate purposes may not exceed 40 years from the date of the original note or assumption agreement.

(ii) EE real estate-type loans secured by chattels only may not exceed 20 years from the date of the original note or assumption agreement.

(iii) RHF loans may not exceed 33 years from the date of the original note or assumption agreement.

(iv) SA loans may not exceed 25 years from the date of the original Shared Appreciation note.

(c) *Reamortized loan interest rate.* The interest rate will be as follows:

(1) The interest rate for loans made at the regular interest rate will be the lesser of:

(i) The interest rate for that type of loan on the date a complete servicing application was received;

(ii) The interest rate for that type of loan on the date of restructure; or

(iii) The original loan note rate of the note being reamortized.

(2) The interest rate for loans made at the limited resource interest rate will be the lesser of:

(i) The limited resource interest rate for that type of loan on the date a complete servicing application was received;

(ii) The limited resource interest rate for that type of loan on the date of restructure; or

(iii) The original loan note rate of the note being reamortized.

(3) At the time of reamortization, the Agency may reduce the interest rate to a limited resource rate, if available, if:

(i) The borrower meets the requirements for the limited resource interest rate; and

(ii) A feasible plan cannot be developed at the regular interest rate and maximum terms permitted in this section.

(4) Loans reamortized at the limited resource interest rate will be subject to annual limited resource review in accordance with § 765.51 of this chapter.

(5) SA payment agreements will be reamortized at the current SA amortization rate in effect on the date of approval or the rate on the original payment agreement, whichever is less.

(d) *Capitalizing accrued interest and adding protective advances to the loan principal.* (1) The Agency capitalizes the amount of outstanding accrued interest on the loan at the time of reamortization.

(2) The Agency adds protective advances for the payment of real estate taxes to the principal balance at the time of reamortization.

(3) The borrower must resolve all other protective advances not capitalized prior to closing the reamortization.

(e) *Installments.* If there are no deferred installments, the first installment payment under the reamortization will be at least equal to the interest amount which will accrue on the new principal between the date the promissory note is executed and the next installment due date.

§ 766.109 Deferral.

(a) *Conditions for approving deferrals.* The Agency will only consider deferral of loan payments if:

(1) The borrower meets the loan servicing eligibility requirements in § 766.104;

(2) Rescheduling, consolidation, and reamortization of all the borrower's loans, will not result in a feasible plan with 110 percent debt service margin;

(3) The need for deferral is temporary; and

(4) The borrower develops feasible first-year deferral and post-deferral farm operating plans subject to the following:

(i) The deferral will not create excessive net cash reserves beyond that necessary to develop a feasible plan.

(ii) The Agency will consider a partial deferral if deferral of the total Agency payment would result in the borrower developing more cash availability than necessary to meet debt repayment obligations.

(b) *Deferral period.* (1) The deferral term will not exceed 5 years and will be determined based on the post-deferral plan that results in the:

(i) Greatest improvement over the first year cash available to service FLP debt;

(ii) The shortest possible deferral period.

(2) The Agency will distribute interest accrued on the deferred principal portion of the loan equally to payments over the remaining loan term after the deferral period ends.

(c) *Agency actions when borrower's repayment ability improves.* (1) If during the deferral period the borrower's repayment ability has increased to allow the borrower to make payments on the deferred loans, the borrower must make supplemental payments, as determined by the Agency. If the borrower agrees to make supplemental payments, but does not do so, the borrower will be considered to be in non-monetary default.

(2) If the Agency determines that the borrower's improved repayment ability will allow graduation, the Agency will require the borrower to graduate in accordance with part 765, subpart C of this chapter.

(d) *Associated loan servicing.* (1) The Agency must cancel an existing deferral if the Agency approves any new primary loan servicing action.

(2) Loans deferred will also be serviced in accordance with §§ 766.107, 766.108 and 766.111, as appropriate.

§ 766.110 Conservation Contract.

(a) *General.* (1) A debtor with only SA or Non-program loans is not eligible for a Conservation Contract. However, an SA or Non-program loan may be considered for a Conservation Contract if the borrower also has program loans.

(2) A current or financially distressed borrower may request a Conservation Contract at any time prior to becoming 90 days past due.

(3) A delinquent borrower may request a Conservation Contract during the same 60-day time period in which the borrower may apply for primary loan servicing. The borrower eligibility requirements in § 766.104 will apply.

(4) A Conservation Contract may be established for conservation, recreation, and wildlife purposes.

(5) The land under a Conservation Contract cannot be used for the production of agricultural commodities during the term of the contract.

(6) Only loans secured by the real estate that will be subject to the easement, may be considered for a Conservation Contract.

(b) *Eligible lands.* The following types of lands are eligible to be considered for a Conservation Contract by the Conservation Contract review team:

(1) Wetlands or highly erodible lands; and

(2) Uplands that meet any one of the following criteria:

(i) Land containing aquatic life, endangered species, or wildlife habitat of local, State, tribal, or national importance;

(ii) Land in 100-year floodplains;

(iii) Areas of high water quality or scenic value;

(iv) Historic or cultural properties listed in or eligible for the National Register of Historic Places;

(v) Aquifer recharge areas of local, regional, State, or tribal importance;

(vi) Buffer areas necessary for the adequate protection of proposed Conservation Contract areas;

(vii) Areas that contain soils generally not suited for cultivation; or

(viii) Areas within or adjacent to Federal, State, tribal, or locally administered conservation areas.

(c) *Unsuitable acreage.* Acreage is unsuitable for Conservation Contract if:

(1) It is not suited or eligible for the program due to legal restrictions;

(2) It has on-site or off-site conditions that prohibit the use of the land for conservation, wildlife, or recreational purposes; or

(3) The Conservation Contract review team determines that the land is not suitable for conservation, wildlife, or recreational purposes.

(d) *Conservation Contract terms.* The borrower selects the term of the contract, which may be 10, 30, or 50 years.

(e) *Conservation management plan.* The Agency, through the recommendations of the Conservation Contract review team, is responsible for approving the conservation management plan.

(f) *Management authority.* The Agency has enforcement authority over the Conservation Contract. The Agency, however, may delegate contract management to another entity if doing so is in the Agency's interest.

(g) *Limitations.* The Conservation Contract must meet the following conditions:

(1) Result in a feasible plan for current borrowers; or

(2) Result in a feasible plan with or without primary loan servicing for financially distressed or delinquent borrowers; and

(3) Improve the borrower's ability to repay the remaining balance of the loan.

(h) *Maximum debt reduction for a financially distressed or current borrower.* The amount of debt reduction by a Conservation Contract is calculated as follows:

(1) Divide the contract acres by the total acres that secure the borrower's FLP loans to determine the contract acres percentage.

$$\frac{\text{Contract acres}}{\text{divided by}}\ \frac{\text{Total acres}}{=}\ \frac{\text{Percent of contract acres to total acres}}{}$$

(2) Multiply the borrower's total unpaid FLP loan balance (principal, interest, and recoverable costs already paid by the Agency) by the percentage calculated under paragraph (h)(1) of this section to determine the amount of FLP debt that is secured by the contract acreage.

$$\frac{\text{Total FLP debt}}{\times}\ \frac{\text{Percent calculated under (h)(1)}}{=}\ \frac{\text{FLP debt secured by contract acres}}{}$$

(3) Multiply the borrower's total unpaid FLP loan balance (principal, interest, and recoverable costs already paid by the Agency) by 33 percent.

$$\frac{\text{Total FLP debt}}{\times 33\% =}\ \frac{\quad}{}$$

(4) The lesser of the amounts calculated in paragraphs (h)(2) and (h)(3) of this section is the maximum amount of debt reduction for a 50-year contract.

(5) The borrower will receive 60 percent of the amount calculated in paragraph (h)(4) of this section for a 30-year contract.

$$\text{Result from (h)(4)} \times 60\% = \text{Maximum debt reduction for a 30-year contract}$$

(6) The borrower will receive 20 percent of the amount calculated in paragraph (h)(4) of this section for a 10-year contract.

$$\text{Result from (h)(4)} \times 20\% = \text{Maximum debt reduction for a 10-year contract}$$

(i) *Maximum debt reduction for a delinquent borrower.* The amount of debt reduction by a Conservation Contract is calculated as follows:

(1) Divide the contract acres by the total acres that secure the borrower's FLP loans to determine the contract acres percentage.

$$\text{Contract acres} \text{ divided by } \text{Total acres} = \text{Percent of contract acres to total acres}$$

(2) Multiply the borrower's total unpaid FLP loan balance (principal, interest, and recoverable costs already paid by the Agency) by the percentage calculated in paragraph (i)(1) of this section to determine the amount of FLP debt that is secured by the contract acreage.

$$\text{Total FLP debt} \times \text{Percent calculated in (i)(1)} = \text{FLP debt secured by contract acres}$$

(3) Multiply the market value of the total acres, less contributory value of any structural improvements, that secure the borrower's FLP loans by the percent calculated in paragraph (i)(1) of this section to determine the current value of the acres in the contract.

$$\text{Market value of total acres less contributory value of structural improvements} \times \text{Percent calculated in (i)(1)} = \text{Market value of acres in the contract}$$

(4) Subtract the market value of the contract acres calculated in paragraph (i)(3) of this section from the FLP debt secured by the contract acres as calculated in paragraph (i)(2) of this section.

$$\text{Result from (i)(2)} - \text{Result from (i)(3)} = \text{Difference}$$

(5) Select the greater of the amounts calculated in either paragraphs (i)(3) and (i)(4) of this section.

(6) The lesser of the amounts calculated in paragraphs (i)(2) and (i)(5) of this section will be the maximum amount of debt reduction for a 50-year contract term.

(7) The borrower will receive 60 percent of the amount calculated in paragraph (i)(6) of this section for a 30-year contract term.

$$\text{Result from (i)(6)} \times 60\% = \text{Maximum debt cancellation for a 30-year term}$$

(8) The borrower will receive 20 percent of the amount calculated in paragraph (i)(6) of this section for a 10-year contract term.

$$\frac{\text{Result from (i)(6)}}{} \times 20\% = \frac{\text{Maximum debt cancellation for a 10-year term}}{}$$

(j) *Conservation Contract Agreement.* The borrower must sign the Conservation Contract Agreement establishing the contract's terms and conditions.

(k) *Transferring title to land under Conservation Contract.* If the borrower or any subsequent landowner transfers title to the property, the Conservation Contract will remain in effect for the duration of the contract term.

(l) *Borrower appeals of technical decisions.* Borrower appeals of the Natural Resources Conservation Service's (NRCS) technical decisions made in connection with a Conservation Contract, will be handled in accordance with applicable NRCS regulations. Other aspects of the denial of a conservation contract may be appealed in accordance with 7 CFR parts 11 and 780.

§ 766.111 Writedown.

(a) *Eligibility.* The Agency will only consider a writedown if the borrower:

(1) Meets the eligibility criteria in § 766.104;

(2) Is delinquent;

(3) Has not previously received debt forgiveness on any FLP direct loan; and

(4) Complies with the Highly Erodible Land and Wetland Conservation requirements of 7 CFR part 12.

(b) *Conditions.* (1) Rescheduling, consolidation, reamortization, deferral or some combination of these options on all of the borrower's loans would not result in a feasible plan with a 110 percent debt service margin. If a feasible plan, including writedown is achieved with a debt service margin of 101 percent or more, the Agency will determine if a feasible plan can be achieved without a writedown. If a feasible plan is achieved with and without a writedown and the borrower meets all the eligibility requirements, both options will be offered and the borrower may choose one option.

(2) The present value of the restructured loan must be greater than or equal to the net recovery value of Agency security and any non-essential assets.

(3) The writedown amount, excluding debt reduction received through Conservation Contract, does not exceed $300,000.

(4) A borrower who owns real estate must execute an SAA in accordance with § 766.201.

(c) *Associated loan servicing.* Loans written down will also be serviced in accordance with §§ 766.107 and 766.108, as appropriate.

§ 766.112 Additional security for restructured loans.

(a) If the borrower is delinquent prior to restructuring, the borrower, and all entity members in the case of an entity, must execute and provide to the Agency a lien on all of their assets, except as provided in paragraph (b) of this section, when the Agency is servicing a loan.

(b) The Agency will take the best lien obtainable on all assets the borrower owns, except:

(1) When taking a lien on such property will prevent the borrower from obtaining credit from other sources;

(2) When the property could have significant environmental problems or costs as described in subpart G of 7 CFR part 1940;

(3) When the Agency cannot obtain a valid lien;

(4) When the property is subsistence livestock, cash, special collateral accounts the borrower uses for the farming operation, retirement accounts, personal vehicles necessary for family living, household contents, or small equipment such as hand tools and lawn mowers; or

(5) When a contractor holds title to a livestock or crop enterprise, or the borrower manages the enterprise under a share lease or share agreement.

§ 766.113 Buyout of loan at current market value.

(a) *Borrower eligibility.* A delinquent borrower may buy out the borrower's FLP loans at the current market value of the loan security, including security not in the borrower's possession, and all non-essential assets if:

(1) The borrower has not previously received debt forgiveness on any other FLP direct loan;

(2) The borrower has acted in good faith;

(3) The borrower does not have non-essential assets for which the net recovery value is sufficient to pay the account current;

(4) The borrower is unable to develop a feasible plan through primary loan servicing programs or a Conservation Contract, if requested;

(5) The present value of the restructured loans is less than the net recovery value of Agency security;

(6) The borrower pays the amount required in a lump sum without guaranteed or direct credit from the Agency; and

(7) The amount of debt forgiveness does not exceed $300,000.

(b) *Buyout time frame.* After the Agency offers current market value buyout of the loan, the borrower has 90 days from the date of Agency notification to pay that amount.

§ 766.114 State-certified mediation or voluntary meeting of creditors.

(a) A borrower who is unable to develop a feasible plan but is otherwise eligible for primary loan servicing may request:

(1) State-certified mediation; or

(2) Voluntary meeting of creditors when a State does not have a certified mediation program.

(b) Any negotiation of the Agency's appraisal must be completed before State-certified mediation or voluntary meeting of creditors.

§ 766.115 Challenging the Agency appraisal.

(a) A borrower considered for primary loan servicing who does not agree with the Agency's appraisal of the borrower's assets may:

(1) Obtain a technical appraisal review of the Agency's appraisal and provide it at the reconsideration or appeal hearing;

(2) Obtain an independent appraisal completed in accordance with § 761.7 as part of the appeals process. The borrower must:

(i) Pay for this appraisal;

(ii) Choose which appraisal will be used in Agency calculations, if the difference between the two appraisals is five percent or less.

(3) Negotiate the Agency's appraisal by obtaining a second appraisal.

(i) If the difference between the two appraisals is five percent or less, the borrower will choose the appraisal to be used in Agency calculations.

(ii) If the difference between the two appraisals is greater than five percent, the borrower may request a third appraisal. The Agency and the borrower will share the cost of the third appraisal equally. The average of the two appraisals closest in value will serve as the final value.

(iii) A borrower may request a negotiated appraisal only once in connection with an application for primary loan servicing.

(iv) The borrower may not appeal a negotiated appraisal.

(b) If the appraised value of the borrower's assets changes as a result of the appealed appraisal or the negotiated appraisal, the Agency will reconsider its previous loan servicing decision using the new appraisal value.

(c) If the appeal process results in a determination that the borrower is eligible for primary loan servicing, the Agency will use the information utilized to make the appeal decision, unless stated otherwise in the appeal decision letter.

§§ 766.116–766.150 [Reserved]

Appendix A to Subpart C of Part 766—Notice of Availability of Loan Servicing to Borrowers Who Are Current, Financially Distressed, or Less Than 90 Days Past Due

This form is available electronically.

FSA-2510 (12-31-07)	U.S. DEPARTMENT OF AGRICULTURE Farm Service Agency	Position 4

NOTICE OF AVAILABILITY OF LOAN SERVICING TO BORROWERS WHO ARE 90 DAYS PAST DUE

This notice informs you that you are seriously delinquent with your Farm Loan Programs (FLP) loan payment and notifies you of options that may be available to you. The Agency's primary loan servicing programs, Conservation Contract Program, current market value buyout, Homestead Protection Program, and debt settlement programs may help you repay your loan or retain your farm property and settle your FLP debt.

How to apply

To apply, you must complete, where applicable, and provide all items required in paragraph (f), within 60 days of the date you receive this notice.

Help in responding to this notice

The servicing options available to you may become complicated. You may need help to understand them and their impact on your operation. You may want to ask an attorney to help you or there are organizations that give free or low-cost advice to farmers. You may contact your State Department of Agriculture or the U. S. Department of Agriculture (USDA) Extension Service for available services in your State.

Note: Agency employees cannot recommend a particular attorney or organization.

Who will decide if you qualify?

After you submit a complete application, the Agency will determine if you meet all eligibility requirements and can develop a farm operating plan that shows that you can pay all debts and expenses.

What happens if you do not bring the account current or apply within 60 days?

The Agency will accelerate your loans if you do not bring your account current or timely apply for loan servicing. This means the Agency will take legal action to collect all the money you owe to the Agency under FLP. After acceleration of your loan accounts, the Agency will start foreclosure proceedings. The Agency will repossess or take legal action to sell your real estate, personal property, crops, livestock, equipment, or any other assets in which the Agency has a security interest. The Agency will also obtain and file judgments against you and your property or refer your account to the Department of the Treasury for collection.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its program and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

Included with this notice you will find information on:

(a) Primary loan servicing programs;
(b) Conservation Contract Program;
(c) Current market value buyout;
(d) Homestead Protection Program;
(e) Debt settlement programs;
(f) Forms, documentation, and information needed to apply;
(g) How to get copies of Agency handbooks and forms;
(h) Reconsideration, mediation, negotiation, and appeal rights;
(i) Acceleration and foreclosure;
(j) The right not to be discriminated against.

(a) **Primary Loan Servicing Programs**

Eligibility

You must meet the following eligibility requirements to obtain primary loan servicing:

(1) You cannot repay your FLP debt due to one of the following circumstances beyond your control:

(i) Illness, injury, or death of a borrower or other individual who operates the farm;
(ii) Natural disaster, adverse weather, disease, or insect damage which caused severe loss of agricultural production;
(iii) Widespread economic conditions such as low commodity prices;
(iv) Damage or destruction of property essential to the farming operation; or
(v) Loss of, or reduction in, your or your spouse's essential non-farm income.

(2) You do not have non-essential assets for which the net recovery value is sufficient to pay the delinquent portion of the loan. The Agency cannot write down or write off debt that you could pay with the value of your equity in these assets.

(3) If you are in non-monetary default as a result of non-compliance with the Agency's loan agreements, you must resolve the non-monetary default prior to closing the servicing action.

(4) You must have acted in good faith in all past dealings with the Agency and in accordance with your loan agreements.

Time limits

If the Agency determines that you can develop a feasible plan and are eligible for primary loan servicing, you will have 45 days from the date you receive the Agency's offer to accept loan servicing.

Lien requirements

If you are offered loan servicing and accept the offer, you must agree to give the Agency a lien on your other assets and you must provide this lien at closing.

Youth Loans

If you have a Youth Loan, it is not eligible for debt writedown, current market value buyout, or limited resource interest rates, but can be rescheduled or deferred. This has no effect on any other loans you may have with the Agency.

Loan consolidation, rescheduling, and reamortization

In loan consolidation, the unpaid principal and interest of two or more operating loans can be combined into one larger operating loan.

In loan rescheduling, the repayment schedule may be changed to cure the delinquency and give you new terms to repay loans made for equipment, livestock, or annual operating purposes.

In loan reamortization, the repayment schedule may be changed to cure the delinquency and give you a new schedule of repayment on loans made for real estate purposes.

When loans are consolidated, rescheduled or reamortized the interest rate will be the lesser of:

(1) The interest rate for that type of loan on the date a complete servicing application was received;
(2) The interest rate for that type of loan on the date of restructure; or
(3) The lowest original loan note rate on any of the original notes being restructured.

In addition, the Agency will consider the maximum loan terms.

Limited resource interest rate

Limited resource interest rates are available for certain types of loans. If you have existing loans which are not at the limited resource rate, and a limited resource rate is available, the Agency will consider reducing the rate of the loans. The limited resource interest rate can be as low as five percent, however, this rate may change depending on what it costs the Government to borrow money.

For information about current interest rates, contact this office.

Loan deferral

Partial or full payments of principal and interest may be temporarily delayed for up to 5 years. You will only be considered for loan deferral if the loan servicing programs discussed above will not allow you to pay all essential family living and farm operating expenses, maintain your property, and pay your debts.

You must be able to show through a farm operating plan that you are unable to pay all essential family living and farm operating expenses, maintain your property, and pay your debts. The farm operating plan must also show that you will be able to pay your full installment at the end of the deferral period.

The interest that accrues during the deferral period must be paid in yearly payments for the rest of the loan term after the deferral period ends.

Debt writedown

Debt writedown can reduce the principal and interest on your loan. The Agency offers a writedown only when the loan servicing programs discussed above and the Conservation Contract Program, if requested, will not result in a feasible plan. To receive debt writedown, the value of your restructured loan must be equal to or greater than the recovery value to the Agency from foreclosure and repossession of your security property.

The recovery value is the market value of:

(1) The collateral pledged as security for FLP loans minus expenses (such as the sale costs, attorneys' fees, management costs, taxes, and payment of prior liens) on the collateral that the Agency would have to pay if it foreclosed, or repossessed, and sold the collateral;

(2) Any collateral that is not in your possession and has not been released for sale by the Agency in writing; and
(3) Any other non-essential assets you may own.

A qualified appraiser determines the value of the collateral and any other assets you own. You may receive a writedown only if you have not previously received any form of debt forgiveness on any other FLP direct loan. The maximum amount of debt that can be written down on all direct loans is $300,000.

Shared Appreciation Agreement

If you own real estate and receive a debt writedown, you must sign a Shared Appreciation Agreement. The term of the agreement is 5 years. Under the terms of the agreement you must repay all or a part of the amount written down at the maturity of your Shared Appreciation Agreement if your real estate collateral increased in value. Payment of shared appreciation will be required prior to the maturity of your Shared Appreciation Agreement if you:

(1) Sell or convey the real estate;
(2) Stop farming;
(3) Pay off your entire FLP debt; or
(4) Have your FLP accounts accelerated by the Agency.

If any of these events occur within the first 4 years of the agreement, you will have to pay 75 percent of the increase in value of the real estate. If any of these events occur after the fourth anniversary of the agreement, or if the Shared Appreciation Agreement matures without having previously been fully triggered, you will have to pay only 50 percent of the increase in value. You will not have to pay more than the amount of the debt written down.

Time limits

To buyout your FLP debt at the current market value, you must pay the Agency within 90 days of the date you receive the offer.

Method of payment

To buyout your FLP debt at the current market value, you must pay by cash, cashier's check, or U.S. Treasury check. The Agency will not make or guarantee a loan for this purpose.

(b) **Homestead Protection Program**

Under the Homestead Protection Program, you may repurchase your primary residence, certain outbuildings, and up to 10 acres of land. If you cannot pay cash or Agency financing is not available, you may lease your primary residence. The lease will include an option for you to purchase the property you lease.

This program may apply when primary loan servicing, the Conservation Contract Program, or current market value buyout is not available or not accepted.

You must agree to give the Agency title to your land at the time the Agency signs the Homestead Protection Agreement with you. The Agency will compute the costs of taking title including the cost of paying other creditors with outstanding liens on the property. The Agency will take title only if it can obtain a positive recovery.

(c) **Conservation Contract Program**

You may request a Conservation Contract to protect highly erodible land, wetlands, or wildlife habitats located on your real estate property that serves as security for your FLP debt. In exchange for such contract, the Agency would reduce your FLP debt. The amount of land left after the contract must be sufficient to continue your farming operation.

(d) **Current Market Value Buyout**

If the analysis of your debt shows that you cannot achieve a feasible plan even if the present value of your FLP debt is reduced to the value of the security, the Agency may offer you buyout of your FLP debt. You would pay the market value of all FLP security and non-essential assets, minus any prior liens. The market value is determined by a current appraisal completed by a qualified appraiser. In exchange, your loans would be satisfied.

Limits

To receive a current market value buyout offer:

(1) You must not have previously received any form of debt forgiveness from the Agency on any other direct FLP loan;
(2) The maximum debt to be written off with buyout does not exceed $300,000; and
(3) You must not have non-essential assets with a net recovery value sufficient to pay your account current.

Eligibility

To qualify, you must prove that:

(1) You cannot repay your delinquent FLP debt due to circumstances beyond your control; and
(2) You have acted in good faith in all past dealings with the Agency and in accordance with your loan agreements.

Eligibility requirements

(1) Your gross annual income from the farming operation must have been similar to other comparable operations in your area in at least two of the last 6 years.
(2) Sixty percent (60%) of your gross annual income in at least two of the last 6 years must have come from the farming operation.
(3) You must have lived in your homestead property for 6 years immediately before your application. If you had to leave for less than 12 months during the 6-year period and you had no control over the circumstances, you may still qualify.
(4) You must be the owner of the property immediately prior to the Agency obtaining title.

Property restrictions and easements

The Agency may place restrictions or easements on your property which restrict your use if the property is located in a special area or has special characteristics. These restrictions and easements will be placed in leases and in deeds on properties containing wetlands, floodplains, endangered species, wild and scenic rivers, historic and cultural properties, coastal barriers, and highly erodible lands.

Leasing the homestead property

(1) You must pay rent to the Agency to lease the property determined eligible for homestead protection. The rent the Agency charges will be similar to comparable property in your area.
(2) You must maintain the property in good condition during the term of the lease.
(3) You may lease the property for up to 5 years but no less than 3 years.

(4) You cannot sublease the property.
(5) If you do not make the rental payments to the Agency, the Agency will cancel the lease and take legal action to force you to leave.
(6) Lease payments are not applied toward the final purchase price of the property.

Purchasing the homestead protection property

You can repurchase your homestead property at market value at any time during the lease. The market value of the property will be decided by a qualified appraiser and will reflect the value of the land after any placement of a restriction or easement such as a wetland conservation easement.

(e) **Debt Settlement Programs**

You can apply for debt settlement at any time; however, these programs are usually used only after it has been determined that primary loan servicing programs and the Conservation Contract Program cannot help you. Under the debt settlement programs, the debt you owe the Agency under FLP may be settled for less than the amount you owe. These programs are subject to the discretion of the Agency and are not a matter of entitlement or right. If you do not have any Agency security, you may apply for debt settlement only. If you do not apply, or do not receive approval of a debt settlement request, your FLP loan accounts will be forwarded to the Department of the Treasury for collection.

Settlement alternatives

Settlement alternatives include:

(1) Compromise: A lump-sum payment of less than the total FLP debt owed;
(2) Adjustment: Two or more payments of less than the total amount owed to the Agency. Payments can be spread out over a maximum of 5 years if the Agency determines you will be able to make the payments as they become due; and
(3) Cancellation: Satisfaction of Agency debt without payment.

Note: The Agency will not finance these alternatives.

Processing and requirements

If you sell loan collateral, you must apply the proceeds from the sale to your FLP loans before you can be considered for debt settlement. In the case of compromise or adjustment you may keep your collateral, if you pay the Agency the market value of your collateral along with any additional amount the Agency determines you are able to pay.

Debt amounts which are collectible through administrative offset, judgment, or by the Department of the Treasury will not be settled through debt settlement procedures. You must certify that you do not have assets or income in addition to what you stated in your application. If you qualify, your application must also be approved by the State Executive Director or the Administrator, depending on the amount of the debt to be settled.

(f) **Forms, documentation, and information needed to apply**

A complete application for primary loan servicing must include items (1) through (10). Additional information is required as noted if you want to be considered for the Conservation Contract Program or debt settlement programs. If you need help to complete the required forms, you may request an Agency official to assist you. The forms for requirements (1) through (8) and (11) are included with this package.

(1) FSA-2511, "Borrower Response to Notice of the Availability of Loan Servicing – For Borrowers who Received FSA-2510," signed by all borrowers.

(2) FSA-2001, "Request for Direct Loan Assistance."

(3) FSA-2002, "Three Year Financial History," or other financial records, including copies of your income tax returns and any supporting documents, for each of the 3 years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the Agency case file. If your copies of tax returns are not readily available, you can obtain copies from the Internal Revenue Service.

(4) FSA-2003, "Three Year Production History," or any other format that provides production and expense history for crops, livestock, livestock products, etc., for each of the 3 years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the Agency case file. You must be able to support this information with farm records.

(5) FSA-2004, "Authorization to Release Information." The Agency will use this form to verify your debts and assets, as well as your non-farm income.

(6) FSA-2005, "Creditor List." The Agency will use this form to verify your debts. Any debts less than $1,000 can be verified by a credit report. If debts of $1,000 or more appear on your credit report and the creditor is not listed on FSA 2005, the application cannot be considered complete.

(7) FSA-2037, "Farm Business Plan Worksheet – Balance Sheet." In the case of an entity, the entity and all entity members must provide current financial statements.

(8) FSA-2038, "Farm Business Plan Worksheet – Projected/Actual Income and Expenses," or other acceptable farm operating plan.

(9) AD-1026, "Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification." You will be required to complete this form if the one you have on file does not reflect all the land you own and lease.

(10) SCS-CPA-026, "Highly Erodible Land and Wetland Conservation Determination." This form must be obtained from and completed by the Natural Resources Conservation Service office, if not already on file with the Agency.

(11) RD 1956-1, "Application for Settlement of Indebtedness." Complete this form only if you wish to apply for debt settlement. You must also comply with any Agency request for additional information needed to process a debt settlement request.

(12) If you are applying for a Conservation Contract, a map or aerial photo of your farm identifying the portion of the land and approximate number of acres to be considered.

Divorced spouses

If you are an FLP borrower who has left the farming operation due to divorce, you may request release of liability. To be released of liability after a divorce, you must present the Agency with the following within 60 days of receiving this notice:

(1) A divorce decree or property settlement document which states the remaining party will be responsible for all repayment to the Agency;

(2) Evidence that you have conveyed your ownership interest in FLP security to the remaining party; and

(3) Evidence that you do not have any repayment ability for the FLP loan through cash, income, or other non-essential assets.

The Agency will make a determination on your request and will inform you of the decision within 60 days of receiving your request.

If you are not released of liability, you will need to include all of your relevant financial information if applying for primary loan servicing, homestead protection, or debt settlement programs.

(g) **How to get copies of Agency handbooks and forms**

Copies of the forms for requirements (f)(1) through (f)(8) and (f)(11) have been included in this package. You may obtain copies of Agency handbooks, which include the pertinent regulations, describing available programs or additional copies of forms from this office.

(h) **Reconsideration, mediation, negotiation, and appeal rights**

Reconsideration, mediation, negotiation, and appeal rights will be provided to you if the Agency makes an adverse decision on your request for loan servicing or prior to acceleration of your account.

Reconsideration

If you are determined by the Agency to be ineligible for loan servicing, or if you cannot develop a feasible plan, you may request a reconsideration meeting with the Agency. You must request reconsideration within 30 days of the date you receive the adverse decision. At a reconsideration meeting, you may present additional information to the Agency and explain why you believe the adverse decision to be in error. If the meeting does not change the Agency decision, you will be notified and provided 30 days to request mediation, negotiation, or appeal as outlined below.

Mediation

Mediation is a process for resolution of a disagreement. A trained neutral mediator assists two or more parties in dispute to look at the issues, consider all available options, and attempt to agree on an acceptable solution. If your State has a mediation program approved by the USDA, the Agency will participate in mediation. If there is no State mediation program, the Agency may help you to set up a meeting with your other creditors. If you wish to request mediation, you must make such request within 30 days of your receipt of an adverse Agency decision. If you request mediation prior to requesting an appeal, the 30-day time period for requesting an appeal will be temporarily suspended. If mediation fails to resolve your dispute with the Agency, only the balance of the 30 days will remain to request an appeal.

Negotiation of the appraisal

If you timely submit a complete application for primary loan servicing, but disagree with the appraisal used by the Agency for processing your primary loan servicing request, you will have 30 days to obtain, at your own expense, an independent appraisal which conforms to published Agency appraisal standards. If this independent appraised value is within five percent of the value of the Agency appraisal, you must choose one of these two appraisals for the Agency to use to continue processing your request. If the appraisals differ by more than five percent, you may request a third appraisal for which you must pay half of the cost, and the average of the two appraisals closest in value is taken as the final appraised value to be used in considering your request. If you wish to request both negotiation of the appraisal and mediation, these should be requested at the same time so the negotiation of the appraisal can be concluded prior to mediation. If not requested at the same time, negotiation of the appraisal must be requested first. Negotiated appraisals are not appealable but other issues can still be appealed after negotiation. If you request negotiation of the appraisal prior to requesting an appeal, the 30-day time period for requesting an appeal will be temporarily suspended. If negotiation of the appraisal fails to resolve your dispute with the Agency, only the balance of the 30 day time frame will remain to request an appeal on issues other than the negotiated appraisal.

Appeal

Appeal is a process under which you present evidence to USDA's National Appeals Division which demonstrates why you believe that the Agency's adverse decision is wrong. Subject to the deadline suspensions discussed above, your request for an appeal must be postmarked no later than 30 days from the date you received the Agency's adverse decision.

(i) **Acceleration and foreclosure**

If you do not appeal an adverse determination, if you appeal, but are denied relief on appeal, or if you do not otherwise resolve your delinquency, the Agency will accelerate your loan accounts and demand payment of the entire debt. You may prevent Agency foreclosure on the loan collateral, if with prior Agency approval, you:

(1) Sell all loan collateral for not less than its market value and apply all proceeds to your creditors in order of lien priority.
(2) Transfer the collateral to someone else and have that person assume all or part of your FLP debt.
(3) Transfer the collateral to the Agency.

If any of these options result in payment of less than you owe, you may apply for debt settlement, even if you applied before and were denied. However, applications for debt settlement filed after the 60-day time period provided in this notice will not delay acceleration, administrative offset, and foreclosure.

If the Agency determines that you cannot qualify for debt settlement, you can:

(1) Pay your FLP loan accounts current;
(2) Pay your FLP loan accounts in full;
(3) Request reconsideration, mediation or appeal.

If your real estate security contains your primary residence and becomes inventory property of the Agency, homestead protection rights will be provided.

(j) **The right not to be discriminated against**

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

The servicing programs described by this Notice are subject to applicable Agency regulations published at 7 CFR Part 766.

BILLING CODE 3410–05–P

Appendix B to Subpart C of Part 766—Notice of Availability of Loan Servicing to Borrowers Who Are 90 Days Past Due

This form is available electronically.

FSA-2512 (Proposal 4)	U.S. DEPARTMENT OF AGRICULTURE Farm Service Agency	Position 4

NOTICE OF AVAILABILITY OF LOAN SERVICING TO BORROWERS WHO ARE CURRENT, FINANCIALLY DISTRESSED, OR LESS THAN 90 DAYS PAST DUE

This notice informs you of servicing options that may be available to current borrowers, financially distressed borrowers, or borrowers less than 90 days past due. The Agency's primary loan servicing programs, Conservation Contract Program, Homestead Protection Program, and debt settlement programs may help you resolve your financial distress, repay your loan, retain your farm property or settle your Farm Loan Programs (FLP) debt.

How to apply

To apply, you must complete, where applicable, and provide all items required in paragraph (f).

Help in responding to this notice

The servicing options available to you may become complicated. You may need help to understand them and their impact on your operation. You may want to ask an attorney to help you or there are organizations that give free or low-cost advice to farmers. You may contact your State Department of Agriculture or the U. S. Department of Agriculture (USDA) Extension Service for available services in your State.

Note: Agency employees cannot recommend a particular attorney or organization.

Who will decide if you qualify?

After you submit a complete application, the Agency will determine if you meet all eligibility requirements and can develop a farm operating plan that shows that you can pay all debts and expenses.

What happens if you do not apply?

If you do not timely apply to this notice and you become 90 days past due on your loans, the Agency will notify you of available loan servicing by sending you FSA-2510, "Notice of Availability of Loan Servicing to Borrowers Who Are 90 Days Past Due."

What happens if you do not apply?

If you do not timely apply to this notice and you become 90 days past due on your loans, the Agency will notify you of available loan servicing by sending you FSA-2510, "Notice of Availability of Loan Servicing to Borrowers Who Are 90 Days Past Due."

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its program and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

Included with this notice you will find information on:

(a) Primary loan servicing programs;
(b) Conservation Contract Program;
(c) Current market value buyout;
(d) Homestead Protection Program;
(e) Debt settlement programs;
(f) Forms, documentation, and information needed to apply;
(g) How to get copies of the Agency's handbooks and forms;
(h) Reconsideration, mediation, negotiation and appeal rights;
(i) The right not to be discriminated against.

(a) **Primary Loan Servicing Programs**

Eligibility

You must meet the following eligibility requirements to obtain primary loan servicing:

(1) You are financially distressed or delinquent due to one of the following circumstances beyond your control:
(i) Illness, injury, or death of a borrower or other individual who operates the farm;
(ii) Natural disaster, adverse weather, disease, or insect damage which caused severe loss of agricultural production;
(iii) Widespread economic conditions such as low commodity prices;
(iv) Damage or destruction of property essential to the farming operation; or
(v) Loss of, or reduction in, your or your spouse's essential non-farm income.

(2) You do not have non-essential assets for which the net recovery value is sufficient to resolve your financial distress. The Agency cannot write down or write off debt that you could pay with the value of your equity in these assets.

(3) If you are in non-monetary default as a result of non-compliance with the Agency's loan agreements, you must resolve the non-monetary default prior to closing the servicing action.

(4) You must have acted in good faith in all past dealings with the Agency and in accordance with your loan agreements.

Time limits

If the Agency determines that you are eligible for primary loan servicing and can develop a feasible plan, you will have 45 days from notice to accept the Agency's offer for loan servicing.

Lien requirements

If you are delinquent, are offered loan servicing, and accept the offer, you must agree to give the Agency a lien on your other assets and you must provide this lien at closing.

Payment of interest

You must pay a portion of the interest that has accrued on your loans prior to closing the servicing action.

Youth Loans

If you have a Youth Loan, it is not eligible for debt writedown, current market value buyout, or limited resource interest
rates, but can be rescheduled or deferred. This has no effect on any other loans you may have with the Agency.

Loan consolidation, rescheduling, and reamortization

In loan consolidation, the unpaid principal and interest of two or more operating loans can be combined into one larger operating loan.

In loan rescheduling, the repayment schedule may be changed to cure the financial distress or delinquency and give you new terms to repay loans made for equipment, livestock, or annual operating purposes.

In loan reamortization, the repayment schedule may be changed to cure the financial distress or delinquency and give you a new schedule of repayment on loans made for real estate purposes.

When loans are consolidated, rescheduled or reamortized the interest rate will be the lesser of:

(1) The interest rate for that type of loan on the date a complete servicing application was received;
(2) The interest rate for that type of loan on the date of restructure; or
(3) The lowest original loan note rate on any of the original notes being restructured.

In addition, the Agency will consider the maximum loan terms.

Limited resource interest rate

Limited resource interest rates are available for certa in types of loans. If you have existing loans which are not at the limited resource rate, and a limited resource rate is available, the Agency will consider reducing the rate of the loans. The limited resource interest rate can be as low as five percent, however, this rate may change depending on what it costs the Government to borrow money.

For information about current interest rates, contact this office.

Loan deferral

Partial or full payments of principal and interest may be temporarily delayed for up to 5 years. You will only be considered for loan deferral if the loan servicing programs discussed above will not allow you to pay all essential family living and farm operating expenses, maintain your property, and pay your debts.

You must be able to show through a farm operating plan that you are unable to pay all essential family living and farm operating expenses, maintain your property, and pay your debts. The farm operating plan must also show that you will be able to pay your full installment at the end of the deferral period.

The interest that accrues during the deferral period must be paid in yearly payments for the rest of the loan term after the deferral period ends.

Debt writedown

Debt writedown can reduce the principal and interest on your loan. The Agency offers a writedown only to delinquent borrowers when the loan servicing programs discussed above and the Conservation Contract Program, if requested, will not result in a feasible plan. To receive debt writedown, the value of your restructured loan must be equal to or greater than the recovery value to the Agency from foreclosure and repossession of your security property.

The recovery value is the market value of:

(1) The collateral pledged as security for your FLP loans minus expenses (such as the sale costs, attorneys' fees, management costs, taxes, and payment of prior liens) on the collateral that the Agency would have to pay if it foreclosed, or repossessed, and sold the collateral;
(2) Any collateral that is not in your possession and has not been released for sale by the Agency in writing; and
(3) Any other non-essential assets you may own.

A qualified appraiser determines the value of the collateral and any other assets you own. You may receive a writedown only if you are delinquent on your FLP loan and you have not previously received any form of debt forgiveness on any other FLP direct loan. The maximum amount of debt that can be written down on all direct loans is $300,000.

Shared Appreciation Agreement

If you own real estate and receive a debt writedown, you must sign a Shared Appreciation Agreement. The term of the agreement is 5 years. Under the terms of the agreement you must repay all or a part of the amount written down at the maturity of your Shared Appreciation Agreement if your real estate collateral increased in value.

Payment of shared appreciation will be required prior to the maturity of your Shared Appreciation Agreement if you:

(1) Sell or convey the real estate;
(2) Stop farming;
(3) Pay off your entire FLP debt; or
(4) Have your FLP accounts accelerated by the Agency.

If any of these events occur within the first 4 years of the agreement, you will have to pay 75 percent of the increase in value of the real estate. If any of these events occur after the fourth anniversary of the agreement, or if the Shared Appreciation Agreement matures without having previously been fully triggered, you will have to pay only 50 percent of the increase in value. You will not have to pay more than the amount of the debt written down.

(b) **Conservation Contract Program**

You may request a Conservation Contract to protect highly erodible land, wetlands, or wildlife habitats located on your real estate property that serves as security for your FLP debt. In exchange for such contract, the Agency would reduce your FLP debt. The amount of land left after the contract must be sufficient to continue your farming operation.

(c) **Current Market Value Buyout**

If you are delinquent and the analysis of your debt shows that you cannot achieve a feasible plan even if the present value of your FLP debt is reduced to the value of the security, the Agency may offer you buyout of your FLP debt. You would pay the market value of all FLP security and non-essential assets, minus any prior liens. The market value is determined by a current appraisal completed by a qualified appraiser. In exchange, your loans would be satisfied.

Limits

To receive a current market value buyout offer:

(1) You must not have previously received any form of debt forgiveness from the Agency on any other direct FLP loan;
(2) The maximum debt to be written off with buyout does not exceed $300,000; and
(3) You must not have non-essential assets with a net recovery value sufficient to pay your account current.

Eligibility

To qualify, you must prove that:
(1) You cannot repay your delinquent FLP debt due to circumstances beyond your control; and
(2) You have acted in good faith in all past dealings with the Agency and in accordance with your loan agreements.

Time limits

To buyout your FLP debt at the current market value, you must pay the Agency within 90 days of the date you receive the offer.

Method of payment
To buyout your FLP debt at the current market value, you must pay by cash, cashier's check, or U.S. Treasury check. The Agency will not make or guarantee a loan for this purpose.

(d) **Homestead Protection Program**

Under the Homestead Protection Program, you may repurchase your primary residence, certain outbuildings, and up to 10 acres of land. If you cannot pay cash or Agency financing is not available, you may lease your primary residence. The lease will include an option for you to purchase the property you lease.

This program may apply when primary loan servicing or the Conservation Contract Program are not available or are not accepted.

You must agree to give the Agency title to your land at the time the Agency signs the Homestead Protection Agreement with you. The Agency will compute the costs of taking title including the cost of paying other creditors with outstanding liens on the property. The Agency will take title only if it can obtain a positive recovery.

Eligibility requirements

(1) Your gross annual income from the farming operation must have been similar to other comparable operations in your area in at least two of the last 6 years.
(2) Sixty percent (60%) of your gross annual income in at least two of the last 6 years must have come from the farming operation.
(3) You must have lived in your homestead property for 6 years immediately before your application. If you had to leave for less than 12 months during the 6-year period and you had no control over the circumstances, you may still qualify.
(4) You must be the owner of the property immediately prior to the Agency obtaining title.

Property restrictions and easements

The Agency may place restrictions or easements on your property which restrict your use if the property is located in a special area or has special characteristics. These restrictions and easements will be placed in leases and in deeds on properties containing wetlands, floodplains, endangered species, wild and scenic rivers, historic and cultural properties, coastal barriers, and highly erodible lands.

Leasing the homestead property

(1) You must pay rent to the Agency to lease the property determined eligible for homestead protection. The rent the Agency charges will be similar to comparable property in your area.
(2) You must maintain the property in good condition during the term of the lease.
(3) You may lease the property for up to 5 years but no less than 3 years.
(4) You cannot sublease the property.
(5) If you do not make the rental payments to the Agency, the Agency will cancel the lease and take legal action to force you to leave.
(6) Lease payments are not applied toward the final purchase price of the property.

Purchasing the homestead protection property

You can repurchase your homestead property at market value at any time during the lease. The market value of the property will be decided by a qualified appraiser and will reflect the value of the land after any placement of a restriction or easement such as a wetland conservation easement.

(e) **Debt Settlement Programs**

You can apply for debt settlement at any time; however, these programs are usually used only after it has been determined that primary loan servicing programs and the Conservation Contract Program cannot help you. Under the debt settlement programs, the FLP debt you owe the Agency may be settled for less than the amount you owe. These programs are subject to the discretion of the Agency and are not a matter of entitlement or right. The Agency will not finance these alternatives.

Settlement alternatives

Settlement alternatives include:
(1) Compromise: A lump-sum payment of less than the total FLP debt owed;
(2) Adjustment: Two or more payments of less than the total amount owed to the Agency. Payments can be spread out over a maximum of 5 years if the Agency determines you will be able to make the payments as they become due; and
(3) Cancellation: Satisfaction of Agency debt without payment.

Processing and requirements

If you sell loan collateral, you must apply the proceeds from the sale to your FLP loans before you can be considered for debt settlement. In the case of compromise or adjustment you may keep your collateral, if you pay the Agency the market value of your collateral along with any additional amount the Agency determines you are able to pay.

Debt amounts which are collectible through administrative offset, judgment, or by the Department of the Treasury will not be settled through debt settlement procedures. You must certify that you do not have assets or income in addition to what you stated in your application. If you qualify, your application must also be approved by the State Executive Director or the Administrator, depending on the amount of the debt to be settled.

(f) **Forms, documentation, and information needed to apply**

A complete application for primary loan servicing must include items (1) through (10). Additional information is required as noted if you want to be considered for the Conservation Contract Program or debt settlement programs. If you need help to complete the required forms, you may request an Agency official to assist you. The forms for requirements (1) through (8) and (11) are included with this package.

(1) FSA-2513, "Borrower Response to Notice of the Availability of Loan Servicing – For Borrowers who Received FSA-2512" signed by all borrowers.

(2) FSA-2001, "Request for Direct Loan Assistance."

(3) FSA-2002, "Three Year Financial History" or other financial records, including copies of your income tax returns and any supporting documents, for each of the 3 years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the Agency case file. If your copies of tax returns are not readily available, you can obtain copies from the Internal Revenue Service.

(4) FSA-2003, "Three Year Production History," or any other format that provides production and expense history for crops, livestock, livestock products, etc., for each of the 3 years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the Agency case file. You must be able to support this information with farm records.

(5) FSA-2004, "Authorization to Release Information." The Agency will use this form to verify your debts and assets, as well as your non-farm income.

(6) FSA-2005, "Creditor List." The Agency will use this form to verify your debts. Any debts less than $1,000 can be verified by a credit report. If debts of $1,000 or more appear on your credit report and the creditor is not listed on FSA 2005, the application cannot be considered complete.

(7) FSA-2037, "Farm Business Plan Worksheet – Balance Sheet." In the case of an entity, the entity and all entity members must provide current financial statements.

(8) FSA-2038, "Farm Business Plan Worksheet – Projected/Actual Income and Expenses," or other acceptable farm operating plan.

(9) AD-1026, "Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification." You will be required to complete this form if the one you have on file does not reflect all the land you own and lease.

(10) SCS-CPA-026, "Highly Erodible Land and Wetland Conservation Determination." This form must be obtained from and completed by the Natural Resources Conservation Service office, if not already on file with the Agency.

(11) RD 1956-1, "Application for Settlement of Indebtedness." Complete this form only if you wish to apply for debt settlement. You must also comply with any Agency request for additional information needed to process a debt settlement request.

(12) If you are applying for a Conservation Contract, a map or aerial photo of your farm identifying the portion of the land and approximate number of acres to be considered.

Divorced spouses

If you are an FLP borrower who has left the farming operation due to divorce, you may request release of liability. To be released of liability after a divorce, you must present the Agency with the following within 60 days of receiving this notice:

(1) A divorce decree or property settlement document which states the remaining party will be responsible for all repayment to the Agency;

(2) Evidence that you have conveyed your ownership interest in FLP security to the remaining party; and

(3) Evidence that you do not have any repayment ability for the FLP loan through cash, income, or other non-essential assets.

The Agency will make a determination on your request and will inform you of the decision within 60 days of receiving your request.

If you are not released of liability, you will need to include all of your relevant financial information if applying for primary loan servicing, homestead protection, or debt settlement programs.

(g) **How to get copies of Agency handbooks and forms**

Copies of the forms for requirements (f)(1) through (f)(8) and (f)(11) have been included in this package. You may obtain copies of Agency handbooks, which include the pertinent regulations, describing available programs or additional copies of forms from this office.

(h) **Reconsideration, mediation, negotiation, and appeal rights**

Reconsideration, mediation, negotiation, and appeal rights will be provided to you if the Agency makes an adverse decision on your request for loan servicing or prior to acceleration of your account.

Reconsideration

If you are determined by the Agency to be ineligible for loan servicing, or if you cannot develop a feasible plan, you may request a reconsideration meeting with the Agency. You must request reconsideration within 30 days of the date you receive the adverse decision. At a reconsideration meeting, you may present additional information to the Agency and explain why you believe the adverse decision to be in error. If the meeting does not change the Agency decision, you will be notified and provided 30 days to request mediation, negotiation, or appeal as outlined below.

Mediation

Mediation is a process for resolution of a disagreement. A trained neutral mediator assists two or more parties in dispute to look at the issues, consider all available options, and attempt to agree on an acceptable solution. If your State has a mediation program approved by the USDA, the Agency will participate in mediation. If there is no State mediation program, the Agency may help you to set up a meeting with your other creditors. If you wish to request mediation, you must make such request within 30 days of your receipt of an adverse Agency decision. If you request mediation prior to requesting an appeal, the 30-day time period for requesting an appeal will be temporarily suspended. If mediation fails to resolve your dispute with the Agency, only the balance of the 30 days will remain to request an appeal.

Negotiation of the appraisal

If you timely submit a complete application for primary loan servicing, but disagree with the appraisal used by the Agency for processing your primary loan servicing request, you will have 30 days to obtain, at your own expense, an independent appraisal which conforms to published Agency appraisal standards. If this independent appraised value is within five percent of the value of the Agency appraisal, you must choose one of these two appraisals for the Agency to use to continue processing your request. If the appraisals differ by more than five percent, you may request a third appraisal for which you must pay half of the cost, and the average of the two appraisals closest in value is taken as the final appraised value to be used in considering your request. If you wish to request both negotiation of the appraisal and mediation, these should be requested at the same time so the negotiation of the appraisal can be concluded prior to mediation. If not requested at the same time, negotiation of the appraisal must be requested first. Negotiated appraisals are not appealable but other issues can still be appealed after negotiation. If you request negotiation of the appraisal prior to requesting an appeal, the 30-day time period for requesting an appeal will be temporarily suspended. If negotiation of the appraisal fails to resolve your dispute with the Agency, only the balance of the 30-day time frame will remain to request an appeal on issues other than the negotiated appraisal.

Appeal

Appeal is a process under which you present evidence to USDA's National Appeals Division which demonstrates why you believe that the Agency's adverse decision is wrong. Subject to the deadline suspensions discussed above, your request for an appeal must be postmarked no later than 30 days from the date you received the Agency's adverse decision.

(i) **The right not to be discriminated against**

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

The servicing programs described by this Notice are subject to applicable Agency regulations published at 7 CFR Part 766.

Appendix C to Subpart C of Part 766—Notice of Availability of Loan Servicing to Borrowers Who Are in Non-Monetary Default

This form is available electronically.

FSA-2514 (12-31-07)	U.S. DEPARTMENT OF AGRICULTURE Farm Service Agency	Position 4

NOTICE OF AVAILABILITY OF LOAN SERVICING TO BORROWERS WHO ARE IN NON-MONETARY DEFAULT

The Agency has reviewed your Farm Loan Programs (FLP) loan account. Our records show:

☐ You have disposed of property used to secure your FLP loan. You did not get written approval for this.

This property is (Describe property):
[Describe property]

☐ You have stopped farming.
☐ A foreclosure action has been filed against you by

_____

☐ You have: _____

_____

_____

☐ You are also $ _____ behind on your payments.

You are in default on your FLP loans and must resolve this default. The Agency's primary loan servicing programs, Conservation Contract Program, current market value buyout, Homestead Protection Program, and debt settlement programs may help you in resolving the default.

How to apply

To apply, you must complete, where applicable, and provide all items required in paragraph (f), within 60 days of the date you receive this notice.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its program and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or b ecause all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

Help in responding to this notice

The servicing options available to you may become complicated. You may need help to understand them and their impact on your operation. You may want to ask an attorney to help you or there are organizations that give free or low-cost advice to farmers. You may contact your State Department of Agriculture or the U. S. Department of Agriculture (USDA) Extension Service for available services in your State.

Note: Agency employees cannot recommend a particular attorney or organization.

Who will decide if you qualify?
After you submit a complete application, the Agency will determine if you meet all eligibility requirements and can develop a farm operating plan that shows that you can pay all debts and expenses.

What happens if you do not resolve the default or apply within 60 days?

The Agency will accelerate your loans if you do not resolve the default, or apply for loan servicing. This means the Agency will take legal action to collect all the money you owe to the Agency under FLP. After acceleration of your loan accounts, the Agency will start foreclosure proceedings. The Agency will repossess or take legal action to sell your real estate, personal property, crops, livestock, equipment, or any other assets in which the Agency has a security interest. The Agency will also obtain and file judgments against you and your property or refer your account to the Department of the Treasury for collection.

Included with this notice you will find information on:

(a) Primary loan servicing programs;
(b) Conservation Contract Program;
(c) Current market value buyout;
(d) Homestead Protection Program;
(e) Debt settlement programs;
(f) Forms, documentation, and information needed to apply;
(g) How to get copies of Agency handbooks and forms;
(h) Reconsideration, mediation, negotiation, and appeal rights;
(i) Acceleration and foreclosure;
(j) The right not to be discriminated against.

(a) **Primary Loan Servicing Programs**

Eligibility

You must meet the following eligibility requirements to obtain primary loan servicing:

(1) You must resolve all non-monetary defaults prior to closing the servicing action.

(2) You must have acted in good faith in all past dealings with the Agency and in accordance with your loan agreements.

(3) If you are also financially distressed or delinquent, it must be due to one of the following circumstances beyond your control:

(i) Illness, injury, or death of a borrower or other individual who operates the farm;

(ii) Natural disaster, adverse weather, disease, or insect damage which caused severe loss of agricultural production;

(iii) Widespread economic conditions such as low commodity prices;

(iv) Damage or destruction of property essential to the farming operation; or

(v) Loss of, or reduction in, your or your spouse's essential non-farm income.

(4) You do not have non-essential assets for which the net recovery value is sufficient to pay any delinquent portion of the loan. The Agency cannot write down or write off debt that you could pay with the value of your equity in these assets.

Time limits

If the Agency determines that you can develop a feasible plan and are eligible for primary loan servicing, you will have 45 days from the date you receive the Agency's offer to accept loan servicing.

Lien requirements

If you are offered loan servicing and accept the offer, you must agree to give the Agency a lien on your other assets and you must provide this lien at closing.

Youth Loans

If you have a Youth Loan, it is not eligible for debt writedown, current market value buyout, or limited resource interest rates, but can be rescheduled or deferred. This has no effect on any other loans you may have with the Agency.

Loan consolidation, rescheduling, and reamortization

In loan consolidation, the unpaid principal and interest of two or more operating loans can be combined into one larger operating loan.

In loan rescheduling, the repayment schedule may be changed to cure the delinquency and give you new terms to repay loans made for equipment, livestock, or annual operating purposes.

In loan reamortization, the repayment schedule may be changed to cure the delinquency and give you a new schedule of repayment on loans made for real estate purposes.

When loans are consolidated, rescheduled or reamortized the interest rate will be the lesser of:
(1) The interest rate for that type of loan on the date a complete servicing application was received;
(2) The interest rate for that type of loan on the date of restructure; or
(3) The lowest original loan note rate on any of the original notes being restructured.

In addition, the Agency will consider the maximum loan terms.

Limited resource interest rate

Limited resource interest rates are available for certain types of loans. If you have existing loans which are not at the limited resource rate, and a limited resource rate is available, the Agency will consider reducing the rate of the loans. The limited resource interest rate can be as low as five percent, however, this rate may change depending on what it costs the Government to borrow money.

For information about current interest rates, contact this office.

Loan deferral

Partial or full payments of principal and interest may be temporarily delayed for up to 5 years. You will only be considered for loan deferral if the loan servicing programs discussed above will not allow you to pay all essential family living and farm operating expenses, maintain your property, and pay your debts.

You must be able to show through a farm operating plan that you are unable to pay all essential family living and farm operating expenses, maintain your property, and pay your debts. The farm operating plan must also show that you will be able to pay your full installment at the end of the deferral period.

The interest that accrues during the deferral period must be paid in yearly payments for the rest of the loan term after the deferral period ends.

Debt writedown

Debt writedown can reduce the principal and interest on your loan. The Agency offers a writedown only to delinquent borrowers when the loan servicing programs discussed above and the Conservation Contract Program, if requested, will not result in a feasible plan. To receive debt writedown, the value of your restructured loan must be equal to or greater than the recovery value to the Agency from foreclosure and repossession of your security property.

The recovery value is the market value of:

(1) The collateral pledged as security for FLP loans minus expenses (such as the sale costs, attorneys' fees, management costs, taxes, and payment of prior liens) on the collateral that the Agency would have to pay if it foreclosed, or repossessed, and sold the collateral;

(2) Any collateral that is not in your possession and has not been released for sale by the Agency in writing; and

(3) Any other non-essential assets you may own.

A qualified appraiser determines the value of the collateral and any other assets you own. You may receive a writedown only if you have not previously received any form of debt forgiveness on any other FLP direct loan. The maximum amount of debt that can be written down on all direct loans is $300,000.

Shared Appreciation Agreement

If you own real estate and receive a debt writedown, you must sign a Shared Appreciation Agreement. The term of the agreement is 5 years. Under the terms of the agreement you must repay all or a part of the amount written down at the maturity of your Shared Appreciation Agreement if your real estate collateral increased in value. Payment of shared appreciation will be required prior to the maturity of your Shared Appreciation Agreement if you:

(1) Sell or convey the real estate;

(2) Stop farming;

(3) Pay off your entire FLP debt; or

(4) Have your FLP accounts accelerated by the Agency.

If any of these events occur within the first 4 years of the agreement, you will have to pay 75 percent of the increase in value of the real estate. If any of these events occur after the fourth anniversary of the agreement, or if the Shared Appreciation Agreement matures without having previously been fully triggered, you will have to pay only 50 percent of the increase in value. You will not have to pay more than the amount of the debt written down.

(b) Conservation Contract Program

You may request a Conservation Contract to protect highly erodible land, wetlands, or wildlife habitats located on your real estate property that serves as security for your FLP debt. In exchange for such contract, the Agency would reduce your FLP debt. The amount of land left after the contract must be sufficient to continue your farming operation.

(c) Current Market Value Buyout

If you are delinquent and the analysis of your debt shows that you cannot achieve a feasible plan even if the present value of your FLP debt is reduced to the value of the security, the Agency may offer you buyout of your FLP debt. You would pay the market value of all FLP security and non-essential assets, minus any prior liens. The market value is determined by a current appraisal completed by a qualified appraiser. In exchange, your loans would be satisfied.

Limits

To receive a current market value buyout offer:

(1) You must not have previously received any form of debt forgiveness from the Agency on any other direct FLP loan;
(2) The maximum debt to be written off with buyout does not exceed $300,000; and
(3) You must not have non-essential assets with a net recovery value sufficient to pay your account current if you are delinquent.

Eligibility

To qualify, you must prove that:

(1) You cannot repay your delinquent FLP debt due to circumstances beyond your control; and
(2) You have acted in good faith in all past dealings with the Agency and in accordance with your loan agreements.

Time limits

To buyout your FLP debt at the current market value, you must pay the Agency within 90 days of the date you receive the offer.

Method of payment

To buyout your FLP debt at the current market value, you must pay by cash, cashier's check, or U.S. Treasury check. The Agency will not make or guarantee a loan for this purpose.

(d) **Homestead Protection Program**

Under the Homestead Protection Program, you may repurchase your primary residence, certain outbuildings, and up to 10 acres of land. If you cannot pay cash or Agency financing is not available, you may lease your primary residence. The lease will include an option for you to purchase the property you lease.

This program may apply when primary loan servicing, the Conservation Contract Program, or current market value buyout is not available or not accepted.

You must agree to give the Agency title to your land at the time the Agency signs the Homestead Protection Agreement with you. The Agency will compute the costs of taking title including the cost of paying other creditors with outstanding liens on the property. The Agency will take title only if it can obtain a positive recovery.

Eligibility requirements

(1) Your gross annual income from the farming operation must have been similar to other comparable operations in your area in at least two of the last 6 years.

(2) Sixty percent (60%) of your gross annual income in at least two of the last 6 years must have come from the farming operation.

(3) You must have lived in your homestead property for 6 years immediately before your application. If you had to leave for less than 12 months during the 6-year period and you had no control over the circumstances, you may still qualify.

(4) You must be the owner of the property immediately prior to the Agency obtaining title.

Property restrictions and easements

The Agency may place restrictions or easements on your property which restrict your use if the property is located in a special area or has special characteristics. These restrictions and easements will be placed in leases and in deeds on properties containing wetlands, floodplains, endangered species, wild and scenic rivers, historic and cultural properties, coastal barriers, and highly erodible lands.

Leasing the homestead property

(1) You must pay rent to the Agency to lease the property determined eligible for homestead protection. The rent the Agency charges will be similar to comparable property in your area.

(2) You must maintain the property in good condition during the term of the lease.

(3) You may lease the property for up to 5 years but no less than 3 years.

(4) You cannot sublease the property.

(5) If you do not make the rental payments to the Agency, the Agency will cancel the lease and take legal action to force you to leave.

(6) Lease payments are not applied toward the final purchase price of the property.

Purchasing the homestead protection property

You can repurchase your homestead property at market value at any time during the lease. The market value of the property will be decided by a qualified appraiser and will reflect the value of the land after any placement of a restriction or easement such as a wetland conservation easement.

(e) **Debt Settlement Programs**

You can apply for debt settlement at any time; however, these programs are usually used only after it has been determined that primary loan servicing programs and the Conservation Contract Program cannot help you. Under the debt settlement programs, the debt you owe the Agency under FLP may be settled for less than the amount you owe. These programs are subject to the discretion of the Agency and are not a matter of entitlement or right. If you do not have any Agency security, you may apply for debt settlement only. If you do not apply, or do not receive approval of a debt settlement request, your FLP loan accounts will be forwarded to the Department of the Treasury for collection.

Settlement alternatives

Settlement alternatives include:

(1) Compromise: A lump-sum payment of less than the total FLP debt owed;
(2) Adjustment: Two or more payments of less than the total amount owed to the Agency. Payments can be spread out over a maximum of 5 years if the Agency determines you will be able to make the payments as they become due; and
(3) Cancellation: Satisfaction of Agency debt without payment.

Note: The Agency will not finance these alternatives.

Processing and requirements

If you sell loan collateral, you must apply the proceeds from the sale to your FLP loans before you can be considered for debt settlement. In the case of compromise or adjustment you may keep your collateral, if you pay the Agency the market value of your collateral along with any additional amount the Agency determines you are able to pay.

Debt amounts which are collectible through administrative offset, judgment, or by the Department of the Treasury will not be settled through debt settlement procedures. You must certify that you do not have assets or income in addition to what you stated in your application. If you qualify, your application must also be approved by the State Executive Director or the Administrator, depending on the amount of the debt to be settled.

(f) **Forms, documentation, and information needed to apply**

A complete application for primary loan servicing must include items (1) through (10). Additional information is required as noted if you want to be considered for the Conservation Contract Program or debt settlement programs. If you need help to complete the required forms, you may request an Agency official to assist you. The forms for requirements (1) through (8) and (11) are included with this package.

(1) FSA-2515, "Borrower Response to Notice of the Availability of Loan Servicing - For Borrowers who Received FSA-2514," signed by all borrowers.
(2) FSA-2001, "Request for Direct Loan Assistance."
(3) FSA-2002, "Three Year Financial History," or other financial records, including copies of your income tax returns and any supporting documents for each of the 3 years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the Agency case file. If your copies of tax returns are not readily available, you can obtain copies from the Internal Revenue Service.
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(10) SCS-CPA-026, "Highly Erodible Land and Wetland Conservation Determination." This form must be obtained from and completed by the Natural Resources Conservation Service office, if not already on file with the Agency.

(11) RD-1956-1, "Application for Settlement of Indebtedness." Complete this form only if you wish to apply for debt settlement. You must also comply with any Agency request for additional information needed to process a debt settlement request.

(12) If you are applying for a Conservation Contract, a map or aerial photo of your farm identifying the portion of the land and approximate number of acres to be considered.

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If you are an FLP borrower who has left the farming operation due to divorce, you may request release of liability. To be released of liability after a divorce, you must present the Agency with the following within 60 days of receiving this notice:

(1) A divorce decree or property settlement document which states the remaining party will be responsible for all repayment to the Agency;

(2) Evidence that you have conveyed your ownership interest in FLP security to the remaining party; and

(3) Evidence that you do not have any repayment ability for the FLP loan through cash, income, or other non-essential assets.

The Agency will make a determination on your request and will inform you of the decision within 60 days of receiving your request.

If you are not released of liability, you will need to include all of your relevant financial information if applying for primary loan servicing, homestead protection, or debt settlement programs.

(g) How to get copies of Agency handbooks and forms

Copies of the forms for requirements (f)(1) through (f)(8) and (f)(11) have been included in this package. You may obtain copies of Agency handbooks, which include the pertinent regulations, describing available programs or additional copies of forms from this office.

(h) Reconsideration, mediation, negotiation, and appeal rights

Reconsideration, mediation, negotiation, and appeal rights will be provided to you if the Agency makes an adverse decision on your request for loan servicing or prior to acceleration of your account.

Reconsideration

If you are determined by the Agency to be ineligible for loan servicing, or if you cannot develop a feasible plan, you may request a reconsideration meeting with the Agency. You must request reconsideration within 30 days of the date you receive the adverse decision. At a reconsideration meeting, you may present additional information to the Agency and explain why you believe the adverse decision to be in error. If the meeting does not change the Agency decision, you will be notified and provided 30 days to request mediation, negotiation, or appeal as outlined below.

Mediation

Mediation is a process for resolution of a disagreement. A trained neutral mediator assists two or more parties in dispute to look at the issues, consider all available options, and attempt to agree on an acceptable solution. If your State has a mediation program approved by the USDA, the Agency will participate in mediation. If there is no State mediation program, the Agency may help you to set up a meeting with your other creditors. If you wish to request mediation, you must make such request within 30 days of your receipt of an adverse Agency decision. If you request mediation prior to requesting an appeal, the 30-day time period for requesting an appeal will be temporarily suspended. If mediation fails to resolve your dispute with the Agency, only the balance of the 30 days will remain to request an appeal.

Negotiation of the appraisal

If you timely submit a complete application for primary loan servicing, but disagree with the appraisal used by the Agency for processing your primary loan servicing request, you will have 30 days to obtain, at your own expense, an independent appraisal which conforms to published Agency appraisal standards. If this independent appraised value is within five percent of the value of the Agency appraisal, you must choose one of these two appraisals for the Agency to use to continue processing your request. If the appraisals differ by more than five percent, you may request a third appraisal for which you must pay half of the cost, and the average of the two appraisals closest in value is taken as the final appraised value to be used in considering your request. If you wish to request both negotiation of the appraisal and mediation, these should be requested at the same time so the negotiation of the appraisal can be concluded prior to mediation. If not requested at the same time, negotiation of the appraisal must be requested first. Negotiated appraisals are not appealable but other issues can still be appealed after negotiation. If you request negotiation of the appraisal prior to requesting an appeal, the 30-day time period for requesting an appeal will be temporarily suspended. If negotiation of the appraisal fails to resolve your dispute with the Agency, only the balance of the 30 day time frame will remain to request an appeal on issues other than the negotiated appraisal.

Appeal

Appeal is a process under which you present evidence to USDA's National Appeals Division which shows that the Agency's adverse decision is wrong. Subject to the deadline suspensions discussed above, your request for an appeal must be postmarked no later than 30 days from the date you received the Agency's adverse decision.

(i) **Acceleration and foreclosure**

If you do not appeal an adverse determination, if you appeal, but are denied relief on appeal, or if you do not otherwise resolve your delinquency, the Agency will accelerate your loan accounts and demand payment of the entire debt. You may prevent Agency foreclosure on the loan collateral, if with prior Agency approval, you:

(1) Sell all loan collateral for not less than its market value and apply all proceeds to your creditors in order of lien priority.
(2) Transfer the collateral to someone else and have that person assume all or part of your FLP debt.
(3) Transfer the collateral to the Agency.

If any of these options result in payment of less than you owe, you may apply for debt settlement, even if you applied before and were denied. However, applications for debt settlement filed after the 60-day time period provided in this notice will not delay acceleration, administrative offset, and foreclosure.

If the Agency determines that you cannot qualify for debt settlement, you can:

(1) Pay your FLP loan accounts current;
(2) Pay your FLP loan accounts in full;
(3) Request reconsideration, mediation or appeal.

If your real estate security contains your primary residence and becomes inventory property of the Agency, homestead protection rights will be provided.

(j) **The right not to be discriminated against**

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

The servicing programs described by this Notice are subject to applicable Agency regulations published at 7 CFR part 766.

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Subpart D—Homestead Protection Program

§ 766.151 Applying for Homestead Protection.

(a) *Pre-acquisition*—(1) *Notification.* If the borrower requested primary loan servicing but cannot develop a feasible plan, the Agency will notify the borrower of any additional information needed to process the homestead protection request. The borrower must provide this information within 30 days of Agency notification.

(2) *Borrower does not respond.* If the borrower does not timely provide the information requested, the Agency will deny the homestead protection request and provide appeal rights.

(3) *Application requirements.* A complete application for homestead protection will include:

(i) Updates to items required under § 766.102;

(ii) Information required under § 766.353; and

(iii) Identification of land and buildings to be considered.

(b) *Post-acquisition*—(1) *Notification.* After the Agency acquires title to the real estate property, the Agency will notify the borrower of the availability of homestead protection. The borrower must submit a complete application within 30 days of Agency notification.

(2) *Borrower does not respond.* If the borrower does not respond to the Agency notice, the Agency will dispose of the property in accordance with 7 CFR part 767.

(3) *Application requirements.* A complete application for homestead protection will include:

(i) Updates to items required under § 766.102; and

(ii) Identification of land and buildings to be considered.

§ 766.152 Eligibility.

(a) *Property.* (1) The principal residence and the adjoining land of up to 10 acres, must have served as real estate security for the FLP loan and may include existing farm service buildings. Homestead protection does not apply if the FLP loans were secured only by chattels.

(2) The applicant may propose a homestead protection site. Any proposed site is subject to Agency approval.

(3) The proposed homestead protection site must meet all State and local requirements for division into a separate legal lot.

(4) Where voluntary conveyance of the property to the Agency is required to process the homestead protection request, the Agency will process any request for voluntary conveyance according to § 766.353.

(b) *Applicant.* To be eligible for homestead protection, the applicant:

(1) Must be the owner, or former owner from whom the Agency acquired title of the property pledged as security for an FLP loan. For homestead protection purposes, an owner or former owner includes:

(i) A member of an entity who is or was personally liable for the FLP loan secured by the homestead protection property when the applicant or entity held fee title to the property; or

(ii) A member of an entity who is or was personally liable for the FLP loan that possessed and occupied a separate dwelling on the security property;

(2) Must have earned gross farm income commensurate with:

(i) The size and location of the farm; and

(ii) The local agricultural conditions in at least 2 calendar years during the 6-year period immediately preceding the calendar year in which the applicant applied for homestead protection;

(3) Must have received 60 percent of gross income from farming in at least two of the 6 years immediately preceding the year in which the applicant applied for homestead protection;

(4) Must have lived in the home during the 6-year period immediately preceding the year in which the applicant applied for homestead protection. The applicant may have left the home for not more than 12 months if it was due to circumstances beyond their control;

(5) Must demonstrate sufficient income to make rental payments on the homestead property for the term of the lease, and maintain the property in good condition. The lessee will be responsible for any normal maintenance; and

(6) Must not be ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718.

§ 766.153 Homestead Protection transferability.

Homestead protection rights are not transferable or assignable, unless the eligible party dies or becomes legally incompetent, in which case the homestead protection rights may be transferred to the spouse only, upon the spouse's agreement to comply with the terms and conditions of the lease.

§ 766.154 Homestead Protection leases.

(a) *General.* (1) The Agency may approve a lease-purchase agreement on the appropriate Agency form subject to obtaining title to the property.

(2) If a third party obtains title to the property:

(i) The applicant and the property are no longer eligible for homestead protection;

(ii) The Agency will not implement any outstanding lease-purchase agreement.

(3) The borrower may request homestead protection for property subject to third party redemption rights. In such case, homestead protection will not begin until the Agency obtains title to the property.

(b) *Lease terms and conditions.* (1) The amount of rent will be based on equivalent rents charged for similar residential properties in the area in which the dwelling is located.

(2) All leases will include an option to purchase the homestead protection property as described in paragraph (c) of this section.

(3) The lease term will not be less than 3 years and will not exceed 5 years.

(4) The lessee must agree to make lease payments on time and maintain the property.

(5) The lessee must cooperate with Agency efforts to sell the remaining portion of the farm.

(c) *Lease-purchase options.* (1) The lessee may exercise in writing the purchase option and complete the homestead protection purchase at any time prior to the expiration of the lease provided all lease payments are current.

(2) The purchase price is the market value of the property when the option is exercised as determined by a current appraisal obtained by the Agency.

(3) The lessee may purchase homestead protection property with cash or other credit source.

(4) The lessee may receive Agency Non-program financing provided:

(i) The lessee has not received previous debt forgiveness;

(ii) The Agency has funds available to finance the purchase of homestead protection property; and

(iii) The lessee demonstrates an ability to repay such an FLP loan.

(d) *Lease terminations.* The Agency may terminate the lease if the lessee does not cure any lease defaults within 30 days of Agency notification.

(e) *Appraisal of homestead protection property.* The Agency will use an appraisal obtained within six months from the date of the application for considering homestead protection. If a current appraisal does not exist, the applicant will select an independent real estate appraiser from a list of appraisers approved by the Agency.

§ 766.155 Conflict with State law.

If there is a conflict between a borrower's homestead protection rights and any provisions of State law relating to redemption rights, the State law prevails.

§§ 766.156–766.200 [Reserved]

Subpart E—Servicing Shared Appreciation Agreements and Net Recovery Buyout Agreements

§ 766.201 Shared Appreciation Agreement.

(a) *When a SAA is required.* The Agency requires a borrower to enter into a SAA with the Agency covering all real estate security when the borrower:

(1) Owns any real estate that serves or will serve as loan security; and

(2) Accepts a writedown in accordance with § 766.111.

(b) *When SAA is due.* The borrower must repay the calculated amount of shared appreciation after a term of 5 years from the date of the writedown, or earlier if:

(1) The borrower sells or conveys all or a portion of the Agency's real estate security, unless real estate is conveyed upon the death of a borrower to a spouse who will continue farming;

(2) The borrower repays or satisfies all FLP loans;

(3) The borrower ceases farming; or

(4) The Agency accelerates the borrower's loans.

§ 766.202 Determining the shared appreciation due.

(a) The value of the real estate security at the time of maturity of the SAA (market value) will be the appraised value of the security at the highest and best use, less the increase in the value of the security resulting from capital improvements added during the term of the SAA (contributory value). The market value of the real estate security property will be determined based on a current appraisal completed within the previous 12 months in accordance with § 761.7 of this chapter, and subject to the following:

(1) Prior to completion of the appraisal, the borrower will identify any capital improvements that have been added to the real estate security since the execution of the SAA.

(2) The appraisal must specifically identify the contributory value of capital improvements made to the real estate security during the term of the SAA to make deductions for that value.

(3) For calculation of shared appreciation recapture, the contributory value of capital improvements added during the term of the SAA will be deducted from the market value of the property. Such capital improvements must also meet at least one of the following criteria:

(i) It is the borrower's primary residence. If the new residence is affixed to the real estate security as a replacement for a residence which existed on the security property when the SAA was originally executed, or, the living area square footage of the original residence was expanded, only the value added to the real property by the new or expanded portion of the original residence (if it added value) will be deducted from the market value.

(ii) It is an improvement to the real estate with a useful life of over one year and is affixed to the property, the following conditions must be met:

(A) The item must have been capitalized and not taken as an annual operating expense on the borrower's Federal income tax returns. The borrower must provide copies of appropriate tax returns to verify that capital improvements claimed for shared appreciation recapture reduction are capitalized.

(B) If the new item is affixed to the real estate as a replacement for an item that existed on the real estate at the time the SAA was originally executed, only the value added by the new item will be deducted from the market value.

(b) In the event of a partial sale, an appraisal of the property being sold may be required to determine the market value at the time the SAA was signed if such value cannot be obtained through another method.

§ 766.203 Payment of recapture.

(a) The borrower must pay on the due date or 30 days from Agency notification, whichever is later:

(1) Seventy-five percent of the appreciation in the real estate security if the agreement is triggered within 4 years or less from the date of the writedown; or

(2) Fifty percent of such appreciation if the agreement is triggered more than 4 years from the date of the writedown or when the agreement matures.

(b) If the borrower sells a portion of the security, the borrower must pay shared appreciation only on the portion sold. Shared appreciation on the remaining portion will be due in accordance with paragraph (a) of this section.

(c) The amount of recapture cannot exceed the amount of the debt written off through debt writedown.

§ 766.204 Amortization of recapture.

(a) The Agency will amortize the recapture into a Shared Appreciation Payment Agreement provided the borrower:

(1) Has not ceased farming and the borrower's account has not been accelerated;

(2) Provides a complete application in accordance with § 764.51(b), by the recapture due date or within 60 days of

Agency notification of the amount of recapture due, whichever is later;

(3) Is unable to pay the recapture and cannot obtain funds from any other source;

(4) Develops a feasible plan that includes repayment of the shared appreciation amount;

(5) Provides a lien on all assets, except those listed in § 766.112(b); and

(6) Signs loan agreements and security instruments as required.

(b) If the borrower later becomes delinquent or financially distressed, reamortization of the Shared Appreciation Payment Agreement can be considered under subpart C of this part.

§ 766.205 Shared Appreciation Payment Agreement rates and terms.

(a) The interest rate for Shared Appreciation Payment Agreements is the Agency's SA amortization rate.

(b) The term of the Shared Appreciation Payment Agreement is based on the borrower's repayment ability and the useful life of the security. The term will not exceed 25 years.

§ 766.206 Net Recovery Buyout Recapture Agreement.

(a) *Servicing existing Net Recovery Buyout Recapture Agreements.* Prior to July 3, 1996, the Agency was authorized to offer borrowers buy out their loans at the net recovery value. A Net Recovery Buyout Agreement was required for borrowers who bought out their loans at the net recovery value. The Agency services existing Net Recovery Buyout Recapture Agreements as described in this section.

(b) *Requirements and terms.* (1) The term of a Net Recovery Buyout Recapture Agreement is 10 years. Net Recovery Buyout Recapture Agreements are secured by a lien on the former borrower's real estate.

(2) If the former borrower sells or conveys real estate within the 10-year term, the former borrower must repay the Agency the lesser of:

(i) The market value of the real estate parcel at the time of sale or conveyance, as determined by an Agency appraisal, minus the portion of the recovery value of the real estate paid to the Agency in the buyout;

(ii) The market value of the real estate parcel at the time of the sale or conveyance, as determined by an Agency appraisal, minus:

(A) The unpaid balance of prior liens at the time of the sale or conveyance; and

(B) The net recovery value of the real estate the borrower paid to the Agency in the buyout if this amount has not been accounted for as a prior lien;

(iii) The total amount of the FLP debt the Agency wrote off for loans secured by real estate.

(3) If the former borrower does not pay the amount due, the Agency will liquidate the Net Recovery Buyout account in accordance with subpart H of this part.

(4) If the former borrower does not sell or convey the real estate within the 10-year term, no recapture is due.

§§ 766.207–766.250 [Reserved]

Subpart F—Unauthorized Assistance

§ 766.251 Repayment of unauthorized assistance.

(a) Except where otherwise specified, the borrower is responsible for repaying any unauthorized assistance in full within 90 days of Agency notice. The Agency may reverse any unauthorized loan servicing actions, when possible.

(b) The borrower has the opportunity to meet with the Agency to discuss or refute the Agency's findings.

§ 766.252 Unauthorized assistance resulting from submission of false information.

A borrower is ineligible for continued Agency assistance if the borrower, or a third party on the borrower's behalf, submits information to the Agency that the borrower knows to be false.

§ 766.253 Unauthorized assistance resulting from submission of inaccurate information by borrower or Agency error.

(a) *Borrower options.* (1) The borrower may repay the amount of the unauthorized assistance in a lump sum within 90 days of Agency notice.

(2) If the borrower is unable to repay the entire amount in a lump sum, the Agency will accept partial repayment of the unauthorized assistance within 90 days of Agency notice to the extent of the borrower's ability to repay.

(3) If the borrower is unable to repay all or part of the unauthorized amount, the loan will be converted to a Non-program loan under the following conditions:

(i) The borrower did not provide false information;

(ii) It is in the interest of the Agency;

(iii) The debt will be subject to the interest rate for Non-program loans;

(iv) The debt will be serviced as a Non-program loan;

(v) The term of the Non-program loan will be as short as feasible, but in no case will exceed:

(A) The remaining term of the FLP loan;

(B) Twenty-five (25) years for real estate loans; or

(C) The life of the security for chattel loans.

(b) *Borrower refusal to pay.* If the borrower is able to pay the unauthorized assistance amount but refuses to do so, the Agency will notify the borrower of the availability of loan servicing in accordance with subpart C of this part.

§§ 766.254–766.300 [Reserved]

Subpart G—Loan Servicing For Borrowers in Bankruptcy

§ 766.301 Notifying borrower in bankruptcy of loan servicing.

If a borrower files for bankruptcy, the Agency will provide written notification to the borrower's attorney with a copy to the borrower as follows:

(a) *Borrower not previously notified.* The Agency will provide notice of all loan servicing options available under subpart C of this part, if the borrower has not been previously notified of these options.

(b) *Borrower with prior notification.* If the borrower received notice of all loan servicing options available under subpart C of this part prior to the time of bankruptcy filing but all loan servicing was not completed, the Agency will provide notice of any remaining loan servicing options available.

§ 766.302 Loan servicing application requirements for borrowers in bankruptcy.

(a) *Borrower not previously notified.* To be considered for loan servicing, the borrower or borrower's attorney must sign and return the appropriate response form and any forms or information requested by the Agency within 60 days of the date of receipt of Agency notice on loan servicing options.

(b) *Borrower previously notified.* To be considered for continued loan servicing, the borrower or borrower's attorney must sign and return the appropriate response form and any forms or information requested by the Agency within the greater of:

(1) Sixty days after the borrower's attorney received the notification of any remaining loan servicing options; or

(2) The remaining time from the Agency's previous notification of all servicing options that the Agency suspended when the borrower filed bankruptcy.

(c) *Court approval.* The borrower is responsible for obtaining court approval prior to exercising any available servicing rights.

§ 766.303 Processing loan servicing requests from borrowers in bankruptcy.

(a) *Considering borrower requests for servicing.* Any request for servicing is the borrower's acknowledgment that the Agency will not interfere with any

rights or protections under the Bankruptcy Code and its automatic stay provisions.

(b) *Borrowers with confirmed bankruptcy plans.* If a plan is confirmed before servicing and any appeal is completed under 7 CFR part 11, the Agency will complete the servicing or appeals process and may consent to a post-confirmation modification of the plan if it is consistent with the Bankruptcy Code and subpart C of this part, as appropriate.

(c) *Chapter 7 borrowers.* A borrower filing for bankruptcy under chapter 7 of the Bankruptcy Code may not receive primary loan servicing unless the borrower reaffirms the entire FLP debt. A borrower who filed chapter 7 does not have to reaffirm the debt in order to be considered for homestead protection.

§§ 766.304–766.350 [Reserved]

Subpart H—Loan Liquidation

§ 766.351 Liquidation.

(a) *General.* (1) When a borrower cannot or will not meet a loan obligation, the Agency will consider liquidating the borrower's account in accordance with this subpart.

(2) The Agency will charge protective advances against the borrower's account as necessary to protect the Agency's interests during liquidation in accordance with § 765.203 of this chapter.

(3) When no surviving family member or third party assumes or repays a deceased borrower's loan in accordance with part 765, subpart J, of this chapter, or when the estate does not otherwise fully repay or sell loan security to repay a deceased borrower's FLP loans, the Agency will liquidate the security as quickly as possible in accordance with State and local requirements.

(b) *Liquidation for Program borrowers.* (1) If the borrower does not apply, does not accept, or is not eligible for primary loan servicing, conservation contract, market value buyout or homestead protection, and all administrative appeals are concluded, the Agency will accelerate the borrower's account in accordance with §§ 766.355 and 766.356, as appropriate.

(2) Borrowers may voluntarily liquidate their security in accordance with §§ 766.352, 766.353 and 766.354. In such case, the Agency will:

(i) Not delay involuntary liquidation action.

(ii) Notify the borrower in accordance with subpart C of this part, prior to acting on the request for voluntary liquidation, if the conditions of paragraph (b)(1) of this section have not been met.

(c) *Liquidation for Non-program borrowers.* If a borrower has both program and Non-program loans, the borrower's account will be handled in accordance with paragraph (b) of this section. If a borrower with only Non-program loans is in default, the borrower may liquidate voluntarily, subject to the following:

(1) The Agency may delay involuntary liquidation actions when in the Agency's financial interest for a period not to exceed 60 days.

(2) The borrower must obtain the Agency's consent prior to the sale of the property.

(3) If the borrower will not pay the Agency in full, the minimum sales price must be the market value of the property as determined by the Agency.

(4) The Agency will accept a conveyance offer only when it is in the Agency's financial interest.

(5) If a Non-program borrower does not cure the default, or cannot or will not voluntarily liquidate, the Agency will accelerate the loan.

§ 766.352 Voluntary sale of real property and chattel.

(a) *General.* A borrower may voluntarily sell real property or chattel security to repay FLP debt in lieu of involuntary liquidation if all applicable requirements of this section are met. Partial dispositions are handled in accordance with part 765, subparts G and H, of this chapter.

(1) The borrower must sell all real property and chattel that secure FLP debt until the debt is paid in full or until all security has been liquidated.

(2) The Agency must approve the sale and approve the use of proceeds.

(3) The sale proceeds are applied in order of lien priority, except that proceeds may be used to pay customary costs appropriate to the transaction provided:

(i) The costs are reasonable in amount;

(ii) The borrower is unable to pay the costs from personal funds or have the purchaser pay;

(iii) The costs must be paid to complete the sale;

(iv) Costs are not for postage and insurance of the note while in transit when required for the Agency to present the promissory note to the recorder to obtain a release of a portion of the real property from the mortgage.

(4) The Agency will approve the sale of property when the proceeds do not cover the borrower's full debt only if:

(i) The sales price must be equal to or greater than the market value of the property; and

(ii) The sale is in the Agency's financial interest.

(5) If an unpaid loan balance remains after the sale, the Agency will continue to service the loan in accordance with subpart B of 7 CFR part 1956.

(b) *Voluntary sale of chattel.* If the borrower complies with paragraph (a) of this section, the borrower may sell chattel security by:

(1) Public sale if the borrower obtains the agreement of lienholders as necessary to complete the public sale; or

(2) Private sale if the borrower:

(i) Sells all of the security for not less than the market value;

(ii) Obtains the agreement of lienholders as necessary to complete the sale;

(iii) Has a buyer who is ready and able to purchase the property; and

(iv) Obtains the Agency's agreement for the sale.

§ 766.353 Voluntary conveyance of real property.

(a) *Requirements for conveying real property.* The borrower must supply the Agency with the following:

(1) An Agency application form;

(2) A current financial statement. If the borrower is an entity, all entity members must provide current financial statements;

(3) Information on present and future income and potential earning ability;

(4) A warranty deed or other deed acceptable to the Agency;

(5) A resolution approved by the governing body that authorizes the conveyance in the case of an entity;

(6) Assignment of all leases to the Agency. The borrower must put all oral leases in writing;

(7) Title insurance or title record for the security, if available;

(8) Complete debt settlement application in accordance with subpart B of 7 CFR part 1956 before or in conjunction with the voluntary conveyance offer if the value of the property to be conveyed is less than the FLP debt; and

(9) Any other documentation required by the Agency to evaluate the request.

(b) *Conditions for conveying real property.* The Agency will accept voluntary conveyance of real property by a borrower if:

(1) Conveyance is in the Agency's financial interest;

(2) The borrower conveys all real property securing the FLP loan; and

(3) The borrower has received prior notification of the availability of loan servicing in accordance with subpart C of this part.

(c) *Prior and junior liens.* (1) The Agency will pay prior liens to the extent consistent with the Agency's financial interest.

(2) Before conveyance, the borrower must pay or obtain releases of all junior liens, real estate taxes, judgments, and other assessments. If the borrower is unable to pay or obtain a release of the liens, the Agency may attempt to negotiate a settlement with the lienholder if it is in the Agency's financial interest.

(d) *Charging and crediting the borrower's account.* (1) The Agency will charge the borrower's account for all recoverable costs incurred in connection with a conveyance.

(2) The Agency will credit the borrower's account for the amount of the market value of the property less any prior liens, or the debt, whichever is less. In the case of an American Indian borrower whose loans are secured by real estate located within the boundaries of a Federally recognized Indian reservation, however, the Agency will credit the borrower's account with the greater of the market value of the security or the borrower's FLP debt.

(e) *Right of possession.* After voluntary conveyance, the borrower or former owner retains no statutory, implied, or inherent right of possession to the property beyond those rights under an approved lease-purchase agreement executed according to § 766.154 or required by State law.

§ 766.354 Voluntary conveyance of chattel.

(a) *Requirements for conveying chattel.* The borrower must supply the Agency with the following:

(1) An Agency application form;

(2) A current financial statement. If the borrower is an entity, all entity members must provide current financial statements;

(3) Information on present and future income and potential earning ability;

(4) A bill of sale including each item and titles to all vehicles and equipment, as applicable;

(5) A resolution approved by the governing body that authorizes the conveyance in the case of an entity borrower;

(6) Complete debt settlement application in accordance with subpart B of 7 CFR part 1956 before or in conjunction with the voluntary conveyance offer if the value of the property to be conveyed is less than the debt.

(b) *Conditions for conveying chattel.* The Agency will accept conveyance of chattel only if:

(1) The borrower has made every possible effort to sell the property voluntarily;

(2) The borrower can convey the chattel free of other liens;

(3) The conveyance is in the Agency's financial interest;

(4) The borrower conveys all chattel securing the FLP loan; and

(5) The borrower has received prior notification of the availability of loan servicing in accordance with subpart C of this part.

(c) *Charging and crediting the borrower's account.* (1) The Agency will charge the borrower's account for all recoverable costs incurred in connection with the conveyance.

(2) The Agency will credit the borrower's account in the amount of the market value of the chattel.

§ 766.355 Acceleration of loans.

(a) *General.* (1) The Agency accelerates loans in accordance with this section, unless:

(i) State law imposes separate restrictions on accelerations;

(ii) The borrower is American Indian, whose real estate is located on an Indian reservation.

(2) The Agency accelerates all of the borrower's loans at the same time, regardless of whether each individual loan is delinquent or not.

(3) All borrowers must receive prior notification in accordance with subpart C of this part, except for borrowers who fail to graduate in accordance with § 766.101(a)(8).

(b) *Time limitations.* The borrower has 30 days from the date of the Agency acceleration notice to pay the Agency in full.

(c) *Borrower options.* The borrower may:

(1) Pay cash;

(2) Transfer the security to a third party in accordance with part 765, subpart I of this chapter;

(3) Sell the security property in accordance with § 766.352; or

(4) Voluntarily convey the security to the Agency in accordance with §§ 766.353 and 766.354, as appropriate.

(d) *Partial payments.* The Agency may accept a payment that does not cover the unpaid balance of the accelerated loan if the borrower is in the process of selling security, unless acceptance of the payment would reverse the acceleration.

(e) *Failure to satisfy the debt.* The Agency will liquidate the borrower's account in accordance with § 766.357 if the borrower does not pay the account in full within the time period specified in the acceleration notice.

§ 766.356 Acceleration of loans to American Indian borrowers.

(a) *General.* (1) The Agency accelerates loans to American Indian borrowers whose real estate is located on an Indian reservation in accordance with this section, unless State law imposes separate restrictions on accelerations.

(2) The Agency accelerates all of the borrower's loans at the same time, regardless of whether each individual loan is delinquent or not.

(3) All borrowers must receive prior notification in accordance with subpart C of this part, except for borrowers who fail to graduate in accordance with § 766.101(a)(8).

(4) At the time of acceleration, the Agency will notify the borrower and the Tribe that has jurisdiction over the Indian reservation of:

(i) The possible outcomes of a foreclosure sale and the potential impacts of those outcomes on rights established under paragraphs (a)(4)(ii) and (iii) of this section;

(ii) The priority for purchase of the property acquired by the Agency through voluntary conveyance or foreclosure;

(iii) Transfer of acquired property to the Secretary of the Interior if the priority of purchase of the property established under paragraph (a)(4)(ii) of this section is not exercised.

(b) *Borrower options.* The Agency will notify an American Indian borrower of the right to:

(1) Request the Tribe, having jurisdiction over the Indian reservation in which the real property is located, be assigned the loan;

(i) The Tribe will have 30 calendar days after the Agency notification of such request to accept the assignment of the loan.

(ii) The Tribe must pay the Agency the lesser of the outstanding Agency indebtedness secured by the real estate or the market value of the property.

(iii) The Tribe may pay the amount in a lump sum or according to the rates, terms and requirements established in part 770 of this chapter, subject to the following:

(A) The Tribe must execute the promissory note and loan documents within 90 calendar days of receipt from the Agency;

(B) Such loan may not be considered for debt writedown under 7 CFR part 770.

(iv) The Tribe's failure to respond to the request for assignment of the loan or to finalize the assignment transaction within the time provided, shall be treated as the Tribe's denial of the request.

(2) Request the loan be assigned to the Secretary of the Interior. The Secretary of the Interior's failure to respond to the request for assignment of the loan or to finalize the assignment transaction, shall be treated as denial of the request;

(3) Voluntarily convey the real estate property to the Agency;

(i) The Agency will conduct a environmental review before accepting voluntary conveyance.

(ii) The Agency will credit the account with the greater of the market value of the real estate or the amount of the debt.

(4) Sell the real estate;

(i) The buyer must have the financial ability to buy the property.

(ii) The sale of the property must be completed within 90 calendar days of the Agency's notification.

(iii) The loan can be transferred and assumed by an eligible buyer.

(5) Pay the FLP debt in full.

(6) Consult with the Tribe that has jurisdiction over the Indian reservation to determine if State or Tribal law provides rights and protections that are more beneficial than those provided under this section.

(c) *Tribe notification.* At the time of acceleration, the Agency will notify the Tribe that has jurisdiction over the Indian reservation in which the property is located, of the:

(1) Sale of the American Indian borrower's property;

(2) Market value of the property;

(3) Amount the Tribe would be required to pay the Agency for assignment of the loan.

(d) *Partial payments.* The Agency may accept a payment that does not cover the unpaid balance of the accelerated loan if the borrower is in the process of selling security, unless acceptance of the payment would reverse the acceleration.

(e) *Failure to satisfy the debt.* The Agency will liquidate the borrower's account in accordance with § 766.357 if:

(1) The borrower does not pay the account in full within the time period specified in the acceleration notice;

(2) The borrower does not voluntarily convey the property to the Agency;

(3) Neither the Tribe nor the Secretary of the Interior accepts assignment of the borrower's loan.

§ 766.357 Involuntary liquidation of real property and chattel.

(a) *General.* The Agency will liquidate the borrower's security if:

(1) The borrower does not satisfy the account in accordance with §§ 766.355 and 766.356, as appropriate;

(2) The involuntary liquidation is in the Agency's financial interest.

(b) *Foreclosure on loans secured by real property.* (1) The Agency will charge the borrower's account for all recoverable costs incurred in connection with the foreclosure and sale of the property.

(2) If the Agency acquires the foreclosed property, the Agency will credit the borrower's account in the amount of the Agency's bid except when incremental bidding was used, in which case the amount of credit will be the maximum bid that was authorized. If the Agency does not acquire the foreclosed property, the Agency will credit the borrower's account in accordance with State law and guidance from the Regional OGC.

(3) Notwithstanding paragraph (b)(2), for an American Indian borrower whose real property secures an FLP loan and is located within the confines of a Federally-recognized Indian reservation, the Agency will credit the borrower's account in the amount that is the greater of:

(i) The market value of the security; or

(ii) The amount of the FLP debt against the property.

(4) After the date of foreclosure, the borrower or former owner retains no statutory, implied, or inherent right of possession to the property beyond those rights granted by State law.

(5) If an unpaid balance on the FLP loan remains after the foreclosure sale of the property, the Agency may debt settle the account in accordance with subpart B of 7 CFR part 1956.

(c) *Foreclosure of loans secured by chattel.* (1) The Agency will charge the borrower's account for all recoverable costs incurred by the Agency as a result of the repossession and sale of the property.

(2) The Agency will apply the proceeds from the repossession sale to the borrower's account less prior liens and all authorized liquidation costs.

(3) If an unpaid balance on the FLP loan remains after the sale of the repossessed property, the Agency may debt settle the account in accordance with subpart B of 7 CFR part 1956.

§§ 766.358—766.400 [Reserved]

Subpart I—Exception Authority

§ 766.401 Agency exception authority.

On an individual case basis, the Agency may consider granting an exception to any regulatory requirement or policy of this part if:

(a) The exception is not inconsistent with the authorizing statute or other applicable law; and

(b) The Agency's financial interest would be adversely affected by acting in accordance with published regulations or policies and granting the exception would resolve or eliminate the adverse effect upon its financial interest.

■ 26. Add part 767 to read as follows:

PART 767—INVENTORY PROPERTY MANAGEMENT

Subpart A—Overview

Sec.
767.1 Introduction.
767.2 Abbreviations and definitions.
767.3–767.50 [Reserved]

Subpart B—Property Abandonment and Personal Property Removal

767.51 Property abandonment.
767.52 Disposition of personal property from real estate inventory property.
767.53–767.100 [Reserved]

Subpart C—Lease of Real Estate Inventory Property

767.101 Leasing real estate inventory property.
767.102 Leasing non-real estate inventory property.
767.103 Managing leased real estate inventory property.
767.104–767.150 [Reserved]

Subpart D—Disposal of Inventory Property

767.151 General requirements.
767.152 Exceptions.
767.153 Sale of real estate inventory property.
767.154 Conveying easements, rights-of-way, and other interests in inventory property.
767.155 Selling chattel property.
767.156–767.200 [Reserved]

Subpart E—Real Estate Property with Important Resources or Located in Special Hazard Areas

767.201 Real estate inventory property with important resources.
767.202 Real estate inventory property located in special hazard areas.
767.203–767.250 [Reserved]

Subpart F—Exception Authority

767.251 Agency exception authority.

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart A—Overview

§ 767.1 Introduction.

(a) *Purpose.* This part describes the Agency's policies for:

(1) Managing inventory property;

(2) Selling inventory property;

(3) Leasing inventory property;

(4) Managing real and chattel property the Agency takes into custody after abandonment by the borrower;

(5) Selling or leasing inventory property with important resources, or located in special hazard areas; and

(6) Conveying interest in real property for conservation purposes.

(b) *Basic policy.* The Agency maintains, manages and sells inventory property as necessary to protect the Agency's financial interest.

§ 767.2 Abbreviations and definitions.

Abbreviations and definitions for terms used in this part are provided in § 761.2 of this chapter.

§§ 767.3–767.50 [Reserved]

Subpart B—Property Abandonment and Personal Property Removal

§ 767.51 Property abandonment.

The Agency will take actions necessary to secure, maintain, preserve, manage, and operate the abandoned security property, including marketing perishable security property on behalf of the borrower when such action is in the Agency's financial interest. If the security is in jeopardy, the Agency will take the above actions prior to completing servicing actions contained in 7 CFR part 766.

§ 767.52 Disposition of personal property from real estate inventory property.

(a) *Preparing to dispose of personal property.* If, at the time of acquisition, personal property has been left on the real estate inventory property, the Agency will notify the former real estate owner and any known lienholders that the Agency will dispose of the personal property. Property of value may be sold at a public sale.

(b) *Reclaiming personal property.* The owner or lienholder may reclaim personal property at any time prior to the property's sale or disposal by paying all expenses incurred by the Agency in connection with the personal property.

(c) *Use of proceeds from sale of personal property.* Proceeds from the public sale of personal property will be distributed as follows:

(1) To lienholders in order of lien priority less a pro rata share of the sale expenses;

(2) To the inventory account up to the amount of expenses incurred by the Agency in connection with the sale of personal property;

(3) To the outstanding balance on the FLP loan; and

(4) To the borrower, if the borrower's whereabouts are known.

§§ 767.53–767.100 [Reserved]

Subpart C—Lease of Real Estate Inventory Property

§ 767.101 Leasing real estate inventory property.

(a) The Agency may lease real estate inventory property:

(1) To the former owner under the Homestead Protection Program;

(2) To a beginning farmer selected to purchase the property but who was unable to purchase it because of a lack of Agency direct or guaranteed loan funds;

(3) When the Agency is unable to sell the property because of lengthy litigation or appeal processes.

(b) The Agency will lease real estate inventory property in an ''as is'' condition.

(c) The Agency will lease property for:

(1) Homestead protection in accordance with part 766, subpart D, of this chapter.

(2) A maximum of 18 months to a beginning farmer the Agency selected as purchaser when no Agency loan funds are available; or

(3) The shortest possible duration for all other cases subject to the following:

(i) The maximum lease term for such a lease is 12 months.

(ii) The lease is not subject to renewal or extension.

(d) The lessee may pay:

(1) A lump sum;

(2) On an annual installment basis; or

(3) On a crop-share basis, if the lessee is a beginning farmer under paragraph (a) of this section.

(e) The Agency leases real estate inventory property for a market rent amount charged for similar properties in the area.

(f) The Agency may require the lessee to provide a security deposit.

(g) Only leases to a beginning farmer or Homestead Protection Program participant will contain an option to purchase the property.

§ 767.102 Leasing non-real estate inventory property.

The Agency does not lease non-real estate property unless it is attached as a fixture to real estate inventory property that is being leased and it is essential to the farming operation.

§ 767.103 Managing leased real estate inventory property.

(a) The Agency will pay for repairs to leased real estate inventory property only when necessary to protect the Agency's interest.

(b) If the lessee purchases the real estate inventory property, the Agency will not credit lease payments to the purchase price of the property.

§§ 767.104–767.150 [Reserved]

Subpart D—Disposal of Inventory Property

§ 767.151 General requirements.

Subject to § 767.152, the Agency will attempt to sell its inventory property as follows:

(a) The Agency will combine or divide inventory property, as appropriate, to maximize the opportunity for beginning farmers to purchase real property.

(b) The Agency will advertise all real estate inventory property that can be used for any authorized FO loan purpose for sale to beginning farmers no later than 15 days after the Agency obtains title to the property.

(c) If more than one eligible beginning farmer applies, the Agency will select a purchaser by a random selection process open to the public.

(1) All applicants will be advised of the time and place of the selection.

(2) All drawn offers will be numbered.

(3) Offers drawn after the first will be held in suspense pending sale to the successful applicant.

(4) Random selection is final and not subject to administrative appeal.

(d) If there are no offers from beginning farmers, the Agency will sell inventory property by auction or sealed bid to the general public no later than 165 days after the Agency obtains title to the property. All bidders will be required to submit a 10 percent deposit with their bid.

(e) If the Agency receives no acceptable bid through an auction or sealed bid, the Agency will attempt to sell the property through a negotiated sale at the best obtainable price.

(f) If the Agency is not able to sell the property through negotiated sale, the Agency may list the property with a real estate broker. The broker must be properly licensed in the State in which the property is located.

§ 767.152 Exceptions.

The Agency's disposition procedure under § 767.151 is subject to the following:

(a) If the Agency leases real estate inventory property to a beginning farmer in accordance with § 767.101(a)(2), and the lease expires, the Agency will not advertise the property if the Agency has direct or guaranteed loan funds available to finance the transaction.

(b) The Agency will not advertise a property for sale until the homestead protection rights have terminated in accordance with part 766, subpart D of this chapter.

(c) The Agency may allow an additional 60 days if needed for conservation easements or environmental reviews.

(d) If the property was owned by an American Indian borrower and is located on an Indian reservation, the Agency will:

(1) No later than 90 days after acquiring the property, offer the opportunity to purchase or lease the property in accordance with:

(i) The priorities established by the Indian Tribe having jurisdiction over the Indian reservation;

(ii) In cases where priorities have not been established, the following order:

(A) A member of the Indian Tribe that has jurisdiction over the Indian reservation;

(B) An Indian entity;

(C) The Indian Tribe.

(2) Transfer the property to the Secretary of the Interior if the property is not purchased or leased under paragraph (1) of this section.

(e) If Agency analysis of farm real estate market conditions indicates the sale of the Agency's inventory property will have a negative effect on the value of farms in the area, the Agency may withhold inventory farm properties in the affected area from the market until further analysis indicates otherwise.

§ 767.153 Sale of real estate inventory property.

(a) *Pricing.* (1) The Agency will advertise property for sale at its market value, as established by an appraisal obtained in accordance with § 761.7.

(2) Property sold by auction or sealed bid will be sold for the best obtainable price. The Agency reserves the right to reject any and all bids.

(b) *Agency-financed sales.* The Agency may finance sales to purchasers if:

(1) The Agency has direct or guaranteed FO loan funds available;

(2) All applicable loan making requirements are met; and

(3) All non-beginning farmer purchasers make a 10 percent down payment.

(c) *Taxes and assessments.* (1) Property taxes and assessments will be prorated between the Agency and the purchaser based on the date the Agency conveys title to the purchaser.

(2) The purchaser is responsible for paying all taxes and assessments after the Agency conveys title to the purchaser.

(d) *Loss or damage to property.* If, through no fault of either party, the property is lost or damaged as a result of fire, vandalism, or act of God before the Agency conveys the property, the Agency may reappraise the property and set the sale price accordingly.

(e) *Termination of contract.* Either party may terminate the sales contract. If the contract is terminated by the Agency, the Agency returns any deposit to the bidder. If the contract is terminated by the purchaser, any deposit will be retained by the Agency as full liquidated damages, except where failure to close is due to Agency non-approval of credit.

(f) *Warranty on title.* The Agency will not provide any warranty on the title or on the condition of the property.

§ 767.154 Conveying easements, rights-of-way, and other interests in inventory property.

(a) *Appraisal of real property and real property interests.* The Agency will determine the value of real property and real property interests being transferred in accordance with § 761.7 of this chapter.

(b) *Easements and rights-of-way on inventory property.* (1) The Agency may grant or sell an easement or right-of-way for roads, utilities, and other appurtenances if the conveyance is in the public interest and does not adversely affect the value of the real property.

(2) The Agency may sell an easement or right-of-way by negotiation for market value to any purchaser for cash without giving public notice if:

(i) The sale would not prevent the Agency from selling the property; and

(ii) The sale would not decrease the value of the property by an amount greater than the price received.

(3) In the case of condemnation proceedings by a State or political subdivision, the transfer of title will not be completed until adequate compensation and damages have been determined and paid.

(c) *Disposal of other interests in inventory property.* (1) If applicable, the Agency will sell mineral and water rights, mineral lease interests, mineral royalty interests, air rights, and agricultural and other lease interests with the surface land except as provided in paragraph (b) of this section.

(2) If the Agency sells the land in separate parcels, any rights or interests that apply to each parcel are included with the sale.

(3) The Agency will assign lease or royalty interests not passing by deed to the purchaser at the time of sale.

(4) Appraisals of property will reflect the value of such rights, interests, or leases.

§ 767.155 Selling chattel property.

(a) *Method of sale.* (1) The Agency will use sealed bid or established public auctions for selling chattel. The Agency does not require public notice of sale in addition to the notice commonly used by the auction facility.

(2) The Agency may sell chattel inventory property, including fixtures, concurrently with real estate inventory property if, by doing so, the Agency can obtain a higher aggregate price. The Agency may accept an offer for chattel based upon the combined final sales price of both the chattel and real estate.

(b) *Agency-financed sales.* The Agency may finance the purchase of chattel inventory property if the Agency has direct or guaranteed OL loan funds available and all applicable loan making requirements are met.

§§ 767.156–767.200 [Reserved]

Subpart E—Real Estate Property With Important Resources or Located in Special Hazard Areas

§ 767.201 Real estate inventory property with important resources.

In addition to the requirements established in subpart G of 7 CFR part 1940, the following apply to inventory property with important resources:

(a) *Wetland conservation easements.* The Agency will establish permanent wetland conservation easements to protect and restore certain wetlands that exist on inventory property prior to the sale of such property, regardless of whether the sale is cash or credit.

(1) The Agency establishes conservation easements on all wetlands or converted wetlands located on real estate inventory property that:

(i) Were not considered cropland on the date the property was acquired by the Agency; and

(ii) Were not used for farming at any time during the 5 years prior to the date of acquisition by the Agency.

(A) The Agency will consider property to have been used for farming if it was used for agricultural purposes including, but not limited to, cropland, pastures, hayland, orchards, vineyards, and tree farming.

(B) In the case of cropland, hayland, orchards, vineyards, or tree farms, the Agency must be able to demonstrate that the property was harvested for crops.

(C) In the case of pastures, the Agency must be able to demonstrate that the property was actively managed for grazing by documenting practices such as fencing, fertilization, and weed control.

(2) The wetland conservation easement will provide for access to other portions of the property as necessary for farming or other uses.

(b) *Mandatory conservation easements.* The Agency will establish conservation easements to protect 100-year floodplains and other Federally-designated important resources. Federally-designated important resources include, but are not limited to:

(1) Listed or proposed endangered or threatened species;

(2) Listed or proposed critical habitats for endangered or threatened species;

(3) Designated or proposed wilderness areas;

(4) Designated or proposed wild or scenic rivers;

(5) Historic or archeological sites listed or eligible for listing on the National Register of Historic Places;

(6) Coastal barriers included in Coastal Barrier Resource Systems;

(7) Natural landmarks listed on National Registry of Natural Landmarks; and

(8) Sole source aquifer recharge areas as designated by EPA.

(c) *Discretionary easements.* The Agency may grant or sell an easement, restriction, development right, or similar legal right to real property for conservation purposes to a State government, a political subdivision of a State government, or a private non-profit organization.

(1) The Agency may grant or sell discretionary easements separate from the underlying fee or property rights.

(2) The Agency may convey property interests under this paragraph by negotiation to any eligible recipient without giving public notice if the conveyance does not change the intended use of the property.

(d) *Conservation transfers.* The Agency may transfer real estate inventory property to a Federal or State agency provided the following conditions are met:

(1) The transfer of title must serve a conservation purpose;

(2) A predominance of the property must:

(i) Have marginal value for agricultural production;

(ii) Be environmentally sensitive; or

(iii) Have special management importance;

(3) The homestead protection rights of the previous owner have been exhausted;

(4) The Agency will notify the public of the proposed transfer; and

(5) The transfer is in the Agency's financial interest.

(e) *Use restrictions on real estate inventory property with important resources.* (1) Lessees and purchasers receiving Agency credit must follow a conservation plan developed with assistance from NRCS.

(2) Lessees and purchasers of property with important resources or real property interests must allow the Agency or its representative to periodically inspect the property to determine if it is being used for conservation purposes.

§ 767.202 Real estate inventory property located in special hazard areas.

(a) The Agency considers the following to be special hazard areas:

(1) Mudslide hazard areas;

(2) Special flood areas; and

(3) Earthquake areas.

(b) The Agency will use deed restrictions to prohibit residential use of properties determined to be unsafe in special hazard areas.

(c) The Agency will incorporate use restrictions in its leases of property in special hazard areas.

§§ 767.203–767.250 [Reserved]

Subpart F—Exception Authority

§ 767.251 Agency exception authority.

On an individual case basis, the Agency may consider granting an exception to any regulatory requirement or policy of this part if:

(a) The exception is not inconsistent with the authorizing statute or other applicable law; and

(b) The Agency's financial interest would be adversely affected by acting in accordance with published regulations or policies and granting the exception would reduce or eliminate the adverse effect upon the its financial interest.

PART 768–769—[RESERVED]

■ 27. Add and reserve parts 768 and 769.

7 CFR Chapter XIV

PART 1405—LOANS, PURCHASES, AND OTHER OPERATIONS

■ 28. Revise the authority citation to read as follows:

Authority: 7 U.S.C. 1515; 7 U.S.C. 7416a; 7 U.S.C. 7991(e); 15 U.S.C. 714b and 714c.

■ 29. Amend § 1405.8 as follows:

■ a. Revise the section heading to read as set forth below;

■ b. Revise paragraph (a)(1) to read as set forth below; and

■ c. Redesignate paragraph (a)(7) as (a)(8) and add a new paragraph (a)(7) to read as set forth below.

§ 1405.8 Disqualification due to crop insurance violation.

(a) * * *

(1) The FCIA.

* * * * *

(7) The Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*).

* * * * *

Signed in Washington, DC, on October 23, 2007.

Teresa C. Lasseter,

Executive Vice President, Commodity Credit Corporation and Administrator, Farm Service Agency.

[FR Doc. 07–5374 Filed 11–7–07; 8:45 am]

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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1, 21, 25 et al.

Enhanced Airworthiness Program for Airplane Systems/Fuel Tank Safety (EAPAS/FTS); Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 21, 25, 26, 91, 121, 125, and 129.

[Docket No.: FAA–2004–18379; Amendment Nos. 1–60, 21–90, 25–123, 26–0, 91–297, 121–336, 125–53, 129–43]

RIN 2120–AI31

Enhanced Airworthiness Program for Airplane Systems/Fuel Tank Safety (EAPAS/FTS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends FAA regulations for certification and operations of transport category airplanes. These changes are necessary to help ensure continued safety of commercial airplanes. They improve the design, installation, and maintenance of airplane electrical wiring systems and align those requirements as closely as possible with the requirements for fuel tank system safety. This final rule organizes and clarifies design requirements for wire systems by moving existing regulatory references to wiring into a single section of the regulations specifically for wiring and by adding new certification rules. It requires holders of type certificates for certain transport category airplanes to conduct analyses of their airplanes and make necessary changes to existing Instructions for Continued Airworthiness (ICA) to improve maintenance procedures for wire systems. It requires operators to incorporate ICA for wiring into their maintenance or inspection programs. And finally, this final rule clarifies requirements of certain existing rules for operators to incorporate ICA for fuel tank systems into their maintenance or inspection programs.

DATES: These amendments become effective December 10, 2007.

FOR FURTHER INFORMATION CONTACT: If you have technical questions about the certification rules in this action, contact Stephen Slotte, ANM–111, Airplane & Flight Crew Interface, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98057–3356; telephone (425) 227–2315; facsimile (425) 227–1320, e-mail *steve.slotte@faa.gov*. If you have technical questions about the operating rules, contact Fred Sobeck, AFS–308, Aircraft Maintenance Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7355; facsimile (202) 267–7335, e-mail *frederick.sobeck@faa.gov*. Direct any legal questions to Doug Anderson, Office of Regional Counsel, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98057–3356; telephone (425) 227–2166; facsimile (425) 227–1007, e-mail *Douglas.Anderson@faa.gov*.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing minimum standards required in the interest of safety for the design and performance of aircraft; regulations and minimum standards in the interest of safety for inspecting, servicing, and overhauling aircraft; and regulations for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it prescribes—

- New safety standards for the design of transport category airplanes, and
- New requirements necessary for safety for the design, production, operation, and maintenance of those airplanes, and for other practices, methods, and procedures relating to those airplanes.

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I. Executive Summary

Safety concerns about wiring systems in airplanes were brought to the forefront of public attention by a midair explosion in 1996 involving a 747 airplane. Ignition of flammable vapors in the fuel tank was the probable cause of that fatal accident, and the most likely source was a wiring failure that allowed a spark to enter the fuel tank. All 230 people aboard the airplane were killed. Two years later, an MD–11 airplane crashed into the Atlantic Ocean, killing all 229 people aboard. Although an exact cause could not be determined, the presence of resolidified copper on a portion of a wire of the in-flight entertainment system cable indicated that wire arcing had occurred in the area where the fire most likely originated.

Investigations of those accidents and later examinations of other airplanes showed a collection of common problems. Deteriorated wiring, corrosion, improper wire installation and repairs, and contamination of wire bundles with metal shavings, dust, and fluids (which would provide fuel for fire) were common conditions in representative examples of the ''aging fleet of transport airplanes.''

The FAA has concluded that current maintenance practices do not adequately address wiring components, wiring inspection criteria are too general, and maintenance instructions do not describe unacceptable conditions, such as improper repairs and installations, in enough detail.

With this final rule we are introducing new maintenance, inspection, and design criteria for airplane wiring to address conditions that put transport airplanes at risk of wire failures, smoke, and fire. We are adding requirements for type certificate holders and applicants for type certificates and supplemental type certificates to analyze the zones of their airplanes for the presence of wire and for the likely accumulation of contaminant materials. This final rule also requires them to develop maintenance and inspection tasks to identify, correct, and prevent wiring conditions that introduce risk to continued safe flight. We are requiring that these tasks be included in new Instructions for Continued Airworthiness for wiring and that they be compatible with Instructions for Continued Airworthiness for fuel tank systems. The EWIS ICA must not conflict with the ICA for fuel tanks, and must avoid duplication and redundancy. Too frequent disturbance to electrical wiring by repeated moving, pulling, and flexing of the wire bundles will induce unnecessary stress on the wiring and its components, which in turn could lead to degradation, expedited aging, and failures. Thus it is important that redundant tasks and unnecessary disturbances to the electrical wiring be minimized. We are amending Title 14 Code of Federal Regulations (CFR) parts 91, 121, 125, and 129 operating rules to require operators of transport category airplanes to incorporate maintenance and inspection tasks for wiring into their regular maintenance programs and we are clarifying existing requirements for fuel tanks.[1] We are creating a new subpart of part 25 to contain the majority of the certification requirements for airplane wiring, including new rules to improve safety in manufacture and modification. Finally, we are creating a new part 26 for design approval holder requirements relating to continued airworthiness and safety improvements and new subparts in parts 91, 121, 125, and 129 for the same types of requirements for operators.

Accompanying this final rule are guidance materials in the form of advisory circulars (AC), which present one way, but not the only way, to comply with specific parts of these regulations.

One of the ACs presents a suggested curriculum for electrical wiring interconnection system (EWIS) training. Existing § 121.375 requires that certificate holders or anyone performing maintenance have a training program. This requirement ensures that anyone determining the adequacy of maintenance work (including inspectors) is fully informed about the procedures and techniques involved and is competent to perform them. AC 120–94 provides guidance for complying with § 121.375 as it applies to EWIS maintenance and inspection. In AC 120–94 we provide a suggested training program to address the informational needs of the various people who come in contact with airplane EWIS, and we encourage operators to include this training voluntarily. While the Aging Transport Systems Rulemaking Advisory Committee (ATSRAC) had recommended some form of EWIS training be required for anyone likely to come into contact with EWIS, we have determined the associated cost would be unduly burdensome. There are 11 other ACs accompanying this rule which provide guidance on different requirements contained here. A few of them have been revised for clarification. In those instances, this will be noted in section III. Otherwise, except for minor editorial changes, the guidance accompanying this rule is being published in the same form in which it was proposed and will not be discussed here.

Since the Notice of Proposed Rulemaking (NPRM), the National Transportation Safety Board (NTSB) has issued Safety Recommendations A–06–29 through –35 pertaining to fires on one particular model of regional jet. In the 6 months between October 2005 and March 2006, there were a total of 6 fires on regional jets. A seventh fire occurred prior to that 6-month period. The NTSB stated that, in addition to the danger posed by the fires, 2 of the incident airplanes temporarily lost all flight displays. The NTSB's investigation

[1] We are not amending 14 CFR part 135 because presently there are only 20 airplanes with sufficient passenger or payload capacity to be affected by this rule that fly in part 135 operations. Should part 135 be amended to permit widespread usage of these larger transport category airplanes, we may extend the operating requirements of today's rule to part 135 at that time.

revealed that all of the fires originated from the same electrical component—an electrical contactor located in the avionics compartment beneath the floor of the captain's seat. The fires were caused by moisture-induced short circuits between the electrical terminals of the contactors. We have issued airworthiness directives (AD) to correct this unsafe condition. However, if the requirements in this final rule had been in effect, the type of failure that caused these 7 fires would not have occurred. This is because several of the new requirements directly address design issues that led to the fires. This final rule is meant to proactively address wiring conditions existing in the transport airplane fleet that we now know affect safe flight and can be detected, corrected, or prevented.

We express present value benefits and costs using a 7% discount rate. The total estimated benefits of this final rule, $801 million ($388 present value) over a 25-year period, are comprised of operational benefits and safety benefits. The operational benefits are estimated at $506.3 million ($237.5 million present value). The safety benefits are estimated at $294.6 million ($150.6 million present value). This final rule will prevent a portion of fatal and non-fatal incidents and accidents while decreasing the impact that EWIS discrepancies have on airline operations.

The estimated total cost of this final rule is $416 million ($233 million present value) over 25 years. The majority of these costs ($292.2 million, or $147.6 million present value) will be borne by operators. The remainder of the projected costs will be borne by aircraft and engine manufacturers, and, to a much lesser extent, the FAA Oversight Offices.

II. Background

A. Summary of the NPRM

1. The Proposed Rule

On October 6, 2005 (70 FR 58508), the FAA published in the **Federal Register** the Notice of Proposed Rulemaking (NPRM) entitled Enhanced Airworthiness Program for Airplane Systems/Fuel Tank Safety (EAPAS/FTS), which is the basis of this final rule.

In that NPRM, we proposed development of Instructions for Continued Airworthiness (ICA) for wiring systems and subsequent incorporation of those ICA into operators' maintenance programs. We also proposed alignment of the compliance times for operators to incorporate wire and fuel tank system ICA into their maintenance programs.

We proposed changes in the certification rules to require more attention during the design and installation of airplane systems to conditions that could compromise wire safety and accessibility. And we proposed a new part 25 subpart that would be dedicated to current and new regulations about airplane wiring systems.

If you would like more details about the proposal, you can get a copy by following the instructions under the Availability of Rulemaking Documents heading at the end of this preamble.

2. Related Activities

On July 12, 2005, the FAA published in the **Federal Register** a statement of policy for future management of the shared responsibility between design approval holders (DAH) and operators in achieving certain types of safety objectives. That stated policy is reflected in the requirements of this final rule for DAHs to develop ICA for airplane wiring systems.

Also published in the July 12, 2005 **Federal Register** was a disposition of comments on a previous notice to extend the date for operators to comply with special maintenance requirements for fuel tank systems. That date was extended from December 6, 2004 to December 16, 2008.

On July 7, 2006, we published notice in the **Federal Register** stating that, although we had originally proposed to align compliance times for operator incorporation of ICA for wiring and for fuel tanks, we later found it impractical to do so. This notice notified operators that their compliance date for incorporation of fuel tank ICA is still December 16, 2008.

Twelve draft ACs on different aspects of the rule accompanied the NPRM and were made available for public comment at the same time. On November 8, 2005, the comment period for the ACs was extended to February 3, 2006, so that it would align with the comment period for the NPRM.

B. Differences Between the NPRM and the Final Rule

We have revised the numbering for 14 CFR part 25 subpart H Electrical Wiring Interconnection Systems (EWIS). We did this to harmonize as much as possible with the planned European Aviation Safety Agency (EASA) version of these rules. As discussed later, the design approval holder requirements proposed in the NPRM as subpart I are now contained in new part 26, again to harmonize more easily with the regulatory structure of other national airworthiness authorities. We also have made some changes to the compliance planning sections of those rules. In response to comments, we have increased the compliance time for the design approval holder requirements to 24 months from the effective date of this rule. We have increased the time for operator compliance with the EWIS requirements to 39 months from the effective date of this rule. Because our regulatory process exceeded the time we had originally planned for issuance of this rule, it is no longer practical to align the operator compliance dates for the EWIS ICA with those for fuel tanks. Coordination of the timing of the maintenance tasks within those ICA is still desirable and possible, so that aspect of our proposal remains unchanged in the final rule. We have, however, extended the date for operators to submit ICA for auxiliary fuel tanks to the FAA Oversight Office.

We have removed some airplanes from the exclusion lists of the DAH requirements and the operating rules. This was either because they were already excluded as a result of the definition of the affected airplanes or because we have reconsidered the rationale for certain exclusions. We have also made other, minor, changes in wording to the proposed rules for the purposes of clarification or harmonization. We discuss all of the changes in section III of this preamble.

C. Summary of Comments

The FAA received 39 comment letters about the proposed rule and guidance material. The comments covered a wide spectrum of topics and a range of responses, which we discuss more fully below. There was much support for the general intent of the rule and the guidance material. There were also requests for changes and for clarification.

III. Discussion of the Final Rule

A. Overview

This rule is a result of years of study, data gathering, and collaboration with industry. It has been developed as a solution to the problem of wire contamination and wire damage on airplanes, which can result in system failures, smoke, and fire, and can threaten continued safe flight.

Examinations by the Aging Systems Task Force of representative airplanes from the fleet of aging transports revealed wiring that was deteriorated, corroded, improperly installed and repaired, and contaminated with materials such as metal shavings, dust,

and fluids.[2] The NTSB, as well as working groups of the FAA, industry, and other Civil Aviation Authorities, found these conditions to be common across the fleet, not just isolated instances of poor maintenance. While systems have always been subject to careful scrutiny of their safety and reliability during the certification process, the wires that connect those systems had been considered appropriately cared for when fitted and maintained according to standard industry practices.

Now we know that airplane wiring needs more attention. It needs to be considered as a discrete system, and given the same careful scrutiny as other systems. The design of wiring systems is important for creating safe separation from other wires and systems and protecting it from damage. Inspection and maintenance is important in uncovering and repairing wire damage and preventing buildup of contaminants that can cause damage and that also provide fuel for fire. Wire must be inspected regularly and contaminant buildup must be prevented.

In considering the problems found on transport category airplanes, we explored various alternatives. One alternative was to do nothing. But the result of that approach would be a continuation of incidents and accidents caused by deteriorated wiring systems. Once we knew there was a problem affecting safe flight, doing nothing was not really an option. We could have asked for voluntary support. But voluntary programs in the past have not always resulted in complete participation, and a voluntary program could not guarantee the level of safety we want to ensure. Accordingly, we decided to develop a rule to correct potential safety problems with airplane wiring, and to require compliance of all those whose participation is necessary to achieve that goal.

This rule enlists the aid of design approval holders in assessing the wiring on their airplanes and in developing inspection and maintenance tasks that operators can use to maintain wire safety. It requires operators to incorporate into their inspection and maintenance programs tasks for maintaining wire safety that are based on those developed in accordance with requirements. It introduces new certification rules for wire separation, identification, system safety, protection from damage, access, and other aspects of wire safety. It creates a new subpart in the certification rules for wire certification so that the many existing requirements are more easily found. It also requires that design approval holders align inspection and maintenance tasks for wiring with those for fuel tank systems, to avoid duplication and to ensure that the most rigorous task is accomplished. As an example, if the EWIS ICA calls for a general visual inspection of a certain wire and the fuel tank ICA calls for a detailed inspection of the same wire, the general visual inspection task would be removed from the EWIS ICA and the detailed inspection would be retained in the fuel tank ICA, identified as both a fuel tank task and an EWIS task.

B. Design Approval Holder (DAH) Requirements (Part 26)

For design approval holders this final rule differs from the proposal in the following four ways.

- The physical location of the rule has changed, from the proposed location in part 25, subpart I, to a new part 26.[3]
- The compliance date has been changed from December 16, 2007, to 24 months after the effective date of the rule.
- Two changes were made to the compliance plan requirement.
- The definition of the ''representative airplane'' has been clarified.

We have also made minor wording revisions to section 26.11 for clarification. They do not change the requirements.

1. Requirements To Develop ICA

As discussed above, this rule introduces requirements for design approval holders (DAH) to assess their airplanes in relation to wiring. The assessment must be performed with an enhanced zonal analysis procedure (EZAP), which is outlined in a part-25-series advisory circular accompanying this rule entitled AC 25–27 ''Development of Transport Category Airplane Electrical Wiring Interconnection Systems Instructions for Continued Airworthiness Using an Enhanced Zonal Analysis Procedure.'' This AC was originally titled AC 120–XX ''Program to Enhance Aircraft Electrical Wiring Interconnection System Maintenance.'' The material contained in that proposed AC is now presented in two separate ACs. Guidance for carrying out an EZAP analysis, as required in the new parts 25 and 26 regulations in this final rule, is presented in the newly titled No. 25–27 AC named above, which will be referred to in the rest of this document as the DAH EZAP AC. Guidance for the operator requirements will be presented in a separate 120-series AC titled ''Incorporation of Electrical Wiring Interconnection System (EWIS) Instructions for Continued Airworthiness into the Operator's Maintenance Program.''

For each zone on the airplane that contains wiring, DAHs must develop maintenance and inspection tasks to prevent contaminant buildup on that wiring and maintain safety. They must then make those tasks available to operators in the form of ICA readily identifiable as pertaining to wiring. They must also assess those wiring ICA in relation to ICA for fuel tank systems to make sure there are no conflicts or redundancies between the two. The rule includes requirements for the DAH to submit a compliance plan to the FAA outlining how it intends to meet these requirements.

2. Changes to Location of Design Approval Holder Requirements

In the NPRM, we noted that we had not decided on the final location of the continued airworthiness and safety improvements design approval holder requirements of part 25, subparts A and I. We requested comments on this issue, and received 7 comments on the rule location. Transport Canada and British Airways stated that they wanted the requirements in part 21. This was to keep the procedural requirements of the new subpart with the present procedural requirements of part 21 and out of the airworthiness standards parts of the regulations. EASA, Airbus, Boeing, Aerospace Industries Association, and the General Aviation Manufacturers Association stated that they wanted the requirements in a new part or in part 21. EASA said these requirements must be in a mandatory part of its system and CS (Certification Specifications) -25, its equivalent to our part 25, is not mandatory. Others who commented wanted to maintain part 25 as strictly an airworthiness standard.

Based on these comments and on discussions with Transport Canada, EASA, and the Brazilian Agencia Nacional de Aviacao Civil, we decided to create a new part 26 and move the enabling regulations out of part 25 and into part 21—Certification Procedures for Products and Parts. We did this for several reasons.

First, moving these requirements to a new part keeps part 25 as strictly an airworthiness standard for new transport category airplanes. This is important because it maintains

[2] Transport Aircraft Intrusive Inspection Project final report dated December 29, 2000.

[3] Since the comments refer to the NPRM, however, the commenters' original references are retained, including references to proposed ACs.

harmonization and compatibility among the United States, Canada, and the European Union regulatory systems. Second, integrating the requirements into part 21 improves the clarity of how the part 26 requirements will address existing and future design approvals.

In creating the new part 26, we renumbered the previous sections of part 25, subpart I, and we incorporated the changes discussed in this preamble. A table of this renumbering follows:

TABLE 1.—RELATIONSHIP OF PROPOSED SUBPART I TO FINAL RULES IN PART 26

Part 26	Part 25, Subpart I
Subpart A—General	
§ 26.1 Purpose and Scope.	§ 25.1801(a) Purpose and definition.
§ 26.3 Definitions.	§ 25.1801(b) and 25.1803.
§ 26.5 Applicability Table.	New.
Subpart B—Enhanced Airworthiness Program for Aging Systems	
§ 26.11 Electrical Wiring Interconnection Systems (EWIS) Maintenance Program.	§ 25.1805 Electrical Wiring Interconnection Systems (EWIS) Maintenance Program.

As noted in the table above, we have added a new § 26.5 to provide an applicability table that will facilitate identifying those provisions of part 26 that apply to affected persons at any given time. As we add subparts to part 26, we will update this table to identify the applicability of those new subparts. As with new subpart B of part 26 in this final rule, we will specify the details of applicability for each new subpart in the new subparts themselves.

3. Interaction Between New Design Approval Holder Requirements and Part 21

It was our intent to treat those provisions of the requirements establishing standards for design changes and revisions to the ICA as airworthiness requirements. Adding a statement to the new § 26.1(a) that the requirements of part 26 are airworthiness requirements clearly integrates these requirements with the procedures specified in part 21. The result of treating these requirements as airworthiness requirements is that any design changes that may be required by part 26 rulemaking become part of the type design of the aircraft. This makes clear that the full flexibilities allowed in part 21, such as equivalent level of safety findings and special conditions, may be applied. Also, we added § 26.1(c) to make a distinction in part 26 between type certificates and supplemental type certificates. Typically, for interpreting part 21, reference to type certificates includes supplemental type certificates unless usage of that term clearly indicates otherwise. While the usage of those terms in part 26 is contrary to the usage in part 21, we did this to make clear distinctions in requirements within part 26.

To address the change to ''Special retroactive requirements'' originally proposed in § 25.2(d) and to fully integrate the new rule with part 21, we made four changes to part 21. First, § 21.7 replaces proposed § 25.2(d) by establishing the applicability of continued airworthiness and safety improvement requirements. This section establishes the general applicability of part 26 to design approval holders, pending and future applicants for design approval, and type certificate holders and licensees for newly produced transport category airplanes.

While § 21.7 makes part 26 applicable to pending applications, § 21.17(a) clarifies this applicability by adding part 26 to the exception list of those requirements of the subchapter that are not established by date of application for a type certificate but by date that the type certificate is issued.

For changed products, in the case when the exceptions of § 21.101(b)(1), (2) or (3) apply, new § 21.101(g) makes clear that, even if an applicant may use an early amendment to part 25, the applicant must still comply with any applicable provisions of part 26. For each applicable part 26 provision, an applicant may elect to comply with a corresponding amendment to part 25 that is issued on or after the date of the part 26 amendment. Under the normal application of § 21.101, if the exceptions of § 21.101(b) do not apply, the applicant would be required to comply with the latest amendments of part 25 in lieu of the requirements of part 26.

Sections 21.31 and 21.50 are revised to make it clear that the Airworthiness Limitations section of the ICA is part of the type design and that changes to the ICA generated under part 26 must be made available as part of the total ICA.

These changes to part 21 do not change or add any new requirements to those proposed in the NPRM. Rather, they clarify the relationship between existing part 21 and new part 26.

4. Compliance Dates

Several commenters proposed changes to the DAH compliance dates for subpart I (now part 26) requirements. The proposal would have required DAHs of existing airplanes to submit ICA for approval to the FAA Oversight Office by December 16, 2007. This was based on an expected effective date of June 30, 2006 for the final rule, and would have allowed DAHs 18 months to complete compliance. The proposed operator requirements would have allowed operators 12 months from the date DAHs completed their ICA to incorporate EWIS tasks into their maintenance program. The compliance date for operators (again based on an expected final rule effective date of June 2006) was December 16, 2008.

Avions de Transport Regional (ATR), Aerospace Industries Association and General Aviation Manufacturers Association (AIA/GAMA), General Electric (GE), and Boeing requested a longer compliance time for the DAH requirements. ATR specifically proposed 30 months because it said it will need to review and update all of its maintenance documentation. GE requested 36 months. Boeing and AIA/GAMA requested the compliance time for DAHs be increased to 24 months. Boeing and AIA/GAMA noted that industry, through ATSRAC, originally identified 24 months as the time needed to conduct the EZAP analysis for their existing airplane configurations. But the FAA has now proposed additional requirements, such as evaluating type certificate (TC) holder changes mandated by airworthiness directives (AD) and compliance plan activities. The commenters noted that the original schedule and resource analysis did not account for these additional activities. Additionally, Boeing and FedEx requested that the rule include required time periods for FAA review and approval activities involved in the compliance plans. Boeing and Airbus noted that the rules do not currently limit the amount of time the FAA will take to review and approve documents, which will negatively impact their compliance time. Boeing stated that most DAHs will require the full 90 days for developing a compliance plan, and will not initiate that plan until they obtain FAA approval. So to ensure that they have an appropriate time for compliance activities, they'll need FAA approval immediately, which is impractical.

Boeing and AIA/GAMA also said that the hard compliance dates and an expected final rule issuance in early 2007 will leave DAHs with less than 12 months to comply with the subpart I requirements. Along with Airbus and GE, they requested that we revise the compliance dates to represent a number

of months after the effective date of the rule, rather than a hard date. AIA/GAMA noted that this approach would prevent our process and schedule for issuing the final rule from impacting DAH compliance dates.

We agree with the commenters that additional time should be allowed for DAH compliance with 26.11. While we understand that ICA for EWIS have already been developed for a number of affected airplanes, we also understand that not all DAHs have begun this activity. In addition, as discussed later, DAHs that have already developed EWIS ICA may not have addressed the ''representative airplane'' configurations, as required by this rule. However, because DAHs would need to plan and coordinate with the FAA anyway, we do not believe the requirements to do so will significantly increase the amount of time needed to comply. In consideration of these factors, we believe that 24 months will allow sufficient time for DAHs to develop and submit the necessary compliance plan, draft data and documents, and final data and documents to show compliance with today's rule.

We have made a minor revision to section 26.11(d)(3), (d)(4) and (d)(5). This is to clarify that the affected pending or future applicants must comply either by a date based on the effective date of the rule, or by the date of approval of the related certificate. Even though we specifically discussed the intent of these dates in the NPRM preamble, we believe that using the term ''approval of the application,'' which appeared in the proposal (in proposed § 25.1805(c)(3), (c)(4), and (c)(5)) indicating dates for compliance, may have caused confusion. So, we have replaced the term ''application'' with the term ''certificate'' in 26.11(d)(3), (d)(4) and (d)(5).

We are not including FAA-required time periods for review and approval of the required compliance plans. Instead, expectations for FAA personnel have been defined in a new FAA order [4] that directs the Aircraft Certification and Flight Standards Services in their roles and responsibilities for implementing these initiatives. The order includes expected times (6 weeks) for reviewing and approving DAH compliance plans, plans to correct deficiencies, and draft and final compliance data and documents. To facilitate implementation, we will also train affected personnel in their roles and responsibilities and provide in-depth familiarization with requirements of the regulations and associated guidance. The FAA's Aviation Safety organization's recent registration as an ISO (International Organization for Standardization) -9001-compliant organization will also facilitate standardized and timely implementation of the review and approval process.

Several operators also requested revisions to the DAH compliance dates, noting the potential adverse impact on them because of the time it could take for FAA review and approval. Air Transport Association (ATA) recommended that § 25.1805(c)(1) (now 26.11(d)(1)) be rewritten to provide a reasonable period of time (90 days) for the necessary FAA review and approval activities. ATA noted that the amount of time the FAA will take to review and approve TC holders' EWIS/FTS ICA could reduce operator compliance time significantly. FedEx made similar comments and noted that compliance dates should acknowledge time for approval of compliance documents, distribution of those documents, operator planning for addressing the requirements, and final release of the changes in the operator's program. Royal Dutch Airlines (KLM) was also concerned about FAA review and approval impacting operators' compliance time and requested that the operator compliance date be one year after ICA are approved. Boeing, ATR and U.S. Airways also stated that the compliance time for the operational rules should be based on availability of needed data.

Continental requested that operators be allowed 18 months rather than 12 months to comply. It said a thorough training program would be needed for maintenance personnel not familiar with wiring and its components. This would require additional effort by the operator not contemplated by simply having ICA incorporated into a maintenance task or inspection program. Additionally, Continental stated that contract maintenance personnel must also be trained for systems they maintain.

The National Air Carrier Association (NACA) requested that operators have two years for compliance, dependent on DAHs complying with their requirements on time.

Based on rationale the ATA provided for requesting the change, we infer that ATA would like additional time (90 days) added to the operator's compliance time rather than to the DAH's compliance time. While it is inappropriate to put requirements for the FAA in a rule applicable to DAHs, we have, as discussed previously, identified expectations for FAA review and approval (including timeframes) in an internal FAA order. The length of time to review plans, data, and documents depends largely on the quality of the submittals. Acceptable documents will take less time to review.

We have structured the requirements of the DAH rule and developed complementary guidance to facilitate timely review and approval of DAH submittals (compliance planning, draft document reviews, etc.). We do agree, however, that a modest increase in operator compliance time would help ensure that operators are not impacted by the FAA review and approval process. We have revised the EAPAS compliance date for operators from 12 months to 15 months.

Regarding the NACA request for a two-year compliance time, in the past we have imposed numerous maintenance program revision requirements through operational rules and ADs. Twelve months has been the typical compliance time for these changes and has been sufficient for operators to comply. The maintenance actions described in the maintenance program changes would be accomplished sometime later, as specified in the maintenance program. So operators will have sufficient time to plan and conduct the necessary EWIS training.

On July 30, 2004, (69 FR 45936), we extended the Fuel Tank Safety Operational Rule compliance dates to December 16, 2008, for reasons outlined in that final rule. Because of the similar timelines for operator incorporation of the FTS and EAPAS maintenance actions into their programs, we had determined that aligning the compliance dates for the FTS and EAPAS maintenance program changes would allow operators to revise their maintenance program once to address both safety initiatives. However, given delays in issuing the EAPAS rulemaking proposal and the expectation for industry to have the FTS ICA developed for compliance with the EASA rule (December 2007) and the FAA rule (December 2008), we have determined that the benefits of aligning the FTS and EAPAS compliance dates are not substantial enough to justify further delay in implementing FTS maintenance actions. As previously discussed, we are not extending the FTS operational rule compliance date in this final rule.

[4] Order 8110.26, ''Responsibilities and Requirements for Implementing Part 26 Safety Initiatives,'' will be released concurrently with this rule.

5. The Design Approval Holder Compliance Plan

As noted above, in the NPRM we contemplated submission of a proposed means of compliance, identifying all required submissions to the FAA. The NPRM proposed submission of—

- A project schedule identifying all major milestones.
- A detailed explanation of how the proposed means of compliance would be shown to comply if it differed from that described in advisory material.
- A proposal for submitting a draft of all compliance items no less than 60 days before the compliance due date.
- A proposal for how the approved ICA would be made available to affected persons (operators and others required to comply with this rule).

The proposal stated that if the FAA notified the DAH of deficiencies in its proposed compliance plan or in its implementation of that plan, the DAH must submit a corrected plan to the FAA Oversight Office within 30 days. All of these compliance plan requirements were contained in proposed § 25.1805(d) and (e).

Airbus requested that § 25.1805(d) and (e) be removed because, it said, these requirements are unnecessary. Airbus believes the only important compliance date is the final date for DAHs to submit the data and documents necessary to support operator compliance. Boeing recommended we remove the § 25.1805(d)(3) requirement to identify deviations to methods of compliance identified in FAA advisory material because it does not agree that proposed methods of compliance should be compared to other methods. Instead, it said, they should be evaluated on their own merits.

The FAA agrees that some provisions of proposed § 25.1803(d) and (e) could be removed without adversely affecting our ability to facilitate TC holder compliance. Specifically, proposed paragraph (d)(3) would require TC holders to identify intended means of compliance that differ from those described in FAA advisory materials. While this is still a desirable element of any compliance plan, we have concluded that an explicit requirement is unnecessary and it is not included in this final rule. As with normal type certification planning, we expect that TC holders will identify differences and fully discuss them with the Oversight Office early in the compliance period to ensure that these differences will ultimately not jeopardize full and timely compliance. Because we believe that timely review and approval is beneficial and will save both DAH and FAA resources, the advisory material recommends that if the DAH proposes a compliance means differing from that described in the advisory material, the DAH should provide a detailed explanation of how it will demonstrate compliance with this section. The Oversight Office will evaluate these differences on their merits, and not by comparison with FAA advisory material.

Similarly, proposed paragraph (e) contains provisions that would have authorized the Oversight Office to identify deficiencies in a compliance plan or the TC holder's implementation of the plan and require specific corrective actions to remedy those deficiencies. While we anticipate that this process will still occur in the event of a potential non-compliance, we have concluded that it is unnecessary to adopt explicit requirements to correct deficiencies and have removed them from the final rule. Ultimately, TC holders are responsible for submitting compliant EWIS ICA by the specified date. This section retains the requirements to submit a compliance plan and to implement the approved plan. If the Oversight Office determines that the TC holder is at risk of not submitting compliant EWIS ICA by the compliance date because of deficiencies in either the compliance plan or the TC holder's implementation of the plan, the Oversight Office will document the deficiencies and request TC holder corrective action. Failure to implement proper corrective action under these circumstances, while not constituting a separate violation, will be considered in determining appropriate enforcement action if the TC holder ultimately fails to meet the requirements of this section.

Additionally, in reviewing the comment, we realized that the rule text could more clearly state our intent to allow DAHs flexibility to modify their approved plan if necessary. So the final text of proposed § 26.11(f) has been modified to read ''each affected person must implement the compliance plan, *or later approved revisions* * * *.'' In response to Airbus' comment that the only important compliance date is the final date for DAHs to submit the data and documents, we must reiterate that we believe a compliance plan is important. The purpose of a 90-day compliance date for the compliance plan is to allow all parties to be informed about how the DAH will be meeting its requirements and to ensure that the all necessary data will be provided to the operators on time. Early development of a compliance plan will give assurance of development of all the necessary data in time for the operators to comply with their requirements.

6. Defining the Representative Airplane

Boeing requested that we define in advance of the final rule which TC holder configuration changes mandated by ADs should be considered in the EZAP. Boeing and AIA/GAMA noted that the DAH must consider airplane configurations representative of each airplane model plus DAH-developed modifications mandated by AD. Boeing stated that because ADs are applicable to operators and not DAHs, and because most ADs are not applicable to all airplanes within a specific model range, it is difficult to define a representative airplane. Boeing does not believe the proposed § 25.1805 (now § 26.11) compliance time allows enough time to properly define the representative configuration.

As previously discussed, we have increased the proposed DAH compliance time for a number of reasons, one of which was to allow sufficient time for the DAH to identify the representative configuration for each affected airplane model.

As discussed in the NPRM, the purpose of the requirement to address all TC-holder-developed modifications mandated by AD is to make the EZAP as complete and accurate as possible. It would serve no purpose to require the TC holder to analyze an airplane configuration no longer in service because an AD has mandated its modification. Therefore, TC holders must assess all these modifications to determine whether they affect the results of the EZAP. Because TC holders own the design data for both the original configurations and these modifications, they are the only entities capable of performing these assessments. When TC holders develop AD-mandated modifications for airplanes still in production, they normally incorporate these same modifications into new airplanes. So this requirement imposes little additional burden for these airplanes. At the same time, we recognize that it would be unreasonable to require the TC holder to analyze modifications developed by third parties. Accordingly, this requirement is limited to TC-holder-developed modifications.

In reviewing Boeing's comment, we recognized that the proposed definition of ''representative airplane,'' i.e., ''the configuration of each model series airplane that incorporates all variations of EWIS used on that series airplane * * *,'' could be interpreted in different ways. It could be interpreted as applying to all post-production

modifications, not just those mandated by AD and those DAH-developed modifications introduced into production. It could also refer to variations used for post-production modifications, as well as those used in production. Boeing correctly understands that we intended to require evaluation only of variations used in production and those post-production modifications mandated by AD. Section § 26.11(b) has been revised to clarify this. For those design changes made in production for which the TC holder has issued service bulletins describing post-production equivalents, the ICA should identify those service bulletins with the corresponding production configurations. This will enable operators that have incorporated these service bulletins to determine that the ICA for the production modification also applies to them.

7. Impact on Operators

Boeing asked that we separate the operational rule from DAH requirements, with a separate comment period, so that defined service information and associated costs can be evaluated by the operators. Boeing contended that consolidating DAH and operational requirements into one rulemaking action with one comment period prevents the FAA from obtaining accurate cost estimates and prevents operators from determining the true impact of the proposal on their operations. NACA also expressed concern that operators cannot know the full impact of this rule until DAHs develop the required ICA.

We have decided against separating the operational rules from the DAH requirements. Separating the rules would not change the technical requirements contained in this final rule but would substantially delay implementation of the EAPAS safety initiative. Thus, it is essential to include both certification and operational requirements in the final rule to ensure maximum safety benefits to the flying public.

In addition to issues of timeliness, we note that while some operators will not know the precise effects of the ICA developed by TC holders on their maintenance programs, they should have a good understanding of the nature and scope of the program from the NPRM and the guidance material provided in the DAH EZAP AC (AC No. 25–27). As discussed, both of these were derived from ATSRAC's recommendations, which operators played a major role in developing. In addition, since 2004, multiple operators have been involved with several airplane manufacturers in developing EWIS ICA using the EZAP analysis described in the DAH EZAP AC. This has been accomplished by integrating EWIS ICA development into the airplane manufacturer's normal maintenance development program. Operators of the airplane model for which a maintenance program is being developed (or revised) are always involved in the development of that program. Therefore, these operators do know the impact of integrating these new EWIS ICA into their maintenance programs.

8. EZAPs Already Completed

Boeing asked that we include a statement in the final rule indicating that EZAP analyses conducted prior to the effective date of the final rule, and resultant ICA, comply with subpart I (now part 26) requirements. Boeing questioned the statement that the proposed time frames are supported by experience gained by EZAPs already performed, when the NPRM did not discuss the acceptability of those analyses. It noted that several EZAP analyses were conducted using MSG–3 [5] methods, which differ slightly from those contained in proposed AC 120–XX (now the DAH EZAP AC, No. 25–27). Boeing noted that, for those cases, it must show the FAA Oversight Office how the previous analyses were conducted, make any necessary changes, obtain industry agreement, and have the FAA approve the resulting ICA.

We believe that work done before adoption of the rule will reduce the level of effort required for DAHs to comply with the rule. But we also recognize that some additional work may be necessary for DAHs to show compliance. For example, EWIS ICA may not have been aligned with FTS ICA or may not have been developed for the ''representative airplane'' as defined in the rule. Therefore previous work cannot automatically be considered compliant. Because we cannot say with any confidence that no more work will be required, we are not adopting Boeing's recommendation.

9. Wire Inspections

The National Air Traffic Controllers Association (NATCA) called the proposal inadequate because it relies on enhanced zonal inspections to detect latent failures in the wiring system, and it said that zonal inspections detect only visible deteriorated wire.

The commenter said that without periodic or real-time monitoring of airplane wiring, there is no way to predict a degraded state and prevent future wire failures. NATCA recommended that we include requirements for either continuous on-board detection of airplane wiring faults, such as that provided by system self-test features, or periodic maintenance tasks, to detect both visible and hidden degradation in the wiring system.

The requirements adopted today do not prevent use of wire monitoring or fault detection technology. Multiple non-destructive inspection (NDI) tools and real-time monitoring techniques are being developed for use in aircraft wiring inspection. However, current NDI reflectometry technology is not yet mature enough for its use to be mandated by the FAA. Although real-time monitoring technology, such as arc fault circuit breaker technology, is further along in development, it too is not yet mature enough to address all circuit types. We expect that these technologies, when available, may be relatively more expensive than conventional methods, so the need for visual inspection of EWIS would remain even if this technology were widely available. We made no change based on this comment.

10. Protections and Cautions

Boeing requested that we remove from subpart I (now part 26) the requirement to include ICA instructions for protection and caution information to minimize contamination and accidental damage during maintenance activities. It suggested this language should be added to the operating rule. Boeing considers the methods of protecting wiring during maintenance to be best determined by the maintenance provider and dependent on the type of maintenance activity underway. Boeing also noted that operators who have already developed protection schemes based on their experience will be required by the operational rules to replace this with the one provided by the TC holder. Boeing does not believe this is a positive step towards increased protection of EWIS.

United Airlines stated its support for requiring airplane manufacturers to include specific recommendations for when and how to protect wire bundles from damage during different phases of maintenance.

We infer that Boeing is referring to the requirement in H25.5(a)(1)(vi). That requirement applies both to new type certificates complying with § 25.1729

[5] Air Transport Association (ATA) Maintenance Steering Group 3 (MSG–3) is a document containing a logic process used by the airlines and manufacturers to develop scheduled maintenance programs for an airplane.

(proposed as § 25.1739) and existing type certificates complying with part 26. The requirement is consistent with ATSRAC's recommendations. These recommendations were based on recognition that the TC holder will have the best understanding of EWIS material properties and vulnerabilities, and will be in the best position to identify what protection and caution measures are needed. If operators have developed their own instructions, they may be used as alternatives or as supplements to those provided by the TC holder, if approved by their Principal Inspector (PI). We have provided guidance to the FAA field offices to allow for consideration of an operator's alternative to that approved by the FAA Oversight Office. We made no rule change based on this comment.

11. Alignment of EWIS and Fuel Tank ICA

AIA/GAMA and GE requested that the last sentence of proposed § 25.1805(b) (now § 26.11(b)), requiring minimization of redundant requirements between EWIS and fuel tank ICA, be deleted. The commenters stated that this is an economic and customer service issue beyond the scope of the FAA's safety interest.

Boeing requested we include, within proposed § 25.1805(b), the levels of alignment of FTS and EWIS maintenance actions that will be acceptable for compliance. While Boeing sees the benefit of eliminating redundant maintenance activities, it considers itself unable to determine how to show compliance with this requirement.

Minimizing redundant requirements is not just an economic issue for operators. One of ATSRAC's findings is that repeated disturbance of EWIS during maintenance is itself a source of safety problems. Therefore, while ensuring that all necessary maintenance is performed, it is also our objective to minimize disturbance by eliminating redundant requirements. Too frequent disturbance to electrical wiring by repeated moving, pulling, and flexing of the wire bundles will induce unnecessary stress on the wiring and its components, which in turn could lead to degradation, expedited aging, and failures. Thus it is important that redundant tasks and unnecessary disturbances to the electrical wiring be minimized. Operators will review their maintenance tasks and coordinate with the DAHs to ensure that tasks are incorporated into their maintenance program for the highest level of safety and performed in the manner most suitable for their operation.

As discussed earlier, Boeing and other TC holders have been required to develop ICA since 1981, and maintenance manuals even before that. In developing ICA, TC holders routinely review individual tasks to align them with other tasks being developed. This is done both to avoid redundancy and to eliminate confusing or conflicting instructions that could inadvertently lead to improper maintenance with unsafe consequences. The purpose of the requirement to align the ICA is no different. The intended ''levels of alignment'' are the same as would be expected for ICA developed in connection with original type certification. The MSG–3 and Maintenance Review Board (MRB) processes, with which Boeing and other affected TC holders are familiar, have the same objectives. The DAH EZAP AC, ''Development of Transport Category Airplane Electrical Wiring Interconnection Systems Instructions for Continued Airworthiness Using an Enhanced Zonal Analysis Procedure,'' No. 25–27, describes means of compliance that will achieve these objectives. It provides a step-by-step process to assist applicants in compliance with the electrical wiring interconnection system (EWIS) maintenance requirements. This process includes a step requiring an analysis of the related maintenance tasks to ensure that they are consolidated and/or aligned to maximize effectiveness and eliminate redundancies and duplications between the EWIS and fuel tank ICA.

The airplane manufacturer will align the ICA requirements to the greatest extent possible. No change to the final rule is necessary.

12. Approval of ICA

Boeing and AIA/GAMA requested further clarification of proposed §§ 25.1739 (now § 25.1729) and 25.1805(b) (now § 26.11(b)) requirements that ICA prepared in accordance with paragraph H 25.5 of Appendix H be submitted to the FAA Oversight Office for approval. AIA/GAMA, Airbus, and FedEx recommended that EWIS ICA be accepted by the FAA, rather than approved, with the exception of any applicable airworthiness limitation items (ALI), which should be approved. The commenters were concerned that the proposed requirements are not consistent with the current requirement in § 25.1529 that ICA be found acceptable to the FAA (except for ALI, which must be approved). FedEx also stated that creation of separate ''FAA-approved'' ICA will lead to confusion and fragmentation of what should be an integrated inspection program.

As discussed earlier, one of the primary objectives of these DAH rules is to ensure that operators have at least one source of FAA-approved data and documents that they can use to comply with operational requirements. This objective would be defeated if the required data and documents were not, in fact, approved. Only by retaining authority to approve these materials can we ensure that they comply with applicable requirements and can be relied upon by operators to comply with operational rules. We believe that there are differences between EWIS ICA and other ICA that necessitate approval of EWIS ICA:

- EWIS ICA are the means for compliance with some of the technical requirements of new subpart H (§ 25.1707 relating to system separation and § 25.1711, component identification).
- EWIS ICA contain highly technical information such as electrical loads data and wiring practices standards that are more complex than typical maintenance instructions.
- EWIS ICA require a degree of consistency and standardization that may not be necessary for other ICA.

We agree that further clarification is needed regarding FAA Oversight Office approval of EWIS ICA. We do not intend to approve all documents that contain EWIS ICA details, such as the airplane maintenance manual. We do intend to review references in all documents that are referred to in the EWIS ICA source documents. We have made changes to the AC guidance information (AC 25.1701–1) to clarify exactly what documents the FAA Oversight Office will approve. No change to the final rule is necessary.

13. Rule Applicability

Today's rule is applicable to airplanes with a passenger capacity of 30 or more passengers or a payload capacity of at least 7,500 pounds operating in parts 121 and 129. NATCA requested that we consider revising the rule applicability to address all transport airplanes regardless of size or type of operation. It stated that all transport airplanes are subject to the same aging safety concerns, and passengers should have one level of safety.

The FAA has used these size criteria for the applicability of other rulemakings because they capture the airplanes carrying the vast majority of passengers and cargo. Similarly, by limiting applicability of the EAPAS operational rules to parts 121 and 129, we focus these requirements on the

airplanes that transport most passengers and cargo. Based on our analysis, the additional safety benefit of extending the operational requirements to all transport airplanes would not justify the additional costs of doing so. We will continue to review this issue and, as this rule is implemented, if we can demonstrate that it can be applied cost effectively to smaller airplanes or other operators, we may consider further rulemaking.

Several commenters requested revisions and clarification of applicability with respect to supplemental type certificates (STC). EASA requested we revise the applicability of § 25.1805 (now § 26.11(d)) to include STCs that significantly affect EWIS.[6] British Airways stated its support for the existing applicability, agreeing that the analysis performed by the DAH would cover the EWIS they are responsible for as well as the wiring changed or added by others. FedEx requested clarification on means of compliance for STCs.

Additionally, the ATA requested we revise proposed § 25.1805(c)(4) (now § 26.11(d)) to clarify its applicability only to new STCs issued after the effective date of the final rule and not to existing STCs that may be modified after the effective date of the rule. The ATA noted that some STCs are modified to expand the STC effectivity as an operator's fleet grows and should not be evaluated for compliance with § 25.1805(c)(4).

Section 26.11 will apply to future applicants for STCs and to existing TCs. As explained in the NPRM, we decided not to include existing STCs in this section for two reasons. First, most existing STCs do not provide detailed instructions for wiring installation, relying on the judgment and expertise of the individual installer. In most cases it would not be possible for the current STC holder to evaluate these wiring installations. Second, in most cases, installers have followed the TC holder's wire routing and installed STC wiring in or adjacent to existing wiring. In these cases, implementing the maintenance programs developed by the TC holder should adequately address the safety issues identified in this rule that may exist in the STC wiring. Our conclusion here is consistent with ATSRAC's recommendations.

However, we will not revise § 26.11 to exclude modifications to existing STCs. As discussed, one reason we are not applying this rule to existing STCs is that in many cases existing STCs do not include data for EWIS that can be evaluated. As discussed in the NPRM, we believe it is important that EWIS ICA be provided for all future STCs, including changes to existing STCs. We have revised § 26.11(d) to clarify that ''if an existing STC is amended, this section would apply to the amendment.''

The extent of the review required for changes to existing STCs would be limited to the newly proposed changes. Applicants would not be required to evaluate the entire design change approved under their existing STC. For example, if an applicant proposed to add additional monitors to an existing in-flight entertainment STC, only the EWIS supporting the additional monitors would need to be evaluated for the impact to the ICA. If an applicant were merely adding airplane models of the same configuration to an existing STC, they would not need to evaluate their STC.

Boeing Wichita asked whether it would be required to evaluate EWIS for an entire airplane in order to comply with requirements of § 25.1805 (now § 26.11) when applying for an STC.

We do not intend to require applicants for design changes approval to evaluate the EWIS of the entire airplane. Rather, these applicants must evaluate whether their proposed design change would require revision of the ICA developed by the TC holder (and any previous STC applicants) in compliance with § 26.11 to correctly address the design change. An example would be if an STC applicant proposed to add EWIS to a zone that did not previously have EWIS. The applicant would need to develop an ICA revision providing for any maintenance actions within that zone that may be necessary to comply with Appendix H to part 25. We have revised § 26.11 by adding a new paragraph (c) to clarify this requirement.

14. Non-U.S. Manufacturers

Airbus also commented that proposed § 25.1805 paragraphs (b), (d), and (e) (now § 26.11(b) and (e)) fail to acknowledge that non-U.S. manufacturers will likely have to comply with similar regulations issued by their own authorities. Airbus said that discussion of the compliance plan and review of the compliance items should be delegated to the relevant foreign authority, as far as permitted by existing Bilateral Aviation Safety Agreements.

We recognize the important role other national authorities are likely to play in implementation of this rule. In addition to the on-going efforts to harmonize these requirements, we have been working closely with the other national authorities to define appropriate roles, responsibilities, and relationships among all affected authorities. As discussed in the NPRM, the compliance planning provisions are equally important for foreign TC holders, and we expect to have mutually agreeable arrangements with their authorities on how this planning will be overseen.

15. General Comments About Design Approval Holder Requirements

We received a number of general comments responding to the concept of DAH requirements rather than to the DAH requirements in this specific rulemaking. We responded to these types of comments in the comment disposition document accompanying our policy statement titled ''Safety—A Shared Responsibility—New Direction for Addressing Airworthiness Issues for Transport Airplanes.'' Both were published in the **Federal Register** on July 12, 2005. As a result, we will not respond to such comments again here. We have included them, and our responses, in a separate document in the docket. That document is titled ''General Comments about DAH Requirements Sent to Docket Number 18379.''

Boeing and AIA/GAMA did not agree with our assessment that DAH rules are necessary to support this initiative. They requested we remove proposed § 25.1805 (now § 26.11) from the rule. They contended that

- The required material is neither complex nor limited to the DAH,
- Operators have the option of developing an enhanced zonal inspection program without participation of the DAH, and
- Operators will not be required to adopt maintenance programs developed by the DAH.

Both commenters stated that developing EWIS ICA is not complex. They noted the EZAP process is based on MSG–3 maintenance program development procedures, which are neither complex nor limited to the DAH. They believe that the DAH type design data needed for development of maintenance tasks is also available to operators.

Boeing and AIA/GAMA also said that use of the MSG–3 process by the DAH alone will only account for airplane configurations certified by the DAH and some, but not all, AD-mandated modifications. Unique configurations that evolved after delivery will not be considered by the DAH. Boeing contended that operators are capable of assessing their airplane configurations using proposed AC 120–XX (now the DAH EZAP AC) and developing an

[6] EASA plans to address STCs in its NPA.

enhanced zonal inspection program without DAH involvement. Additionally, Boeing stated that operators could develop ICA more efficiently because they could concurrently address the baseline configuration and any configuration changes made in service.

As discussed previously, the policy statement provides criteria for deciding when DAH regulations are necessary.

Appendix H paragraph H25.5(a)(1) identifies information required to perform the analysis and develop maintenance tasks. While some of this information may be available to operators without assistance from the DAH, operators would not have access to all of it.

Also, the methodology described in the AC may appear to be relatively simple, but applying it properly requires considerable expertise and judgment and can be quite complex. DAH involvement is necessary to ensure it is applied properly. We believe that DAH regulations are necessary for this safety initiative to ensure all of the representative type design configurations are addressed in a timely manner. The ''representative'' airplane is defined as the configuration of each model series airplane that incorporates all the variations of EWIS used on that model, and that includes all TC-holder-designed modifications mandated by AD, as of the effective date of this rule.

Existing regulations regarding ICA as adopted in Amendments 21–50 and 25–54 require DAHs to provide ICA for the airplane as a whole. This rule simply applies that same policy to EWIS, which were not specifically addressed by those amendments.

We note that in the form in which the rules were proposed, operators would be required to implement EWIS ICA based on those ''developed by the type certificate holder.'' That statement did not clearly articulate our intent and we have corrected that language in the final rule to reference ''in accordance with the provisions of Appendix H of part 25 of this chapter applicable to each affected airplane * * *.''

Both Boeing and AIA/GAMA requested that we establish, within the final rule, all requirements for the DAHs regarding consistency, standardization of process and requirements, and technical guidelines. They do not believe the rule or guidance material is comprehensive enough to enable DAHs to comply. Boeing stated that the root cause of past difficulties with voluntary compliance lies with unclear regulatory requirements and lack of appropriate guidance. Boeing noted that the FAA attempted to address this problem in the proposed rule, but said those attempts have fallen short of what is needed. It quoted draft AC 25–XX: ''* * * the Compliance Team, as soon as possible after issuance of the safety initiative rule, will provide the DAHs with our expectations for the required analysis content [and] describe to the DAHs our expectations for the content and format of their data * * * .'' Boeing contends that visibility of requirements, expectations, and technical requirements would ensure uniformity of application and inform operators of what information they would receive from DAHs.

We partially agree. The program plan for the aging airplane rules was to release associated guidance and policy for public comment upon release of the NPRMs. We believe this approach should have helped clarify our expectations of what is considered an acceptable approach to compliance.

For this initiative, both the performance standards and guidance materials were developed by ATSRAC, which had representatives from the affected industry. We must presume that industry, in helping to develop these materials, understood what would be expected for new TCs. We consider these same materials to be sufficient for application to existing TCs.

The comprehensiveness and level of detail of requirements and related advisory material is at least equivalent to that for other ICA currently in Appendix H, which DAHs have successfully complied with for 25 years. The purpose of compliance planning provisions is to ensure that DAHs work closely with the FAA, as they do for initial certification, in developing compliant data and documents. We made no change to the rule due to this comment. However, we will clarify in AC 26–1 that the compliance team will meet with DAHs as soon as possible after issuance of the final rule to ensure that guidance materials and expectations related to rule implementation are clear.

16. Airplanes Excluded From Design Approval Holder and EWIS Operating Requirements

The DAH requirements and the EWIS requirements for operators do not apply to the following airplane models:

(1) Lockheed L–188
(2) Bombardier CL–44
(3) Mitsubishi YS–11
(4) British Aerospace BAC 1–11
(5) Concorde
(6) deHavilland D.H. 106 Comet 4C
(7) VFW-Vereinigte Flugtechnische Werk VFW–614
(8) Illyushin Aviation IL 96T
(9) Bristol Aircraft Britannia 305
(10) Handley Page Herald Type 300
(11) Avions Marcel Dassault—Breguet Aviation Mercure 100C
(12) Airbus Caravelle
(13) Lockheed L–300

The airplanes excluded from these rules are not currently operating under parts 121 or 129, so there is no need for DAHs to develop data to support the operational rules for these airplane models. The Vickers Viscount airplane appeared on this exclusion list in the NPRM. But since the Vickers Viscount was originally type certificated before January 1, 1958, this airplane is not subject to these rules because of the general exclusion of airplanes type certificated before that date. Thus it has been removed from the exclusion list. Similarly, the Convair and DC–3 models that have been modified to incorporate turbine-powered engines are also covered by this general exclusion, so they too have been removed from the originally proposed exclusion list. The Lockheed L–300 has been added to the exclusion list. There is only one qualified aircraft, which was modified, used, and later retired by the National Aeronautics and Space Administration (NASA) in 1995. It would not be cost effective to bring it into 121 operations. Thus it has been excluded from the requirements of these rules.

C. Electrical Wiring Interconnection System (EWIS) Certification Rules (Part 25 Subpart H)

1. New Subpart for EWIS

This final rule creates a new subpart H within part 25 of 14 CFR addressing electrical wiring interconnection systems (EWIS). Its purpose is to be the single place in the regulations where the majority of certification rules pertaining to transport airplane wiring can be found. Many of the rules contained in this new subpart are previously-existing requirements that have been moved from different parts of the regulations. Some have been reworded to make it clear that they apply to wiring. Several of the rules in subpart H are new. As a whole, the rules in subpart H are meant to improve the safety of transport airplane wiring by making sure that it is designed to be safe. Individually, the rules address different aspects of wiring design safety, and they are discussed individually below.

To better harmonize with foreign airworthiness authorities, the numbers of many of the rules in subpart H have been changed from those originally proposed. The following table indicates the revised numbers. Since commenters referred to the proposal when they

wrote to the FAA, however, their references below are the originally proposed rule numbers. Similarly, if a commenter references a proposed AC, the original draft AC number is retained, as used by the commenter. Several of the proposed subpart H rules received no comments and remain unchanged except for their numbers. Those will not be discussed here. The following table indicates the rule number changes.

TABLE 2.—SUBPART H RULE RENUMBERING

Title in subpart H	Final rule section	NPRM section
Definition	25.1701	25.1701
Functions and Installation: EWIS	25.1703	25.1703
Systems and Functions: EWIS	25.1705	25.1719
System Separation: EWIS	25.1707	25.1709
System Safety: EWIS	25.1709	25.1705
Component Identification: EWIS	25.1711	25.1711
Fire Protection: EWIS	25.1713	25.1713
Electrical Bonding and Protection against Static Electricity: EWIS	25.1715	25.1717
Circuit Protective Devices: EWIS	25.1717	25.1721
Accessibility Provisions: EWIS	25.1719	25.1725
Protection of EWIS	25.1721	25.1727
Flammable Fluid Protection: EWIS	25.1723	25.1729
Powerplants: EWIS	25.1725	25.1731
Flammable fluid shutoff means: EWIS	25.1727	25.1733
Instructions for Continued Airworthiness—EWIS	25.1729	25.1739
Powerplant and APU fire detector system: EWIS	25.1731	25.1737
Fire detector systems, general: EWIS	25.1733	25.1735
[Reserved]	deleted	25.1707
[Reserved]	deleted	25.1715
Instruments using a power supply: EWIS	deleted	25.1723

2. The Definition of EWIS (§ 25.1701)

Section 25.1701 is a new requirement. It defines electrical wiring interconnection systems (EWIS). The final rule differs from the proposal in the addition of the words ''and external wiring of equipment,'' discussed below.

Boeing commented that EWIS is not limited to the numbered items in § 25.1701(a). EWIS components might also include terminal blocks, circuit protective devices, and contactors. Boeing requested we indicate that EWIS may include these and other items as well.

We agree with Boeing that the EWIS components listed in § 25.1701(a) are not a comprehensive list. There may be other devices that would be considered part of an EWIS, as indicated by the phrase in the lead-in sentence to the list of § 25.1701(a)(1)–(13); ''* * * this includes:'' A determination of whether a component is considered to fall under the definition of EWIS must be made on specific design details of a certification program.

Airbus commented that the phrase ''and external wiring of equipment'' should be added to the list in proposed § 25.1701(b) of components covered by the EWIS definition. Airbus stated that for completeness and consistency, external wiring of equipment should be considered, since it can be part of the aircraft installation (e.g., galley connection wiring and seat connection wiring). Continental asked if wire installed in seats is covered by the proposal.

We have added the phrase ''and external wiring of equipment'' to the list of equipment in § 25.1701(b). We consider this a clarification of what constitutes an EWIS component and not an increase in scope over the proposal. If an airplane component, such as a galley or a seat, is manufactured with connection cables external to it, then the external connection cables would be considered an EWIS component.

An individual commenter stated that the word ''interconnection'' in the phrase ''electrical wiring interconnection systems'' is redundant and should be eliminated. This commenter also requested that we cite the numerous examples of airplane electrical wiring systems that are not a part of the EWIS. This commenter further requested that we define the term EWIS in the definition section and cite examples of components included in and excluded from the system.

We do not concur with the request to remove ''interconnection'' from the term ''electrical wiring interconnection system'' (EWIS). The EWIS certification and operational requirements in the final rule apply to wires that ''interconnect'' airplane systems, as opposed to wiring located solely within the enclosure of a piece of avionics equipment, for example. Thus the word interconnection is integral and important in describing what electrical wiring interconnection system means.

The definition of EWIS contained in § 25.1701 does include examples of airplane wiring and its associated components that are not part of the EWIS. We believe that these examples are sufficient to adequately articulate the regulatory definition of EWIS and that further examples are unnecessary. We made no change due to this comment.

We do not agree with the commenter's proposal to define EWIS in the definition section. Although not specifically identified by the commenter, we are assuming that he wants the definition to appear in 14 CFR part 1. Section 25.1701 contains the EWIS definition and clearly states that the definition applies to ''The Chapter.'' This includes all applicable certification and operational subchapters such as parts 25, 121, and 129 where the EWIS requirements are located. We have revised the final rule to include a reference to § 25.1701 in § 1.2.

Continental Airlines quoted § 25.1701 (definition) and the preamble discussion to emphasize the following statements:

> The term EWIS means any wire, wiring device, or combination of these, including termination devices, installed in the airplane for *transmitting electrical energy* between two or more termination points * * *
>
> * * * but any electrical connection used to support power and/or *signal transmission* that is part of the airplane TC, and that is used for the laptop or other carry-on items, is covered by the proposed definition.

The commenter requested that the phrase ''signal transmission'' be defined.

As used in the context of the proposal, signal transmission refers to data transmitted through wired means, as opposed to wireless signal transmission.

GE and AIA/GAMA commented that proposed § 25.1701(c), which provides for exceptions to the definition of an EWIS, means that the equipment inside shelves, panels, etc. will have to show compliance with EWIS requirements even if they are qualified to the standards of Radio Technical Commission for Aeronautics (RTCA) document number RTCA/DO–160. These commenters believe this would be the opposite of the rule's intended meaning. They request that the following phrase be deleted from the final rule: ''Except for the equipment indicated in paragraph (b) of this section''.

As discussed in the NPRM, the definition of EWIS includes electrical wiring interconnection system components inside shelves, panels, racks, junction boxes, distribution panels, back-planes of equipment racks including circuit board back-planes, and wire integration units. This EWIS, unlike wiring within avionics equipment, is typically designed and made for a particular airplane model or series of models. Avionics components must be sent back to their manufacturer or a specialized repair shop for service. But this type of equipment is maintained, repaired, and modified by the same personnel who maintain, repair, and modify the other EWIS in the airplane. In an electrical distribution panel system, for example, separation must be designed and maintained within the panel just as in the EWIS leading up to that panel. Identification of components inside the panel is just as important as for those outside the panel since the wiring inside the panel is treated much the same. We have retained the first sentence of proposed § 25.1701(c).

3. Functions and Installation: EWIS (§ 25.1703)

Section 25.1703 (whose number is unchanged from that in the proposal), is essentially derived from requirements of existing § 25.1301. It requires that applicants select EWIS components that are of a kind and design appropriate to their intended function. Factors such as the components' design limitations, functionality, and susceptibility to arc tracking and damage from moisture must be considered in selecting EWIS components.

The final rule differs from the proposal in that words were changed to clarify meaning and words inadvertently left out of the proposal were put back in. We also removed the word ''adequately'' in response to a comment from Boeing, as noted in the discussion elsewhere under the heading System Separation (§ 25.1707).

Boeing commented that proposed § 25.1703(a)(3) states that EWIS must ''function properly when installed.'' Boeing proposed the final rule be rewritten to say that EWIS must ''perform the function for which it was intended without degrading the airworthiness of the airplane.''

The commenter stated that it has had difficulty in the past with the term ''function properly'' when applied to complex or non-essential systems. It stated the suggested revision will help clarify the regulation's intent.

We agree that in the past the term ''function properly'' has been applied to complex or non-essential systems in a nonstandardized manner. We have revised the final rule text as proposed.

Airbus, Boeing, General Electric, and Honeywell requested that we add the words ''in the fuselage'' to § 25.1703(c) so it is consistent with the original regulation, § 25.869 (a)(3). They said that this will ensure that the requirements of § 25.1703(c) are consistent with the original requirement.

We agree. We mistakenly omitted the phrase ''in the fuselage'' in the proposed wording. We have revised the final rule to include it.

EASA and Airbus commented that ATSRAC recommended that § 25.1703 include the following requirement:

> Electrical wiring interconnection system modifications to the original type design must be designed and installed to the same standards used by the original aircraft manufacturer or other equivalent standards acceptable to the Administrator (for 14 CFR)/ authorities (for JAR).

EASA stated that this requirement will be included in the EASA notice of proposed amendment (NPA) that will propose to adopt ATSRAC's recommendations. Airbus said such a requirement is consistent with the proposal's preamble and advisory material (reference proposed AC 25.17XX, paragraph 5.b.(8)(b)). Airbus said that including this language in the final rule will ensure EWIS minimum compatibility for modifications made after an airplane is delivered.

Similarly, the International Aviation Safety Association (IASA) commented that airplane and wiring manufacturers should be required to approve the type of wiring used in modifications to an approved type design.

To add this additional requirement would essentially delegate to the type certificate holder authority to establish standards that go beyond the minimum safety standards required by part 25. The FAA does not have legal authority to make such a delegation. As with other airworthiness standards, an applicant who shows compliance with our standards is entitled to design approval (reference § 21.117). The rationale for this is that our standards provide an acceptable level of safety, so exceeding them is not necessary for safety. However, the referenced advisory material does contain the following statement:

> Only the components listed in the applicable manual or approved substitutes should be used for the maintenance, repair, or modification of the aircraft. EWIS modifications to the original type design should be designed and installed to the same standards used by the original aircraft manufacturer or other equivalent standards acceptable to the FAA. This is because the manufacturer's technical choice of an EWIS component is not always driven by regulatory requirements alone. Sometimes specific technical constraints would result in the choice of a component that exceeds the minimum level required by the regulations.

We believe such a statement meets the intent of the ATSRAC recommendation. Therefore, we made no changes based on this comment.

Airbus requested that the term ''hazard'' replace ''hazardous effects'' in proposed § 25.1703(d). Airbus said this would eliminate ambiguous interpretation due to inappropriate use of what is a system safety classification term in § 25.1309(b). Airbus stated that the effect on the component itself needs to be covered instead of the effect on the function.

We infer from this comment that Airbus objects to the phrase ''hazardous effects'' because it believes this phrase implies that a numerical probability analysis would be necessary to show that moisture on EWIS components in known areas of moisture accumulation would not create a hazard not shown to be improbable. A numerical probability analysis is not necessary when demonstrating compliance with § 25.1703(d). The intent is that good engineering and manufacturing judgment be used when designing and installing EWIS components in areas of known moisture accumulation to minimize potential for moisture to cause an EWIS component failure. Such a failure could in turn lead to a functional failure of the system it is associated with. Or it could lead to accelerated

degradation of the component and localized electrical arcing could occur. This in itself could lead to a hazardous condition. It is important to protect the EWIS component from moisture damage. But it is the possible safety hazard from failure of the component that the rule is addressing, and not strictly the effect on the component, or its function. The advisory material for § 25.1703(d) states, in part, the following:

> This section requires that EWIS components located in areas of known moisture build-up be adequately protected to minimize moisture's hazardous effects. This is to ensure that all practical means are used to ensure damage does not occur from fluid contact with components.

We believe that this statement prevents confusion about whether or not a numerical probability analysis is required for demonstrating compliance with this requirement. It is not. We made no changes due to this comment.

Boeing and AIA/GAMA commented that the preamble discussion of § 25.1703(d) states that the rule proposes to ensure that ''all practical means'' are used to prevent damage due to fluid contact. They noted that one could interpret this guidance to mean that multiple means must be used. Another interpretation could be that all practical means must be considered and the most appropriate method used to address potential for fluid impinging on wiring. For purposes of clarification, Boeing requests that the term ''used'' be changed to ''considered.''

This rule is meant to require that all practical means be considered and the most appropriate method used to address potential damage from fluid contact with EWIS components. The advisory material for this requirement has been clarified to state this.

4. Systems and Functions: EWIS (§ 25.1705)

Section 25.1705 was proposed as § 25.1719. This section adds to the regulations the concept that EWIS associated with systems required for type certification or by operating rules must be considered an integral part of those systems and considered in showing compliance with all applicable requirements. In addition to this general requirement, the rule lists other specific certification rules (for example § 25.773 Pilot compartment view and § 25.981 Fuel tank ignition prevention) for which the applicant must include consideration of the EWIS that is part of the subject system in demonstrating compliance.

There are two differences between the proposal and the requirement as adopted: The section number has been changed, and a reference to § 25.1331(a)(2) (as discussed below) has been added.

EASA and Airbus requested that § 25.1723 be deleted and references to §§ 25.1303(b) and 25.1331(a)(2) be moved to § 25.1719 (now § 25.1705).

We partially agree to this request. There is no need to list both rules in § 25.1705(b). It is necessary to refer to § 25.1331(a)(2) because that requirement specifically applies to instruments required by § 25.1303(b). To list both §§ 25.1303(b) and 25.1331(a)(2) would be redundant. Therefore we have revised § 25.1705(b) to include 25.1331(a)(2) and we have deleted proposed § 25.1723 from the final rule.

EASA suggested that references to §§ 25.854 and 25.858 be included in § 25.1719 (now § 25.1705). The subjects of these two requirements are lavatory fire protection and cargo or baggage compartment smoke or fire detection systems, respectively. EASA stated that if we add §§ 25.854 and 25.858 to § 25.1719(b), § 25.1735 can be deleted, because its intent would be addressed in § 25.1719(a) and (b).

Requirements of § 25.1705(a) apply to EWIS associated with systems required for type certification or by operating rules. This is slightly different from those in § 25.1735, which apply to EWIS associated with any installed fire protection system, whether or not it is required for type certification or by operating rules. Therefore, we cannot delete § 25.1735. We have revised it, however, to include references to §§ 25.854 and 25.858. We included these two requirements in the preamble discussion for the proposed § 25.1735 and to avoid future confusion we believe they should be referenced within the final rule.

5. System Separation: EWIS (§ 25.1707)

Section 25.1707 System Separation: EWIS was proposed as § 25.1709. This rule requires applicants to design EWIS with appropriate separation to minimize possibility of hazardous effects upon the airplane or its systems.

Aside from the section number change, the difference between the proposal and this final rule is that word changes have been made to clarify meaning, and the reference in paragraph (a) has been changed.

EASA commented that proposed § 25.1709 (now § 25.1707) uses the phrase ''any EWIS component failure'' in several places throughout the requirement. EASA believes this implies that an exhaustive list of possible EWIS component failures not related to the design under review would have to be produced. It believes this goes beyond the intent of the rule, and states that the equivalent EASA requirement will use the wording ''an EWIS component failure * * *'' as was recommended by ATSRAC. EASA recommended that the final rule language be revised to adopt ATSRAC's recommended wording.

We have made the change EASA requested. The intent of the requirement is that applicants assess all EWIS components that could have a reasonable likelihood of failing in such a manner as to create a hazardous condition. We believe the revised rule language is clearer and will not cause an applicant to unreasonably consider EWIS component failures that could not adversely impact required separation.

Boeing requested that the words ''adequately'' be removed from the text of proposed § 25.1703(d) (rule number unchanged) and ''adequate'' from § 25.1709 (a), (c), (d), (e), (f), (g), (k), and (l) (§ 25.1709 is now § 25.1707). Boeing contends that inclusion of these terms does not enhance interpretation of the rules. It requested that we either delete them or add performance criteria that define the term ''adequate.''

We believe the word ''adequate'' is necessary to the intent of § 25.1707. Paragraph (a) of that section provides objective criteria outlining how adequate physical separation must be achieved. We have also described various means of providing adequate physical separation in the associated advisory material. Because each system design and airplane model can be unique, and because manufacturers have differing design standards and installation techniques, § 25.1707 does not mandate specific separation distances. The advisory material provides the criteria each airplane manufacturer should consider when developing adequate physical separation for EWIS. These criteria include the following factors:

- The electrical characteristics, amount of power, and severity of failure condition of the system functions performed by the signals in the EWIS and adjacent EWIS.
- Installation design features, including the number, type, and location of support devices along the wire path.
- The maximum amount of slack wire resulting from wire bundle build tolerances and other wire bundle manufacturing variabilities.
- Probable variations in the installation of the wiring and adjacent wiring, including position of wire support devices and amount of wire slack possible.

• The intended operating environment, including amount of deflection or relative movement possible and the effect of failure of a wire support or other separation means.

• Maintenance practices as defined by the airplane manufacturer's standard wiring practices manual and the ICA required by § 25.1529 and § 25.1729.

• The maximum temperature generated by adjacent wire/wire bundles during normal and fault conditions.

• Possible electromagnetic interference, high intensity radiated fields, or induced lightning effects.

Although not related to this comment, we believe that the requirements of § 25.1707(c) could be stated more clearly. We have revised § 25.1707(c) in the final rule to state that

> * * * damage to circuits associated with essential functions will be minimized under fault conditions.

We have removed the word ''adequately'' from § 25.1703(d). As used in proposed § 25.1703(d), that word does not add clarity to the requirement's intent and is therefore unnecessary.

GE suggested that for clarification we revise proposed § 25.1709(l) (now § 25.1707(l)) to read as follows:

> § 25.1709(l) Each EWIS must be designed and installed so there is adequate separation between it and other aircraft components, in order to prevent abrasion/chafing, vibration damage, and other types of mechanical damage.

We agree with GE that the wording of this rule could be improved to help clarify its requirements. We have revised § 25.1707(l) to state that

> * * * EWIS must be designed and installed so there is adequate physical separation between it and other aircraft components and aircraft structure, and so that the EWIS is protected from sharp edges and corners, to minimize potential for abrasion/chafing, vibration damage, and other types of mechanical damage.

Boeing requested that the reference to § 25.1309(b)(1) and (b)(2) in § 25.1709(a) (now § 25.1707(a)) be deleted. It commented that the applicable guidance material does not include a numerical probability analysis. EASA commented that proposed § 25.1709(a) limits applicability of § 25.1309 to EWIS addressed by subparagraphs (b)(1) and (b)(2). EASA believes that for administrative purposes the final § 25.1709(a) should simply reference § 25.1309 because § 25.1309 could be revised in the future or the requirements of those paragraphs could be moved to a different paragraph within § 25.1309, making it necessary to also change § 25.1709. It stated that the equivalent EASA requirement will just reference § 25.1309.

We agree with Boeing's request to delete the reference to § 25.1309(b)(1) and (b)(2) and do not agree with EASA's request to modify the reference. The intent of the reference to failure conditions as defined by § 25.1309(b)(1) and (b)(2) was to require that an EWIS, under normal and failure conditions, would not create an unsafe condition. The failure conditions we were intending to reference are ''hazardous'' or ''catastrophic,'' used in EASA CS–25.1309 and in § 25.1709. In reviewing the text of the proposal, however, we realized that this reference could cause confusion as to the intent of the requirement and that the reference to the ''catastrophic'' failure condition is not necessary for the purposes of this requirement. To better align the requirement of paragraph (a) with the requirements of paragraphs (e) through (j), and to ensure adequate separation between EWIS and other airplane systems not specifically addressed by those paragraphs and paragraph (k), we have revised the first sentence of 25.1707(a). That sentence now reads: ''Each EWIS must be designed and installed with adequate physical separation from other EWIS and airplane systems so that an EWIS component failure will not create a hazardous condition.'' We discuss the term ''hazardous condition'' in our response to the next two comments.

General Electric and Honeywell commented that the wording of § 25.1709 (now § 25.1707) should be revised to clarify the meaning of ''hazardous conditions,'' so that a contained and detectable engine nacelle or auxiliary power unit (APU) enclosure fire is clearly distinguished from a fire within the pressurized fuselage as not being hazardous. In a similar comment, Airbus requested that the language for § 25.1709(b) (now § 25.1707(b)) be revised to reflect the original ATSRAC recommendation as follows:

> Each EWIS must be designed and installed so that any electrical interference likely to be present in the airplane will not result in hazardous effects upon the airplane or its systems unless shown to be extremely remote.

Airbus stated that the ATSRAC-proposed words ''unless shown be to extremely remote,'' should not be removed unless it can be interpreted that the word ''likely'' excludes cases that are extremely remote and this is expressed in the advisory material.

In our NPRM preamble discussion of this issue, we said that the phrase ''hazardous condition'' in § 25.1709 (now § 25.1707) is used in a different context than it is when associated with the EWIS safety analysis requirements of § 25.1705 (now § 25.1709.) While that statement remains true, we now realize that framing the discussion around what a hazardous condition means in different rules may have caused confusion. The meaning of the term ''hazardous condition'' remains the same, whether used in § 25.1707, in § 25.1709, in current § 25.1353, or in CS 25.1309. Here is the definition for a hazardous failure condition, and also for a catastrophic failure condition.

Hazardous Failure Condition:

Failure condition that would reduce the capability of the airplane or the ability of the flightcrew to cope with adverse operating conditions to the extent that there would be, for example:

• A large reduction in safety margins or functional capabilities; or

• Physical distress or excessive workload such that the flightcrew cannot be relied upon to perform their tasks accurately or completely; or

• Serious or fatal injuries to a relatively small number of persons other than the flightcrew.

Catastrophic Failure Condition:

Failure condition that would result in multiple fatalities, usually with the loss of the airplane.

Hazardous and catastrophic failure conditions are descriptive terms for situations that could occur in the airplane because of failures (safety margins reduced, the flightcrew unable to perform accurately because of adverse operating conditions, injuries to passengers, etc.). These are situations that result from unsafe conditions and must be avoided. Therefore, when an airplane is certified, the applicant must show that the kinds of failures that could result in these kinds of situations have been considered, and measures put in place to prevent them.

In the System Separation rule, § 25.1707, separation distances or a barrier must be used to ensure that none of the types of failures described in the rule will create a situation that would fit the definition of a hazardous condition. The operative term in this rule is that such failures will not create a hazardous condition. To show that a given failure, such as fuel leakage onto EWIS components, will not create a hazardous condition, the applicant may use a qualitative analysis, consisting of expert engineering judgment, manufacturing judgment, and an assessment of any relevant service history.

In the EWIS System Safety rule, § 25.1709, the applicant must show that each EWIS system is designed and installed so that each hazardous failure

condition is extremely remote. The definition of a hazardous failure condition remains the same. In this rule, however, a numerical probability is required to demonstrate that the possibility for such an occurrence is extremely remote.

Section § 25.1709 uses both the terms ''hazardous'' and ''catastrophic'' and says that the applicant must not only show that each hazardous failure condition is extremely remote, but that each catastrophic failure condition is extremely improbable and does not result from a single failure. This would normally require a combination of qualitative and quantitative analyses to demonstrate compliance.

The requirements of § 25.1707 do not preclude use of valid component failure rates if the applicant chooses to use a probability argument in addition to the design assessment to demonstrate compliance. It also does not preclude the FAA from requiring such an analysis if the applicant cannot adequately demonstrate that hazardous conditions will be prevented solely by using the qualitative design assessment. However, we did not include the words ''unless shown to be extremely remote'' in § 25.1707 because we did not want to imply that a numerical probability assessment was required to comply with this rule.

The engine nacelles and APU enclosures are designated as fire zones and this is taken into account in the design and installation of EWIS in those areas. But we do not agree with GE and Honeywell that a fire in the engine nacelle or APU enclosure could never create a hazardous condition. There is always the possibility that the fire could not be suppressed and could result in a safety hazard. We made no changes because of these comments.

The National Air Carrier Association (NACA) commented that the proposed EWIS system separation requirements in § 25.1709 (now § 25.1707) are necessary for new aircraft. However, it said that imposing these requirements and those of § 25.1711 on existing airplanes would be a significant economic burden.

The separation and identification requirements of §§ 25.1707 and 25.1711 are applicable to new designs and do not apply to previously certified products.

In a comment relating to proposed § 25.1709 (now § 25.1707), IASA requested that specific mention be made of wiring that is required to regularly flex in position (such as that in doors and hatches).

We agree that designers and installers should address the additional stresses placed on wires and cables that are required to regularly flex, such as those in doors and hatches. We have revised the advisory material for §§ 25.1703 and 25.1709 to reflect this. However we do not concur that a change to § 25.1707 is necessary. As stated, these requirements are performance based. Applicants would have to demonstrate that any wiring required to regularly flex in operation would be able to maintain its designed separation distance from other EWIS, components, or airplane structure as applicable.

Boeing and GE requested that we clarify § 25.1709(d) (now § 25.1707(d)). They asked whether an ''independent airplane power source'' is considered to be an airplane level power source as is related to an APU, battery, etc., or whether it is *any* power source that transmits power. If it is the latter, they recommended that there be some differentiation in the associated guidance material for the differences between ground blocks and ground studs, and for the differences between static grounds terminating at ground blocks and ground studs. The commenters did not consider ground blocks ''a common terminating location'' for non-redundant grounds.

As used in § 25.1707(d), ''independent airplane power sources'' means a general source of power for the whole of the airplane or for major subsystems (such as the permanent magnet generators that provide power for fly-by-wire systems). Examples include engine-or APU-driven generators, batteries, and ram air turbines. We have revised the AC to reflect this.

GE requested that the word ''physical'' be deleted from the text of § 25.1709(d) (now § 25.1707(d)). It stated that adequate separation should be all that is required and that using physical separation is only one means of achieving this.

The FAA believes that the word ''physical'' is necessary, as recommended by ATSRAC, to ensure that necessary separation is not achieved solely by electrical isolation and use of control logic via hardware or software implementation. We made no changes due to this comment.

Airbus requested that the phrase ''will not create a hazardous condition'' be replaced by the phrase ''will not create a hazard'' in proposed § 25.1709 (e), (f), (g), (h), (i), and (j) (proposed § 25.1709 is now § 25.1707). Airbus commented that this would eliminate ambiguous interpretation from inappropriate use of what is a system safety classification term used in § 25.1309(b).

We believe the word ''hazard'' is ambiguous and could cause confusion in the context of the requirement. We believe that the preamble discussion in the NPRM (which refers to this rule as § 25.1709), the additional clarification given in this final rule, and the advisory material for final § 25.1707 clearly articulate what is meant by the term ''hazardous condition.''

6. System Safety: EWIS (§ 25.1709)

This rule requires applicants to perform a system safety assessment of the EWIS on their airplane. The current regulation requiring system safety assessment for certification is § 25.1309. But current § 25.1309 only covers systems and equipment that are ''required by this subchapter,'' and wiring for non-required systems is sometimes ignored. The objective of new § 25.1709 is to apply the concepts of § 25.1309 to all wiring.

The safety assessment required by § 25.1709 must consider effects that both physical and functional failures of EWIS would have on the airplane's safety. Based on that safety assessment, the applicant must show that each EWIS failure considered to be hazardous is extremely remote. Each EWIS failure considered to be catastrophic must be shown to be extremely improbable and may not result from a single failure.

This rule was proposed as § 25.1705. That number has been changed to § 25.1709, to harmonize with foreign airworthiness authorities. With the exception of that number change, this rule remains unchanged from the form in which it was proposed.

Airbus suggested that use of the words ''extremely remote'' and ''extremely improbable'' should be avoided. It pointed out that the preamble discussion for § 25.1705 (now § 25.1709) is based on a qualitative approach and this was the basis of ATSRAC's recommendation. Airbus said that no calculated number should be necessary for compliance with this rule. It also said, with reference to the NPRM preamble discussion, that ''jamming'' cannot be a justification for creating § 25.1705 because an EWIS cannot cause flight control surface or pilot controls jamming.

The analysis required by § 25.1709 is not purely a qualitative assessment of the effects of EWIS failures. Nor was this the basis of the ATSRAC recommendation. The analysis required by § 25.1709 is based on a qualitative and quantitative approach to assessing EWIS safety, as opposed to a purely numerical, probability-based quantitative analysis. This is consistent with existing § 25.1309 assessments, where a qualitative analysis is always necessary, and the quantitative

probability analysis is a means of compliance for the hazardous and catastrophic failure conditions.

Section 25.1709 is based on the recommendation from ATSRAC. The § 25.1709 safety assessment must consider effects that both physical and functional failures of EWIS would have on airplane safety. The physical analysis is meant to be a qualitative assessment and its results are to be integrated into the analysis required by § 25.1309 (or other required assessments such as § 25.671 as applicable), which is both a qualitative and quantitative assessment.

In response to Airbus's comment that creation of EWIS requirements should not be predicated on flight control surface or pilot controls jamming, the NPRM preamble reference is in the context of explaining that certain airplane systems are exempt from § 25.1309. EWIS associated with those exempt systems are thus also excluded, even though those EWIS could create hazardous conditions in the same way as any other EWIS. As a result, there is a need for a requirement to address all the EWIS on an airplane. We made no changes based on these comments.

While acknowledging that the aim of proposed § 25.1705 (now § 25.1709) is to make the requirements of § 25.1309 more explicitly applicable to EWIS, Airbus requested that the text of this rule be revised to read as follows:

> Each EWIS must be designed and installed so it does not lead to a catastrophic failure condition as a consequence of a single EWIS failure. EWIS failure should be understood as failure affecting from one to all EWIS components within a single bundle.

Airbus's rationale for this change is based on the originally estimated 32.8 accidents that adoption of the proposed rules will prevent over the next 25 years. When combined with the number of airplanes projected to be in service and their combined operating hours, the probability of an EWIS causing a hazardous or catastrophic failure condition will be less than is required to demonstrate compliance with § 25.1709. The commenter contended that if this rationale is accepted by the FAA, then all an applicant should have to do is show in a qualitative manner that an airplane's EWIS will not be the cause of a catastrophic event.

The purpose of § 25.1709 is to ensure that the same analytical rigor applied to other systems for compliance with § 25.1309 is applied to EWIS. That is why the proposal specified the same criteria as § 25.1309(b). Airbus's request would impose lesser criteria for analysis of EWIS, even though the consequences of EWIS failures may be just as severe as any other system failures. Airbus's justification for its request relies on the estimated numbers of incidents in the initial regulatory evaluation and an apparent assumption that this number would meet the computed risk threshold required by § 25.1309. This is not the case. The analytical methods used for an economic evaluation are very different from methods required for risk assessment by § 25.1309 (or § 25.1709). The regulatory evaluation is a projected incident rate based on historical data. Estimating possible failures for compliance requires a detailed evaluation of the modes and effects of potential failures in a specific system design. We made no change because of this comment.

Boeing requested that proposed § 25.1705 (now § 25.1709) be included as a reference within § 25.1309(b) as previously proposed by industry. Boeing stated that duplicating the regulations leaves open the possibility of deviations in application. GE commented that proposed § 25.1705 is not acceptable. It said the discussion of this proposal, and the accompanying AC, contain several misstatements regarding current use and means of compliance with § 25.1309. According to GE, this misunderstanding of § 25.1309 has led to a perception by the FAA that a new rule is needed, when in fact, § 25.1309 already addresses the area of concern. The NPRM preamble states that § 25.1309 does not address single wire chafing or arcing as a cause of failure: ''the physical portion has been neglected in past system safety analyses.'' GE contended this is not true, because § 25.1309 safety assessments have addressed wiring failures as sources of fire. GE recommended that proposed § 25.1705 be removed. It suggested that the AC material for proposed § 25.1705 be provided to ARAC for incorporation into the § 25.1309 AC.

As stated in the preamble discussion of the NPRM, and in its related draft advisory material, the § 25.1709 analysis may be accomplished in conjunction with § 25.1309 assessments. Having a separate requirement for EWIS safety assessments will ensure that all airplane EWIS are assessed for potential impact on safe operation. This cannot be accomplished if § 25.1709 is simply included as a reference in § 25.1309. Nor can we delete § 25.1709 and incorporate its means of compliance into future versions of advisory material for § 25.1309, as GE suggests. As discussed in the NPRM, the requirements of § 25.1709 are necessary. Current safety analysis practice has been proven—by accidents and service history—to be insufficient with respect to safety assessments of wire designs and installations, including wire failures that can cause fires. The requirements of § 25.1709 are such that they complement those of § 25.1309 and address its shortcomings when it comes to safety assessments of EWIS. Section 25.1309 does not allow any single failure to result in catastrophic consequences, regardless of the failure probability. The requirements of § 25.1709 are consistent with those of § 25.1309. We made no changes due to these comments.

Federal Express referred to this statement in the preamble discussion of proposed § 25.1705 (now § 25.1709):

> If this information [what systems and functions the other wires in the same and surrounding bundles support] is not available to the modifier, then the EWIS system must be designed to accommodate this lack of knowledge * * *.

FedEx said this would typically mean that wire being added for the modification would need to be routed separately from existing airplane wiring. It requested that, prior to adoption of this concept into any advisory material or design standard, detailed guidance on separation in confined areas such as equipment racks or breaker panels be developed.

We believe that the advisory material for post-TC modifications provides clear guidance for the case cited by Federal Express. When separation cannot be maintained because of physical constraints (in terminal strips and connectors, for instance), the applicant should conduct the appropriate analysis to show that no adverse failure conditions result from sharing the common device. This analysis requires knowledge of the systems or system functions sharing that device (again, the example would be terminal strips and connectors). If a modifier cannot identify the systems or system functions in the congested area, then the new EWIS would have to be routed through a different area if an acceptable alternative method of providing adequate separation is not provided. We made no changes to the final rule because of this comment. However, we have expanded the final advisory material for this requirement to provide clear guidance on the specific scenario contained in FedEx's comment.

Boeing commented on the part of the § 25.1705 (now § 25.1709) discussion in the NPRM that states that an in-flight entertainment (IFE) system installed on an airplane with subpart H as part of its type certification basis would be subjected to a more rigorous safety

assessment. Boeing noted its understanding that subpart H is applied to applicants for type certificates, amended type certificates, and supplemental type certificates. It asked whether it is correct that ''an application for that or another IFE system to be installed on any airplane following the implementation of subpart H would be subjected to a more rigorous safety assessment.''

Boeing asked whether an existing STC applicable to an existing airplane model, applied to a new airplane of the same model but with subpart H as part of its certification basis, would be subjected to requirements of subpart H. It referred to the statement in the NPRM that post-type certificate modifications have repeatedly introduced wiring safety problems. Boeing asked for clarification of whether an existing amended or supplemental type certificate would be subjected to subpart H requirements prior to installation on an airplane with or without subpart H as its basis of certification.

In the case of a previously certified IFE system being considered for installation on an airplane model with subpart H in its certification basis, the answer is yes. The IFE system would have to be certified to the EWIS requirements of subpart H. To do otherwise could compromise the safety of the airplane by applying a lesser certification standard to the IFE system. After the effective date of the final rule, if a modification is proposed for an existing airplane model without subpart H in its certification basis, whether or not the modification will need to have subpart H in its certification basis will be decided on a case-by-case basis, and the requirements of § 21.101, Designation of applicable regulations, will apply.

7. Component Identification: EWIS (§ 25.1711)

This rule requires applicants to identify EWIS components using consistent methods that facilitate easy identification of the component, its function, and its design limitations. For EWIS associated with flight-essential functions, identification of the EWIS separation requirement is also required.

The number of this rule remains unchanged from its number as proposed. In response to comment, we have revised wording to clarify its intent, as discussed below.

Boeing requested that we clarify § 25.1711(a) by revising it as follows:

> EWIS components must be labeled or otherwise identified using a consistent method that facilitates identification of the wire *EWIS component,* its function, and its design limitations, if any.

GE requested we revise the same paragraph to read as follows:

> EWIS components must be labeled or otherwise identified using a consistent method that facilitates identification.

Boeing and GE also requested that we remove the requirement in § 25.1711(b) that, for systems requiring redundancy, components must be identified with component part number, function, and separation requirement for bundles. They stated that all wiring should be treated with the same level of care. The commenters contended that as the proposed requirement was written, the regulation was impractical to implement, since there are many redundancy separation categories in the aircraft. A given bundle might have different separation requirements from multiple other bundles, from hydraulic systems, and from air ducts, and the requirement could vary with axial distance along the fuselage. There would not be room to add all this data to the bundle label.

We have clarified § 25.1711(a) as requested by Boeing. It is the intent of this rule to require identification of all EWIS components and not just the wire (which is one component of an EWIS). We have revised that section by replacing the word ''wire'' with the phrase ''EWIS component.''

We have decided against deleting the phrase ''of the wire, its function, and its design limitations, if any'' from § 25.1711(a). It is important that the EWIS component's function and design limitation information be easily and readily available to maintainers and future modifiers. Labeling components with this information will help ensure that the level of safety provided by the original design is not degraded. It will also prevent potential safety hazards from improper maintenance and from replacement of original parts with parts not designed or intended for that particular use.

We have also decided against deleting § 25.1711(b). We agree that all wiring must be treated with care. But we are especially concerned that wires and other EWIS components associated with flight-essential or flight-critical systems be easily identifiable by those designing and installing modifications, as well as by technicians performing maintenance or repair. If a wire bundle has different separation requirements as it is routed throughout the airplane, then those varying separation requirements must be identified on the bundle at the appropriate location where a particular separation requirement is applicable. It would not be necessary to have each label on the bundle contain all the differing separation requirements.

IASA suggested that using a color-coding approach to identifying critical systems would help post-TC modifiers easily identify critical airplane systems. We agree with the need to help ensure easy identification of these systems so that post-TC modifications and repairs do not inadvertently introduce unintended failure modes. However, the EWIS identification requirements of § 25.1711 do not prescribe the means by which EWIS is identified. It only requires that the identification scheme be consistent throughout the airplane and that modifications follow the same scheme. Color coding of EWIS may be an acceptable means to comply with the requirements. We made no changes because of this comment.

US Airways stated that mandating identification for all terminals, switches, connectors, or any component mounted in an area with limited space could cause tags or something similar to be used. These would in turn become contaminants.

We agree that some EWIS components may be so small that it would be impractical to label the component directly with textual data, and that excessive use of tags could become a source of future contamination. However, § 25.1711 states that other means of identification can be used if the component cannot be physically marked. For example, the manufacturer's consistent marking scheme may be such that a color code is used to mark these types of components. Applicants will have to collaborate with their FAA Aircraft Certification Office to work out the details. The method of identification is not mandated by the rule. It is left up to the applicant to propose a method of identification. We made no changes based on this comment.

8. Fire Protection: EWIS (§ 25.1713)

This rule requires that EWIS components meet the applicable fire and smoke protection requirements of § 25.831(c). It further requires that EWIS located in designated fire zones be fire resistant. Insulation on electrical wires and cables is required to be self-extinguishing when tested in accordance with the applicable portions of Appendix F, part 1, of part 25. Section 25.1713 is adopted as proposed, except that we removed the phrase ''at least'' that preceded ''fire resistant.''

EASA and Airbus commented that § 25.1713(a) should also reference § 25.863. Airbus stated that this reference is common practice for fire

protection compliance demonstration for EWIS components. EASA stated that the equivalent EASA requirement, CS 25.1713, will reference CS 25.863.

Because § 25.1723 already requires EWIS components to meet requirements of § 25.863, it is not necessary to state the same requirement in § 25.1713.

Boeing commented that proposed § 25.1713(c) repeats and replaces § 25.869(a)(4), except with the change underlined below:

> (c) Insulation on electrical wire and electrical cable, *and materials used to provide additional protection for the wire and cable,* installed in any area * * *

Boeing requested that we change § 25.1713(c) and/or Appendix F to Part 25 to clarify which test article configurations (test components individually or test components installed on the wire), and which flammability tests are required for ''materials used to provide additional protection for the wire and cable.''

Boeing noted that Appendix F only refers to electrical conduit. It said the rule is clear on how electrical conduit and insulation on wire must be tested, but not on how to test the ''materials used to provide additional protection for the wire and cable.''

Boeing said that the rules should make clear what testing is required for materials such as tight-fitting protective sleeve (heat shrinkable material, for example), loose-fitting protective sleeve (such as spiral wrap or Varglas), or, for that matter, clamps, grommets installed in holes, or other devices used to protect wire and cable.

We have not revised § 25.1713(c) and/or Appendix F because we believe the requirements of § 25.1713(c) are clear and unambiguous. A material used to protect wire such as heat shrinkable material, or loose fitting protective sleeving such as spiral wrap or Varglas, must be tested in accordance with the requirements of part 25, Appendix F, part I, in the same manner as electrical wire is tested. As stated in Appendix F, Part 1(a)(v), it is not necessary to test small parts such as clamps and grommets because they would not contribute significantly to the propagation of a fire.

9. Electrical Bonding and Protection Against Static Electricity: EWIS (§ 25.1715)

Section 25.1715 requires that EWIS used for electrical bonding and protection against static electricity meet the requirements of § 25.899. It requires that EWIS components used for any electrical bonding purposes (not just those used for protection against static electricity) provide an adequate electrical return path under both normal and fault conditions.

Section 25.1715 was proposed as § 25.1717. Its number was changed to better harmonize with foreign airworthiness authorities. In response to comments, we have revised the wording of § 25.1715 and expanded it to clarify meaning, as discussed below.

Boeing stated that the term ''adequate electrical return path'' as used in § 25.1717 (now § 25.1715) is difficult to define, and should be replaced with performance criteria, such as the following:

> On airplanes having grounded electrical systems, electrical bonding provided by EWIS components must provide an electrical return path capable of carrying both normal and fault currents without creating a shock hazard.

GE requested clarification of what constitutes a fault condition for compliance with proposed § 25.1717. It asked if a fault condition includes failure of the bonding path, such as physical breakage.

We have revised § 25.1715 as requested by Boeing but have added the phrase ''or damage to the EWIS components, other airplane system components, or airplane structure.'' to the end of the suggested revision.

In response to GE's comment, the intent of the requirement is to ensure that the current return paths are sized so they can accommodate fault currents due to component failure. One example would be shorted integrated drive generator power feeder cables where electrical bonding is used for the fault current path.

10. Accessibility Provisions: EWIS (§ 25.1719)

This rule requires access be provided to allow for inspection of EWIS and replacement of their components, as necessary for continued airworthiness.

Section 25.1719 was proposed as § 25.1725. Its number has been changed to facilitate harmonization. No other changes have been made.

EASA and Airbus commented that the wording of proposed § 25.1725 (now § 25.1719) is slightly different from that recommended by ATSRAC. ATSRAC recommended that it state:

> *Means* must be provided to allow for inspection of EWIS and the replacement of its components as necessary for continued airworthiness.

The NPRM proposed § 25.1725 to read as:

> *Access* must be provided to allow inspection and replacement of any EWIS component as necessary for continued airworthiness.

Airbus said that the word ''access'' is ambiguous. For example, it said, it is almost impossible to access the inside of a conduit. U.S. Airways noted that the rule needs to be revised because there are areas where access to cables and wire runs is not possible.

EASA suggested we change the rule to ATSRAC's original wording and stated that it will use this wording in its equivalent requirement, CS 25.1719.

We have decided to retain the wording of this requirement as proposed. However, it should be noted that it is not the intent of the rule to require human physical access in all cases. If such access is not possible because of physical design, then other inspection techniques could be allowed, such as use of a remote optical device. However, in response to U.S. Airways' statement, § 25.1719 does require that access be provided to allow for inspection and replacement for any EWIS component if it is necessary for continued airworthiness. Therefore there will not be areas where EWIS components are inaccessible for airplanes with § 25.1719 in their type certification basis.

We have revised AC 25–1701–1 to reflect the fact that other types of inspection techniques could be approved when human physical access is not possible. Other types of emerging inspection techniques may not require physical access.

11. Protection of EWIS (§ 25.1721)

Section 25.1721 requires that cargo or baggage compartments not contain any EWIS whose failure would adversely affect safe operation. It also requires that all EWIS be protected from damage by movement of people and from damage from items carried on the airplane by passengers or cabin crew.

Section 25.1721 was proposed as § 25.1727. Its rule number was changed to harmonize with regulations of foreign airworthiness authorities. No other changes have been made.

Boeing suggested that this rule be revised to state that EWIS should be protected so it ''* * * cannot be damaged by normal movement of cargo or baggage in the compartment.'' It said this change will clarify requirements. Boeing, GE, and AIA/GAMA stated that maintenance personnel need to be trained in proper EWIS handling.

We have decided against revising § 25.1721 in the manner Boeing suggests. This requirement is not limited to ''normal movement.'' EWIS in cargo or baggage compartments must be designed and installed so it is protected in both normal and non-normal situations, such as when cargo

containers come loose and strike compartment walls during flight because of cargo system malfunctions.

We agree that training personnel in proper handling of EWIS is also necessary. Although we have not mandated this training, except for technicians and inspectors working directly with EWIS, we have outlined a training program for a wide variety of personnel who work on airplanes. This training program is outlined in Advisory Circular 120–YY, Aircraft Electrical Wiring Interconnection Systems Training Program. We made no changes due to these comments.

GE requested that the phrase ''risk of damage'' be deleted from proposed § 25.1727 (now § 25.1721). It stated that risk of damage implies control of the failure effect of damage that is assumed to occur, as in § 25.901(c). It said that because 14 CFR 25.1309 already adequately controls the relationship between probability of a failure condition and its effect, risk of damage should be deleted from proposed § 25.1727.

We believe it is necessary to address both damage and risk of damage. Design and installation must be such that they preclude damage to EWIS to the extent possible when all design and installation factors are considered. We recognize, however, that it is not always possible to prevent possible damage because of design or installation considerations. EWIS components should be robust enough to minimize the damage that could occur if they come into contact with cargo, baggage, or personnel. We made no changes due to this comment.

12. Flammable Fluid Shutoff Means: EWIS (§ 25.1727)

Section 25.1727 requires that EWIS associated with each flammable fluid shutoff means and control be ''fireproof'' (as defined in § 1.1) or located and protected so that any fire in a fire zone will not affect operation of the flammable fluid shutoff means, in accordance with § 25.1189.

Section 25.1727 was originally proposed as § 25.1733. We have changed its number to facilitate harmonization with foreign airworthiness authorities. No other changes have been made.

Boeing recommended that the word ''fireproof'' in § 25.1733 (now § 25.1727) be replaced with ''fire resistant'' to be consistent with terminology used in § 25.869(a) and proposed § 25.1735 (now § 25.1733). AIA/GAMA stated that fire resistant and fireproof are not synonymous.

AIA/GAMA is correct. ''Fireproof'' is a more stringent standard than ''fire retardant.'' The basis for proposed § 25.1727 is the requirement of § 25.1189(d) that ''each flammable fluid shutoff means and control must be fireproof or must be located and protected so that any fire in a fire zone will not affect its operation.''

To ensure the effectiveness of flammable fluid shutoff means and controls, the requirement for EWIS associated with those systems must be as stringent as the requirement for other components of those systems.

13. Powerplant and APU Fire Detection System: EWIS (§ 25.1731)

This rule requires that EWIS that are part of a fire or overheat detector system located in a fire zone be fire resistant, as defined in § 1.1. It also requires that EWIS components of any fire or overheat detector system for any fire zone may not pass through another fire zone unless:

- They are protected against the possibility of false warning caused by fire in the zone through which they pass, or
- Each zone involved is simultaneously protected by the same detector or extinguishing system.

This rule also requires that EWIS that are part of a fire or overheat detector system in a fire zone meet requirements of § 25.1203. Section 25.1203 requires approved, quick acting, fire or overheat detectors in each designated fire zone, and in the combustion, turbine, and tailpipe sections of turbine engine installations, to provide prompt indication of fire in those zones.

Section 25.1731 was originally proposed as § 25.1737. Its number was changed for purposes of harmonization. No other changes have been made.

EASA requested that the reference to § 25.1203 be moved to § 25.1719 (now § 25.1705 Systems and Functions: EWIS).

The intent of § 25.1731 is to ensure that any EWIS components associated with powerplant and auxiliary power units' fire detector systems be as robust and fire resistant as the other components making up these systems. The requirements of § 25.1731 are based on those contained in § 25.1203. It could create confusion if the requirements in § 25.1731 were split between two separate subpart H regulations as requested by EASA. Therefore we have retained the originally proposed § 25.1731 in this final rule.

14. Fire Detector Systems, General: EWIS (§ 25.1733)

Section 25.1733 requires that EWIS associated with any installed fire protection system be considered in showing compliance with the applicable requirements for that particular system. This is a new requirement that has not previously existed in part 25. Current part 25 regulations contain fire detection system requirements for powerplants, lavatories, and cargo compartments. Each of these fire detection systems requires electrical wire, and failure of this wire could lead to inability of the detection system to function properly. This rule applies to all required fire protection systems with the exception of those for powerplants and APUs. Requirements for EWIS associated those systems are contained in § 25.1731.

Section 25.1733 was originally proposed as § 25.1735. Its number was changed to better harmonize with foreign airworthiness authorities. As stated previously in the discussion under the heading of Systems and Functions: EWIS (§ 25.1705), we have revised this rule to include references to §§ 25.854 and 25.858, in response to comments from EASA.

Boeing and GE requested that proposed § 25.1735 (now § 25.1733) be removed from subpart H, because it is not directly related to EWIS certification. The commenters noted that any system, not just fire detection systems, which uses wiring in its design will be required to meet requirements of subpart H.

We have decided to adopt this requirement as proposed. Fire detection systems need wire and other EWIS components to operate. Failure of an associated EWIS component could lead to inability of the detection system to function properly. Therefore EWIS components must be considered an integral part of the fire detection system and meet requirements of the applicable regulation.

15. Engine, Nacelle, and APU Wiring

GE, Honeywell, and AIA/GAMA commented that engine, nacelle, and APU wiring should be exempt from the proposed EWIS certification and maintenance requirements. They said wiring in these areas is extremely rugged, has excellent reliability in service, and is easily accessible for inspection. They further stated that it is physically impossible for a wiring failure or deterioration in the propulsion system to cause a hazardous or catastrophic effect. They expressed the view that existing regulations are

adequate, as demonstrated by service experience, and application of these rules to engine, nacelle and APU wiring confers no safety benefit and would result in significant cost to industry.

We agree that EWIS components installed on the engine are very robust. This is because the harsh environment in which they are installed and the critical function engines play in the safe operation of the airplane dictate such robust design and installation. However, we do not agree that it is impossible for an engine wiring failure to cause a hazardous or catastrophic condition. The following quote is from the ''Lauda Air B767 Accident Report,'' dated July 21, 1993, issued by the Aircraft Accident Investigation Committee Ministry of Transport and Communications, Thailand—

> Investigation of the accident disclosed that certain ''hot-short'' conditions involving the electrical system occurring during an auto-restow command, could potentially cause the DCV to momentarily move to the deploy position.

This illustrates that, in the past, there have been designs where an engine wiring failure could cause a catastrophic accident. Application of these requirements to all wiring on part 25 airplanes will help ensure that in the future we will minimize EWIS designs and installations that could lead to serious safety issues. Our position is consistent with ATSRAC's recommendation that engine wires not be excluded from compliance with these new requirements. Additionally, our regulatory analysis indicates that these rules are cost effective. We made no rule change due to these comments.

16. Designated Fire Zones

General Electric (GE) commented that the entire rulemaking package was written from the perspective of wiring contained in the pressurized fuselage, and then extrapolated to other areas. It stated as an example the assumption made throughout the NPRM that an electrical fire is catastrophic. GE stated that this is not the case in a designated fire zone, because such zones contain specific design measures to safely detect, contain, and put out a fire. The commenter stated that unpressurized portions of the airplane spend much of the flight at ambient pressures which will not easily support combustion. GE suggested that itemizing fuel sources that are isolated from the pressurized portion of the airplane—engine oil, engine fuel—as if they coexisted with the heated and air-conditioned section of the aircraft is very misleading.

We believe that a fire in a fire zone is a safety issue. Fire zones are designated as such because they are areas that have a higher potential for a fire to occur. These zones do have fire detection and suppression systems or other design features to mitigate effects of fire. But these features are designed to meet a limited set of test conditions for a limited duration of time and are not designed to meet all anticipated sets of conditions that may exist in a fire zone. Any fire on board an airplane, no matter where it occurs, has the potential for serious safety consequences.

The rule package was written with the objective of ensuring the safety of wiring in the entire airplane, consistent with the intent of ATSRAC.

17. Goal of the New Wiring Subpart

GE and AIA/GAMA commented that many of the proposed subpart H EWIS certification requirements are duplicative of existing part 25 rules. They asserted that repeating a requirement in multiple locations promotes differences in interpretation and confusion over acceptable means of compliance. They recommended that the proposed subpart contain new applicable requirements and act as a collector with references or points to the existing applicable rules. They said this packaging technique would provide the benefit of the common location sought by the FAA to bring focus to the importance of EWIS design and certification while minimizing the confusion, interpretation, and divergence that challenges use of duplicate rule sets.

We do not agree with the opinion that the proposed certification requirements of subpart H are duplicates of existing part 25 requirements. To be a duplicate implies that the requirement exists in both the new subpart H and in other places within part 25. This is not the case. As described in the proposal's preamble, some of the subpart H requirements previously resided in other part 25 subparts. But they have been relocated to the new subpart H, and in some cases enhanced, and no longer exist elsewhere in part 25. Also, many requirements of subpart H are new requirements. In some cases (for instance in § 25.1705 in this final rule), we reference existing part 25 requirements that are applicable to EWIS but have not been moved into subpart H because they do not lend themselves to division into wire and non-wire portions. The goal of collecting existing part 25 wire-related requirements and developing new requirements is to make them easy to locate, ensure their application to EWIS, and highlight the importance of considering wiring and its associated components as an airplane system. Eliminating the majority of the proposed subpart H requirements and simply referencing other wire-related requirements in a new § 25.1700 series paragraph would not support this goal.

18. Harmonization

British Airways, Royal Dutch Airlines (KLM), Airbus, and the Association of Asia Pacific Airlines requested that the proposed FAA and European Aviation Safety Agency's (EASA) EWIS requirements and advisory material be fully harmonized and made identical where possible.

Harmonization of these requirements with EASA has been our goal from the beginning. We have coordinated extensively with EASA and other national civil aviation authorities to achieve this common objective. While there may be some differences in wording because of our differing regulatory procedures, our intent is to harmonize the substantive requirements to the extent possible.

D. Instructions for Continued Airworthiness: EWIS (§ 25.1729 and Appendix H)

1. Requirements for EWIS ICA

Section 25.1729 requires that applicants prepare EWIS ICA in accordance with requirements of Appendix H to part 25. Section 25.1729 was originally proposed as § 25.1739. Its number has been changed to facilitate harmonization with the regulations of foreign airworthiness authorities. Otherwise, this rule remains unchanged from the form in which it was proposed.

This final rule also revises paragraph H25.4 and adds a new paragraph H25.5 to Appendix H—Instructions for Continued Airworthiness. Section H25.5 is a new requirement. It requires TC applicants and applicants for design change to develop maintenance information for EWIS as part of the ICA that are required for design approval. The EWIS ICA must be developed through the use of an enhanced zonal analysis procedure (EZAP). The ICA must include tasks, and intervals for performing those tasks, to reduce the likelihood of ignition sources and accumulation of combustible material and tasks to clean the EWIS of combustible material if there is not an effective task to reduce the likelihood of its accumulation. The ICA must also include—

- Instructions for protections and cautions to prevent accidental damage or contamination to EWIS during maintenance, alteration, or repairs.
- Acceptable maintenance practices in a standard format.

• Wire separation requirements as determined under § 25.1707.

• Information explaining the EWIS identification method and requirements for identifying any changes to EWIS under § 25.1711.

• Electrical load data and instructions for updating that data.

The ICA developed through the use of an EZAP must be in the form of a document appropriate for the information to be provided, easily recognizable as EWIS ICA, and either contain required EWIS ICA or specifically reference other portions of the ICA that contain this information.

The amendment to section H25.4 requires that the Airworthiness Limitations section of the ICA include any mandatory replacement times for EWIS components.

The final wording for the requirement for ICA as a single document was revised from its proposed form, to clarify intent, as discussed below. No other changes have been made to these rules.

2. ICA as a Single Document

Boeing and AIA/GAMA requested we delete paragraph H25.5(b) of Appendix H. This paragraph requires that EWIS ICA be contained in a single document, easily recognizable as EWIS ICA. They said their current approach is to produce several documents, including the maintenance planning data document, airplane maintenance manual, and standard wiring practices manual, with appropriate cross-references. These documents may not be EWIS specific. Boeing and AIA/GAMA believe separating EZAP-generated maintenance activities from those required by Special Federal Aviation Regulation (SFAR) 88 defeats the intent of the rule and is impractical.

Additionally, Airbus, and GE suggested we revise H25.5(b) to say ''the ICA must be provided in a manner acceptable to the Administrator, where instructions specific to EWIS are easily recognizable.'' They believe there is no safety benefit in uniquely identifying ICA related to, but not specific to, EWIS. They also requested that proposed § 25.1739 (now § 25.1729) be revised with a reference back to § 25.1529 or deleted in its entirety. They stated that § 25.1529 already requires Instructions for Continued Airworthiness to be developed in accordance with Appendix H.

We do not agree that paragraph H25.5 (b) should be deleted or revised as requested. The requirements of paragraph (b) do not preclude incorporation by reference of detailed information. However, we expect the DAH to provide a document appropriate for the information provided, in other words, a single or source document that either includes the EZAP-generated EWIS ICA or specifies where those EWIS ICA can be located. This also means that, if incorporation by reference is the approach taken by the DAH, all referenced documents are available at the same time as the EWIS ICA source document. We have revised the text of final H25.5(b) to clarify that the requirement only applies to EWIS ICA developed in accordance with requirements of H25.5(a)(1) and that the ''document must either contain the required EWIS ICA or specifically reference other portions of the ICA that contain this information.'' This does not change the meaning of the requirement, but clarifies it.

We also do not agree with the request to delete or revise § 25.1729. Having a separate requirement for EWIS ICA located within subpart H is consistent with the purpose of creating the new subpart. The goal was to collect existing part 25 wire-related requirements and develop new requirements, make them easy to locate, ensure their application to EWIS, and highlight the importance of considering wiring and its associated component as an airplane system. We made no changes due to this comment.

3. Standard Wiring Practices Manuals

Airbus commented about the requirement to include acceptable maintenance practices in a standard format. Airbus made the point that electronic standard wiring practices manuals (SWPM), in which such maintenance practices can be found, are easily searchable. It requested that manufacturers who publish their SWPMs electronically be either exempt from the requirement for a standard format for SWPMs, and/or an interim master breakdown index (which was outlined in the AC as an approach to standardizing SWPM formats without rewriting them), or able to adopt a similar approach.

We are rejecting Airbus's request to exempt electronic versions of the SWPM from requirements of part 25, Appendix H, H25.5. The objective of this requirement is to ensure that maintenance personnel can readily access necessary information. They may work on many different models, so having a standard format will facilitate this. An applicant may propose an alternative ''standard'' format to that described in the AC, as long as it achieves the same objective (again, taking into account that maintenance personnel will be working on a range of models). The master breakdown index described in AC 25–26 was developed so that existing non-electronic SWPMs would not have to be reformatted. An electronic SWPM, by definition, can be easily indexed to align with the master breakdown index format as depicted in the AC. We made no changes due to this comment.

4. Mandatory Replacement Times

Airbus requested that the requirement in section H25.4 to include mandatory replacement times for EWIS in Airworthiness Limitations of ICA be deleted because it is not related to any requirements to define mandatory EWIS replacement times.

We are retaining H25.4. The intent of this requirement is not to mandate life limits for EWIS components, but to ensure that the designer consider whether EWIS life limitations are applicable to a particular design and identify those limits in the Airworthiness Limitations section of the ICA. Such limitations, if any, would be identified when demonstrating compliance with § 25.1703. That rule requires that EWIS be installed according to limitations specified for that EWIS component, and this might include life limits under certain circumstances. For example, a given EWIS component may be well suited for a particular environment, but because of technological limitations, the material it is made of may degrade over time when exposed to certain environmental stresses. The component manufacturer may recommend that certain tests be performed at given intervals to ensure that its material properties are still within its qualification limits, and if they are not, recommend that the component be replaced. Life limits might also be identified when demonstrating compliance with the EWIS safety assessment requirements of § 25.1705, as part of identifying acceptable mitigation strategies to prevent hazardous or catastrophic failures. We made no changes due to this comment.

5. Wire Identification Method Information

Airbus, AIA/GAMA, and GE suggested we delete the requirement in proposed H25.5 for information explaining wire identification methods and requirements for identifying changes to EWIS. They stated that changes to EWIS, including future identification, are the modifier's responsibility, and a DAH cannot anticipate all possible future changes and give instructions for identification methods for changed components.

This requirement is intended to ensure that EWIS components added or changed due to post-TC modifications retain the same identification scheme used by the design approval holder. It is not necessary for the original DAH to anticipate future changes to EWIS. The original DAH is only required to describe the original identification scheme used. An example could be a particular color used to identify EWIS components associated with a fly-by-wire system. It is the responsibility of the future modifier to follow that EWIS identification scheme as required by § 25.1711.

6. Electrical Load Data

GE requested confirmation that H25.5(a)(2), (3), (4), and (5) do not apply to the existing fleet. Also, AIA/GAMA and GE contended that electrical load data is a certification issue, not a continued airworthiness issue, and future changes or updates to that information is the modifier's responsibility. They requested that paragraph H25.5(a)(5) be deleted.

The requirements of H25.5(a)(2), (3), (4), and (5) do not apply to the existing fleet unless a modification is introduced that would require that these requirements be part of the type certification basis of the modification, in accordance with 14 CFR 21.101.

We agree that it is the responsibility of modifiers (e.g., STC applicants) to ensure that they update the actual load data of the airplane they are modifying and document the electrical load data as required by H25.5(a)(5). However, we have decided against deleting paragraph H25.5(a)(5). We are using this requirement as a means to ensure that accurate electrical load data is available to those who need it. Accurate electrical load data is necessary to help ensure continued airworthiness. It is important that the load demand of an airplane's systems not exceed the generation and distribution capacity of its electrical power system. By ensuring this, the necessary levels of electrical power will always be available for those airplane systems needed for safe operation. We made no changes due to this comment.

E. Continued Airworthiness and Safety Improvements Subparts for Operating Rules (Parts 91, 121, 125, 129)

1. Establishment of New Subparts

This rule establishes new subparts in parts 91, 121, 125, and 129. These new subparts will contain operator requirements for continued airworthiness and safety improvements, just as the new part 26 will contain requirements for continued airworthiness and safety improvements applicable to DAHs. As we stated in the NPRM:

> The FAA believes that inclusion of certain rules under the new subparts will improve the reader's ability to readily identify rules pertinent to continued airworthiness. * * * The proposed new subparts consist of relocated, revised, and new regulations pertaining to continued airworthiness of the airplane. Unless we say otherwise, our purpose in moving requirements to these new subparts is to ensure easy visibility of those requirements applicable to the continued airworthiness of the airplane. We do not intend to change their legal effect in any other way. (70 FR 58537)

Our creating these new subparts does not, by itself, impose any new requirements; it simply establishes the locations in which these requirements will be placed. In some cases, as with the fuel tank safety provisions of today's final rule, we may adopt parallel sections in all four new subparts. In other cases, as with the EWIS provisions of today's final rule, we may adopt requirements in only certain subparts. But in each case, the new requirements will only be adopted after public notice and opportunity to comment where we will explain the proposed scope and effect of the new requirements.

Other new regulations and new subparts have been added to the CFR since publication of the NPRM. As a result, some of the rule numbers and some of the letter names for the new subparts that were proposed for this rule have already been used. In this final rule we have revised those rule numbers and subpart letter names where necessary.

Provisions enabling each of the new Continued Airworthiness and Safety Improvements subparts, which were inadvertently left out of the proposal, have been added here. The placement of certain provisions within the rules has also been revised. The table below indicates the changes. Commenters' original references are retained here, however, for ease of reference to the proposal, including references to draft ACs.

TABLE 3.—OPERATIONS RULES CHANGES FROM NPRM TO FINAL RULE

Part	Final rule	NPRM
91	§ 91.1(d) (new)	N/A.
91	Subpart L—Continued Airworthiness and Safety Improvements	Subpart L—Continued Airworthiness and Safety Improvements.
91	§ 91.1501 Purpose and definition	§§ 91.1501 Purpose and definition.
91	§ 91.1507 Fuel tank system inspection program	§ 91.1507 Fuel tank system maintenance program.
121	§ 121.1(g) (new)	N/A.
121	Subpart AA—Continued Airworthiness and Safety Improvements.	Subpart Y—Continued Airworthiness and Safety Improvements.
121	§ 121.1101 Purpose and definition	§ 121.901 Purpose and definition.
121	§ 121.1111 Electrical wiring interconnection systems (EWIS) maintenance program..	§ 121.911 Electrical wiring interconnection systems (EWIS) maintenance program.
121	§ 121.1113 Fuel tank system maintenance program	§ 121.913 Fuel tank system maintenance program.
125	§ 125.1(e) (new)	N/A
125	Subpart M—Continued Airworthiness and Safety Improvements	Subpart M—Continued Airworthiness and Safety Improvements.
125	§ 125.501 Purpose and definition.	§ 125.501 Purpose and definition.
125	§ 125.507 Fuel tank system inspection program	§ 125.507 Fuel tank system inspection program.
129	Subpart A—General	Subpart A—General.
129	§ 129.1(b)	§ 129.1(b).
129	Subpart B—Continued Airworthiness and Safety Improvements	Subpart B—Continued Airworthiness and Safety Improvements.
129	§ 129.101 Purpose and definition	§ 129.101 Purpose and definition.
129	§ 129.111 Electrical wiring interconnection systems (EWIS) maintenance program.	§ 129.111 Electrical wiring interconnection systems (EWIS) maintenance program.
129	§ 129.113 Fuel tank system maintenance program	§ 129.113 Fuel tank system maintenance program.

2. Continued Airworthiness Subparts and Airworthiness Directives

The Regional Airline Association (RAA) commented that proposed § 121.901(a) (now § 121.1101(a)), as a stand-alone provision, is unlimited in scope. It contended that the requirement can be interpreted to mean that operators must incorporate any future design and maintenance changes that a type certificate holder incorporates into its ICA, regardless of their airworthiness status. The RAA said that this would effectively eliminate the need for any future airworthiness directives. The RAA said it therefore has the potential to eliminate operator participation in the rulemaking process for future original equipment manufacturers' recommendations affecting maintenance and design of their fleet.

In a similar vein, United Parcel Service (UPS) recommended we not adopt the new subpart for part 121 and instead use the part 39 AD process to implement required actions once the necessary data and documents have been developed by manufacturers. It stated the new subpart, as proposed, will allow the FAA to impose regulations prior to development of a technically feasible solution available for comment. UPS stated that operators would be unable to accurately comment on the cost and feasibility of the actions required for compliance. The current AD process allows operators the ability to comment on a specific solution with a known cost impact.

We do not believe that § 121.1101(a) as a stand-alone provision can be reasonably construed as unlimited in scope. Section 121.1101(a) describes the purpose of the new Subpart AA and who it is applicable to, and defines the ''FAA Oversight Office.'' It does not impose technical requirements. Any specific requirements for continued airworthiness and safety improvements will be proposed for comment in the same way as the EWIS and fuel tank safety requirements included in this final rule were proposed for comment. The FAA will continue to issue airworthiness directives in accordance with requirements of 14 CFR part 39 when we find that an unsafe condition exists in a product and the condition is likely to exist or develop in other products of the same type design.

We also disagree that subpart AA should not be created. The new requirements contained in subpart AA are necessary to raise the level of safety by correcting fleet-wide continued airworthiness issues. Airworthiness directives only address specific unsafe conditions that exist in a product and are likely to exist or develop on products of the same type design. Continued airworthiness issues, such as EWIS maintenance, affect all transport category airplanes. In addition, using ADs to implement these requirements would mean that ADs would need to be continually issued as new models, model variants, or modifications are introduced by a DAH. The use of the AD process to impose the requirements contained in subpart AA would not be the most effective method to address these issues.

We do not believe that adopting the new subpart instead of issuing ADs will prevent operators from being able to accurately comment on the cost and feasibility of the manufacturers' proposed requirements. It would be impractical to set up a comment period for each specific set of maintenance changes developed by the manufacturers, as the commenter appears to want. However, a substantial cost/benefit analysis is always prepared to support any proposed 14 CFR regulation and public comments are solicited. This is a more comprehensive analysis than those prepared for an AD. We made no changes due to this comment.

3. Type and Scope of Requirements

The Air Transport Association (ATA) commented that in proposed § 121.1101(a), the words ''* * * may include, but are not limited to * * *'' can be interpreted to mean that at a *minimum* the operator's maintenance program *must* incorporate 100% of all design changes and 100% of all ICA, *not just the EWIS/FTS design changes and ICAs to be developed.* ATA stated there is no justification presented in the NPRM for such an open-ended regulatory requirement. It said this requirement cannot be interpreted consistently by all operators impacted or by all the FAA Aviation Safety Inspectors with oversight responsibility. ATA recommended that the second sentence of § 121.1101(a) be rewritten as follows:

> These requirements may include revising the maintenance program *by* incorporating *the intent of applicable* revisions to *the* Instructions for Continued Airworthiness, *as identified in this subpart.*

As explained in the NPRM (at 58538–9), this rulemaking is one of several to adopt new requirements relating to continued airworthiness, and the purpose of creating these new subparts is to have a common location for all of these requirements, both existing and proposed. The purpose of § 121.1101(a) (and its counterparts, §§ 91.1501(a), 125.501(a), and 129.101(a)), is to identify the type and scope of requirements that may be included within this subpart. It is purposely broad to encompass possible future rulemaking but does not itself impose requirements. Any future requirements will be proposed through the normal rulemaking process and all interested parties will be afforded the opportunity to comment on them.

As under current requirements for ICA, a TC holder is required to update ICA to address any new design change for which they get approval. An operator altering an airplane to incorporate the new design change would have to update its maintenance program ''based on'' the approved ICA. TC holders may also update their ICA in the absence of design changes, but, as under existing regulations, these updates would not be mandatory unless we issue an AD mandating them, which we would do only if necessary to address an unsafe condition. Operators may also independently revise their EWIS and fuel tank ICA. Under today's final rule, these changes would have to be approved by their Principal Inspector.

F. Operating Requirements for EWIS (Parts 121 and 129)

1. Requirements for Maintenance and Inspection Program Revisions

For those operating under parts 121 and 129, we are establishing, within the new Continued Airworthiness and Safety Improvements subparts, requirements to revise maintenance and inspection programs to include maintenance and inspection tasks for EWIS. The tasks must be based on ICA developed in accordance with Appendix H.

We have extended the compliance dates for §§ 121.1111 and 129.111. They were originally proposed with a compliance date of December 16, 2008. But as a result of comments discussed earlier we have decided to fix the time for compliance as a number of months after the effective date, rather than as a hard date, and to also allow some additional time beyond that which was originally contemplated. The compliance date for these rules is now 39 months after the effective date of the rule. We have also revised these rules to clarify meaning, as discussed below.

2. ICA Developed by Design Approval Holders

Boeing noted that the proposed operational regulations would require that the maintenance program revisions be *based on* ICA developed by the DAH.

Boeing would like clarification of the interpretation of the term ''based on.'' It asked whether certificate holders are expected to adopt, without change, the ICA provided by the DAHs.

As discussed previously, it was not our intent to require operators to use ICA developed by TC holders. While we think it is very likely that operators will use those ICA, we intend that they be able either to develop their own or to contract with third parties for ICA, as long as they meet the applicable requirements. We have revised the operational rules to clarify this flexibility. Deviations from the EWIS or fuel tank system maintenance programs that have been developed in accordance with the requirements of SFAR 88 or Appendix H must be approved by the operator's Principal Inspector, who will coordinate the changes with the FAA Oversight Office as appropriate. Similarly, later changes to either the EWIS maintenance program or the fuel tank system maintenance program must be approved by the operator's Principal Inspector, who will coordinate the changes with the FAA Oversight Office, as appropriate. In some cases, coordination with the Oversight Office will be necessary to ensure that the program's original objectives are still met. Details of these coordination procedures are defined in an FAA order and described in an advisory circular.

3. Different Requirements for Existing and Future Designs

RAA requested that proposed § 121.911 (now § 121.1111) be revised so the performance objective of the ''retrofit'' requirements may be distinguished from the design changes that may be considered for newly manufactured fleet types. The commenter assumed that each OEM will be required to re-certify to the new standards provided in the part 25 proposal, and that carriers would be subjected to a massive retrofit program. NACA requested that we clarify requirements by being more specific about differences between new production aircraft and retrofitting aircraft. They ask if all the part 25 enhancements will become ICA and fall under these requirements.

At the outset, § 121.1111 requires neither ''retrofit'' nor ''design changes.'' It simply imposes requirements for operators' maintenance programs. We agree that some clarification is appropriate. As explained in the NPRM, the purpose of § 26.11 is to require type certificate holders to develop ICA for existing airplanes that would enable operators to comply with this section. For those airplanes, only certain provisions of new paragraph H25.5 (H25.5(a)(1) and (b)) are required. But for all future airplane designs subject to new § 25.1729, type certificate applicants must show compliance with all provisions of paragraphs H25.4(a)(3) and H25.5. Our intent in the operational rules is to require operators to incorporate into their maintenance programs all of the EWIS ICA developed for each of their airplanes. For existing airplanes, this would be limited to ICA meeting paragraphs H25.5(a)(1) and (b). For future airplanes, this would also include ICA meeting the remaining requirements of paragraphs H25.4(a)(3) and H25.5. We have revised § 121.1111 (and § 129.111) to clarify these differences.

KLM disagreed with the requirement for operators of all airplanes, regardless of the airplane's age, to implement maintenance program inspections and procedures for EWIS. The commenter contended that the amount of exposure to deteriorating factors on new aircraft is limited, so there is negligible benefit to performing additional maintenance tasks on wiring. The commenter also pointed out that checking wiring on a new aircraft may even cause more wiring failures due to maintenance near the wiring. KLM suggested we consider a threshold for starting the first inspections.

Although older airplanes have been exposed to more stressors that can accelerate the degradation of wire and other EWIS components, age is not the sole factor in degradation. We do not want to specify a threshold for starting the first EWIS inspections. The intervals for performing the inspections, including the first ones, are determined by performing the EZAP analysis. Factors to be considered in establishing intervals are the hostility of the environment in which the EWIS is located and the likelihood of accidental damage. Neither of these factors is necessarily dependent on age, and EWIS failures can occur on newer airplanes. So the ''threshold'' for the first EWIS inspection would normally be the same as the interval, measured from the issuance of the first certificate of airworthiness. The results of the analysis are reviewed by industry working groups (as part of the MSG–3 process) and approved by the FAA Oversight Office. It is during the industry working group review that the final inspection intervals are set and subsequently approved by the FAA. We made no changes due to this comment.

4. ICA for Alterations

British Airways requested that proposed § 121.911 (now § 121.1111) be revised to state that if changes to the ICA are required after alterations, incorporation of these changes into the maintenance program may be delayed until after the airplane has resumed service, but before it reaches the ''relevant age or flight hours.'' The commenter expressed concern that the current wording would result in extended operational delays and grounded aircraft after minor alterations or repairs. British Airways also expressed concerns about SFAR 88-related alterations/component changes conducted while the airplane is in a normal operating environment (e.g., at the ramp). It asked whether inspections or incorporation of ICA changes to the maintenance program must be completed before resuming operations and, if so, requests a rule change allowing ICA incorporation into maintenance programs after the airplane returns to service but before it reaches the ''relevant age or flight hours.''

The only alterations for which EWIS ICA will be developed are those for which compliance with either §§ 26.11 or 25.1729 must be shown—in other words, major alterations approved under STCs or amended TCs. The only alterations for which fuel tank system ICA will be developed are those for which compliance with either SFAR 88 or § 25.1529 must be shown—again, major alterations approved under STCs or amended TCs. We believe that any of these alterations would be scheduled to occur during a period of allocated downtime such as a scheduled maintenance ''C Check.'' The maintenance planning for such modifications should include the actions necessary to incorporate additional EWIS or fuel tank ICA into the approved maintenance or inspection program. No additional time would be needed for these actions. Accordingly, no changes were made due to these comments.

5. Alaska Operations

Senator Stevens of Alaska stated that this rule will have severe consequences to residents and cargo carriers operating in his state. Referencing Section 1205 of the Federal Aviation Reauthorization Act of 1996 (49 U.S.C. 40113(f)), and the uniqueness of aviation in Alaska, Senator Stevens, Everts Air Cargo, and Alaska Senator Murkowski requested that ''intrastate'' operations in Alaska be exempted from this rule.

Consistent with 49 U.S.C. 40113(f), the FAA has carefully considered the potential impact of this rulemaking on Alaska intrastate operators to determine whether intrastate service in Alaska would be adversely affected. We have

determined that there would not be an adverse effect and that regulatory distinctions are inappropriate.

Under both EAPAS and the Fuel Tank Safety Rule, manufacturers are required to develop maintenance program revisions and make them available to operators to support their compliance with the operational rules. We have concluded that in the case of both the EAPAS and FTS operations rules, any burden on affected operators in implementing these changes would not have a significant impact. Under EAPAS, the changes would be integrated into existing inspections that are currently performed during heavy maintenance checks. The fuel tank tasks, which would be aligned with the EAPAS inspections, would also be performed during these checks. Because these additional inspections would be only a small additional piece of a much more extensive maintenance visit, we concluded that they would have no adverse effect on intrastate service in Alaska.

Lynden Air Cargo requested that the L–382G aircraft be excluded from requirements of proposed §§ 121.911 and 121.913 (now §§ 121.1111 and 121.1113). Senator Stevens asked that Lynden Air Cargo's six L–382G airplanes in interstate operation be exempted. Lynden Air Cargo said that it does not carry passengers and operates a small fleet largely outside the U.S. It stated that it is in the public interest to maintain its unique capabilities in Alaska where it supports remote communities and projects with no roads or waterways, as well as regularly supporting the U.S. military during critical campaigns and the ongoing war on terrorism. Lynden Air Cargo also asked to be excluded from § 121.909 (now § 121.1109).

We do not believe it is appropriate to exclude the L–382G from requirements of §§ 121.1111 and 121.1113 for those airplanes in interstate operation. The safety rationale for these rules applies equally to that airplane. Lynden Air Cargo may apply for an exemption to these rules in accordance with 14 CFR part 11. However, under § 11.81, Lynden Air Cargo must provide information stating why granting such an exemption would be in the public interest and why it would not adversely affect safety, or how it would provide a level of safety equivalent to the final rule. Also, we are not granting Lynden Air Cargo's request for an exclusion from § 121.1109. That requirement, which is not a new rule but simply a renumbering of the requirement formerly designated as § 121.370a, has been in effect since November 1, 2002 (reference 67 FR 72761, December 6, 2002), and we did not make any changes to that rule other than changing its section number.

6. EWIS Inspections

Lynden Air Cargo stated that it does not have the engineering staff to effectively analyze and comment on the myriad complexities associated with the proposed certification rule changes. However, it said that with an aircraft type certificated under CAR 4b (Lockheed L–382G Hercules), the cost to ''retroactively'' apply these new certification rules would require extraordinary expenditures. Lynden had the following concerns about the practical application and implementation of specific inspection criteria for EWIS under EZAP-developed methods:

- How does an inspector accomplishing a general visual inspection (GVI) or a detailed inspection (DET) of EWIS make a specific determination of airworthiness? The FAA has failed to state an objective criteria in its proposed rule (i.e., what will be the accept/reject criteria?).
- If there are no actual circuit defects, what corrective action will be required? An immediate action? Or can it be scheduled and effectively planned for a future inspection action?
- Disturbing wire bundles for inspections can induce more problems than are corrected.

The proposed operating rules do not require ''retroactive'' application of design requirements. They do require that operators include EWIS maintenance tasks in their maintenance programs. Any post-inspection actions are based on results of the GVI or DET. If inspections determine that EWIS components need cleaning or repairing, procedures for accomplishing these tasks are contained in the airplane manufacturer's standard wiring practices manual or equivalent procedures developed by the operator. If inspection shows that no circuit defects exist (to use the words of the commenter) then no corrective action would be required. We agree that moving, or disturbing, wire bundles does have the potential to cause damage if not done with care. Precautions for preventing such damage should be part of the operator's overall EWIS maintenance program.

7. Non-U.S. Registered Airplanes

Boeing requested that the FAA clarify whether the proposed part 129 rule would affect foreign operators operating non-U.S. registered airplanes into the United States. They noted that part 129 usually applies to these operations and it seems unusual that they have been omitted in the proposed rule.

Under International Civil Aviation Organization (ICAO) Annex [7] 8, the state of registry of an airplane is the state responsible for its airworthiness. For this reason, the airworthiness regulations of part 129, including those contained in new subpart B, apply only to U.S.-registered airplanes.

8. Taking Airplanes Out of Service

US Airways requested clarification of § 91.911 to stipulate that aircraft need not be taken out of service specifically to accomplish the revised inspections.

We believe that U.S. Airways meant to ask for clarification of § 121.911 (now § 121.1111) instead of § 91.911, which is not contained in the proposal. Operators will have considerable flexibility in determining when inspections will be performed. For example, in the appendix of the DAH EZAP AC, which describes an acceptable procedure for establishing EWIS inspection intervals, even inspections of EWIS located in the most severe environment with the highest risk of accidental damage may be performed at intervals ranging from an ''A'' check to a ''1-C'' check, which are normally scheduled maintenance intervals. Although we cannot guarantee that an airplane will not have to be taken out of service specifically to accomplish the new EWIS maintenance program requirements, we believe these tasks can be scheduled to be performed during other scheduled maintenance times. Section 121.1111 does not require tasks to be accomplished at any particular intervals. It only requires that the maintenance program for a particular airplane include inspections and procedures for EWIS.

9. Training

The NTSB referred to its recommendation A–00–108 of Sept. 19, 2000, in which it asked the FAA to address the need for improved training of maintenance personnel to ensure adequate recognition and repair of potentially unsafe wiring conditions. The NTSB commented that, since non-EWIS maintenance actions often compromise EWIS safety, training of all maintenance personnel on EWIS maintenance and inspection is critical. The board would like us to amend the NPRM to specifically state that all maintenance personnel must receive EWIS training.

[7] ICAO's 98 articles, created and accepted at its Chicago Convention, established the privileges and obligations of member states. Standards and recommended practices of ICAO are designated as ''Annexes'' to the Convention.

We agree with the NTSB on the importance of training personnel not directly involved with EWIS maintenance and inspection. But the cost of training all groups identified by ATSRAC as people working directly with, indirectly with, or in the vicinity of, EWIS was not commensurate with the benefits. While not required as a result of this final rule, AC 120–94 provides a sample curriculum for a more comprehensive training program. We strongly encourage organizations to voluntarily offer this training.

10. Reporting Requirements

The NTSB commented that in its recommendation A–00–108 it asked the FAA to address improved reporting of potentially unsafe electrical wiring conditions. It noted that the NPRM holds manufacturers and operators responsible for proper maintenance and inspection of EWIS. The board contends there can be no quantitative measurement of how well the maintenance and inspection system is performing without an effective mechanism to collect basic data, examine the findings, and provide reporting about performance.

The NTSB noted that, even though it has supported the FAA's previous NPRMs to revise and improve the service difficulty reporting (SDR) system, the FAA has withdrawn both. It noted that restricted access to existing data and inability to effectively search available data inhibits research into recurring or potential problems that may exist across operators, and such research is important in the prevention of accidents. The board strongly encouraged the FAA to amend the NPRM to address this issue and revise the SDR system, regardless of any potential industry opposition.

We have developed an Enhanced Airworthiness Datamart (EADM), covering the years 1995 to the present, which provides analysts with a more detailed view of SDRs. We have deployed the EADM on the Aviation Safety Information Analysis and Sharing (ASIAS) system secured portal. It integrates those reports with information on aircraft age, hours, and cycles from the Airclaims database. The resulting data set allows the user to identify trends in service difficulties as a fleet of aircraft ages.

Also, with the 1995 creation of the Air Transport Association (ATA) code 97 for electrical wiring, precise reporting of electrical problems is possible. In 1995 the FAA updated its Joint Aircraft Systems/Component Codes (JASC) to include electrical wiring. We added ATA code 97 to each airplane system category for the wiring within those systems. Because of these new analysis tools, we made no changes due to this comment. While the value of the contents of service difficulty reporting systems is contingent upon the accuracy of reporting by the operators, the data is publicly available and useful in analysis (*http://av-info.faa.gov/isdr/SDRQueryControl.ASP?vB=IE&cD=32*).

G. Operating Requirements for Fuel Tank Systems (Parts 91, 121, 125, and 129)

1. Requirements for Maintenance and Inspection Program Revisions

This rule includes provisions for operators to revise their maintenance programs by adding maintenance tasks for fuel tanks. These maintenance tasks must be based on ICA that have been developed in accordance with SFAR 88 or § 25.1529 and Appendix H and approved by the FAA Oversight Office. Parts 91, 121, 125, and 129 each contain these requirements in the new subparts for Continued Airworthiness and Safety Improvements. These fuel tank requirements are not new requirements. Rather, they clarify requirements of previously existing rules.

When this rule was proposed in October 2005, our intent was to set the same operator compliance date for the fuel tank and EWIS maintenance program revisions. This would have allowed both sets of tasks to be added at the same time and required that the maintenance program be revised only once. As discussed earlier, the rulemaking process took longer than expected. At this time, we do not want to delay inclusion of the fuel tank tasks into maintenance. Thus, while the compliance date for the EWIS maintenance revision requirements of §§ 121.1111 and 129.111 has been changed, the compliance date for this fuel tank maintenance revision requirement remains December 16, 2008, the date that was originally proposed. We have, however, changed the date by which the certificate holder must submit maintenance instructions for auxiliary fuel tanks to the FAA Oversight Office. That date is now June 16, 2008. The list of airplanes excluded from the requirements of these rules has also been changed. The requirement in § 26.11 that the EWIS ICA prepared by the DAH must be compared with fuel tank ICA to ensure compatibility and minimize redundancy remains unchanged.

2. Airplanes Excluded From Fuel Tank System Operating Requirements

We have revised the list of airplanes excluded from the operating requirements for fuel tank systems. For these rules, which affect airplanes operating under parts 91, 121, 125, and 129, the list of excluded airplanes includes those models of airplanes that are neither U.S.-registered nor operated under these parts. Because of this, the type certificate holders have not complied with SFAR 88 and, in several cases, the type certificates have been surrendered. Subjecting these models to the operational requirements for fuel tank safety would, therefore, have no effect.

Additionally, since the Vickers Viscount airplane was originally type certificated before January 1, 1958, this airplane is not subject to the EAPAS or Fuel Tank Safety rules because of the general exclusion of airplanes type certificated before that date. This airplane model has been removed from the exclusion list originally proposed. Similarly, the Convair and DC–3 models that have been modified to incorporate turbine-powered engines are also covered by this general exclusion. The Lockheed L–300 has been added to the exclusion list. That exception was granted because there is only one qualified aircraft, which was modified, used, and later retired by NASA in 1995. It would not be cost effective to bring it into 121 operations.

The proposal excluded the Lockheed L–188, the Mitsubishi YS–11, and the BAC 1–11. There are still more than 20 airplanes of each model listed on the U.S. registry. For these models, the FAA has granted partial exemptions to the respective DAHs for SFAR 88 requirements. In each case, these exemptions, while relieving design approval holders of some requirements, also have required them to develop service information to be provided to affected operators and have explicitly declined to exempt the operators from these operational rules. Therefore, we have reconsidered the proposed exclusion of these models and concluded that they should not be excluded.

The following airplane models are excluded from the Fuel Tank Safety Operational Rules:

(1) Bombardier CL–44
(2) Concorde
(3) deHavilland D.H. 106 Comet 4C
(4) VFW-Vereinigte Flugtechnische Werk VFW–614
(5) Illyushin Aviation IL 96T
(6) Bristol Aircraft Britannia 305
(7) Handley Page Herald Type 300

(8) Avions Marcel Dassault—Breguet Aviation Mercure 100C
(9) Airbus Caravelle
(10) Lockheed L–300

3. Change in Operator Compliance Date for Auxiliary Fuel Tank ICA

As stated in the NPRM preamble, the current FTS requirements mandate that ICA must be developed for the ''actual configuration of the fuel tank systems of each affected airplane.'' The fuel tank ICA must address the fuel tank system as defined by the airplane's type certificate (TC), any supplemental TCs, and any field-approved incorporated auxiliary fuel tank systems.

In the NPRM preamble, we acknowledged that the original wording of the Fuel Tank Safety Rule proved to be unclear to many in the industry. We proposed revised regulatory language in the NPRM to clarify the original intent. The revision clarifies that holders of STCs, as well as TC holders for the affected airplane models, must develop ICA as required by SFAR 88, and that the operator is required to develop maintenance instructions for field-approved auxiliary fuel tanks. The clarified language regarding field-approved auxiliary fuel tanks was included in paragraphs 91.1507(b), 121.913(b) (the number of proposed § 121.913 has been changed in this final rule to § 121.1113), 125.507(b), and 129.113(b) of the NPRM. Those paragraphs require operators to develop and submit to the FAA Oversight Office proposed ICA by December 16, 2007 to address their field-approved auxiliary fuel tanks.

While the referenced paragraphs were clarifications and not newly proposed requirements, industry has expressed uncertainty regarding the scope of effort required by operators. As that uncertainty will not be completely addressed until issuance of this rule, which will provide the necessary clarification, we think it is appropriate to provide additional time for operators to develop and submit auxiliary fuel tank ICA proposals to the FAA Oversight Office. We have decided to extend the compliance date for these operator submittals to June 16, 2008. This will allow additional time for operators to conduct the necessary analyses and develop appropriate ICA, or contract with other experts to perform this work if needed. The June 16, 2008 date will also allow adequate time for the FAA's Oversight Office to review and approve the operator-developed ICA and for the operators to revise their maintenance programs accordingly by December 16, 2008.

4. Original Configuration and Auxiliary Fuel Tanks

United Airlines referred to the statement in the NPRM that new maintenance programs must be developed based on the actual configuration of the aircraft. It asked if this is intended to include only major alterations (STCs), or minor alterations affecting wiring systems as well.

The commenter refers to a portion of the NPRM discussing operational requirements of the Fuel Tank Safety Rule. As explained in the NPRM, we are revising these requirements to eliminate reference to the ''actual configuration'' of the fuel tank system. Instead, these requirements clarify that operators' maintenance programs must address the fuel tank system of the airplane as originally configured and auxiliary fuel tanks later installed. All auxiliary fuel tank installations are considered major alterations.

On a related issue, under the operational rules adopted as part of the Fuel Tank Safety Rule (§ 121.370(b)), operators were required to revise their maintenance programs to include fuel tank safety instructions, regardless of whether TC and STC holders provided such revisions, as required by SFAR 88. In this final rule, we revise these operational requirements to require that operators revise their maintenance programs to incorporate fuel tank ICA developed by TC holders, ICA developed by the operator for field-approved auxiliary fuel tanks, and ICA developed by STC holders, if any. The effect of this change is that, except for auxiliary fuel tanks installed under field approvals, operators are not required to develop ICA to comply with this rule; they are only required to revise their programs to incorporate ICA developed by others. Therefore if an STC holder does not develop ICA, then the operator has no further action to comply with the operational rule for that STC design configuration. However, if it appears STC holders will not provide timely support for the operators, we will consider enforcement action.

5. Inspection and Maintenance Program Terminology

Boeing commented that § 125.507 refers to a fuel tank system *inspection* program; whereas the companion sections in parts 91, 121, and 129 refer to a fuel tank system *maintenance* program. It asked whether this difference was intentional, and, if so, what is the purpose of the difference.

Boeing identifies a longstanding difference in terminology between the regulations applicable to air carrier operations (parts 121 and 129) and other operations (parts 91 and 125). For air carriers, we commonly use the term ''maintenance program'' to refer to the required program for inspection and maintenance of aircraft (see §§ 121.367 and 129.14). For other operations, we use the term ''inspection program,'' which is typically narrower in scope than the programs required of air carriers (see §§ 91.409 and 125.247). For purposes of this rulemaking, the requirements for the two types of programs are the same. As Boeing notes, we have not always been consistent in our use of this terminology.

H. Regulatory Evaluation

The final regulatory evaluation that accompanies this final rule can be found in the docket. In response to comments, we have revised our cost and benefit estimates in several instances from those included in the initial regulatory evaluation.

1. Engine Costs

GE commented that new rules invariably involve additional engineering work on the first certification program to comply. There is often redesign required partway through the program, especially when airplane rules are being applied to engine components, which are designed in advance of the airplane. GE estimated additional costs of understanding proposed subpart H and redesigning engine wiring accordingly at $3,000,000 to $7,000,000 for the first certification program only, and this figure doesn't include additional costs identified by regulation.

We accept this estimate and incorporate this general engineering cost into the costs estimated in our final regulatory evaluation. To estimate total general engine design costs to the industry, we use a median of $5 million and multiply it by the number of engine manufacturers (5) to arrive at total costs of $25 million ($23.4 million present value using a discount rate of 7%).

2. Wiring System Safety Analysis for Engines

GE commented that the proposed § 25.1705 (now § 25.1709) requirement for an independent safety analysis of wiring systems would add to the certification cost of each new program. The incremental cost would be similar to the existing cost of a safety analysis.

Since the original comment, the engine manufacturer has provided additional supporting data. The FAA agrees and incorporates this data into this regulatory evaluation. The total estimated cost to this engine

manufacturer as a result of this requirement is $6.6 million ($3.2 million present value).

We have revised our cost evaluation based upon this estimate. Using this annual estimate for one manufacturer, we have developed an industry estimate. The corresponding total cost for five engine manufacturers is $31.5 million ($14.7 million present value) and is contained in the final regulatory evaluation.

3. Labor Rates

GE commented that the estimated fully burdened hourly labor cost of $55.18 for engineers is too low because it doesn't include employee benefits. GE contended that including benefits would bring labor costs to $73 per hour. Boeing commented that in this proposal and the proposed rule on ''Reduction of Fuel Tank Flammability in Transport Category Airplanes'' there were differences in the fully burdened rates used for aviation engineers and mechanics. Boeing requested that costs associated with this proposal be reevaluated using the more realistic rates contained in Docket No. FAA–2005–22997.

We have updated the wage rates in our final regulatory analysis. In the final regulatory evaluation we use $75 as the burdened hourly cost for an engineer and $50 as the burdened hourly cost for a mechanic. A detailed discussion can be found in the ''key assumptions & labor rates'' section of the final regulatory evaluation.

4. The Regional Airplane Fleet

The Regional Airline Association (RAA) requested we revise the cost-benefit analysis because it cites no regional transport category airplane accidents or incidents to indicate that concern over wiring systems is comparable for all airplanes affected by the proposed rule. The commenter said that wiring system malfunctions are generally unique to a specific fleet type, and the review of the NTSB database, most of the EAPAS NPRM Supplemental Material, and ATSRAC's review were limited to wiring discrepancies in airplanes with passenger seating of 100 persons or more. The RAA stated that differences in the regional airline fleet would justify a less stringent design review. For example, no airplanes with 50 seats or less have in-flight entertainment systems. Regional airplane galleys generally have no more than a single coffee maker, and almost none have ovens, so the electrical loads and wiring required to support this type of service is minimal. Regional operators are less likely to revise seating or make other modifications to the cabin from their original configuration. The commenter said that inspection of regional airplanes affords fewer opportunities to disturb existing wiring, since accessibility into locations where wire bundles may be inadvertently damaged is limited. It noted that the turboprop fleet, in particular, operates at altitudes and locations where emergency landings can be readily accomplished.

The RAA said its members will incur greater costs than the larger fleet because regional operators must amortize compliance costs over a significantly smaller seat revenue base.

Smaller transport airplanes do, and will continue to, exhibit the same EWIS degradation issues found in larger transports in absence of this final rule. Since the NPRM, the NTSB has issued Safety Recommendations A–06–29 through –35 pertaining to fires on one particular model of regional jet. In the six months between October 2005 and March 2006, there were a total of six fires on regional jets. A seventh fire occurred prior to that six month period. In addition to the danger posed by the resulting fires, the NTSB stated that two of the incident airplanes temporarily lost all flight displays. The investigation by the NTSB revealed that all of the fires originated from the same electrical component [8] and that the fires were caused by moisture-induced short circuits between the electrical terminals of the contactors. If the requirements contained in this final rule had been in effect, the type of failure that was the cause of these seven fires would not have occurred. This is because several of the new requirements directly address the design issues that lead to the fires. The following bullets address the specific requirements and the reason the failures would have been prevented.

- § 25.1701 provides a regulatory definition of an EWIS. The portion of the electrical contactor that was the cause of the failure would have been considered an EWIS component.
- § 25.1703 requires the proper selection of EWIS components. Although the electrical contactor was qualified to perform its intended function by the current § 25.1301, the new requirements of § 25.1703 would have gone further by requiring a specific assessment of the component to ensure that it is installed correctly and operated within its limitations (§ 25.1703(a)(2)) and that if located in a known area of moisture accumulation (which it is) that it be protected to minimize any hazardous effects due to moisture (§ 25.1703(d)).
- §§ 25.1707 and 25.1709 would have prevented redundant power sources for essential airplane systems from receiving power from the same electrical contactor, as was the case with this aircraft design. Section 25.1707 requires that adequate separation between power sources be provided and that they not interfere with each other. Section 25.1709 requires an EWIS safety assessment to demonstrate that failures cannot occur unless they can be shown to be either extremely remote or extremely improbable, depending on the severity of the failure.

The regional jet (RJ) fleet uses the same EWIS components, design and installation methods, and maintenance techniques as the larger transports. Although RJs typically do not have in-flight entertainment systems and the same type of galleys as the larger transports, they share many systems that have historically exhibited EWIS-related problems. Examples are the power distribution systems, cargo areas, hydraulic systems, wheel wells, and high density areas such as the cockpit and avionics racks. On average, RJs fly more cycles per day than larger transports. So while their life cycle might be shorter in years than the larger transports, because their systems are cycled on a more frequent basis, their EWIS are subjected to more exacerbating factors causing degradation in a shorter period of time. We have reviewed SDR data spanning a five year period to specifically identify EWIS failures on RJs. Although the NTSB findings alone might demonstrate the underlying necessity of this final rule, in response to comment, the FAA has evaluated the annual number of wiring SDRs specifically by aircraft category. The final regulatory evaluation demonstrates that the number of EWIS failures for regional jets and large transports should not be examined separately.

5. Measure of Effectiveness

The RAA requested that we validate use of a 68% effectiveness measure in the cost-benefit analysis. It noted that the benefit analysis suggests that by adopting the proposed regulations, ''industry will be able to detect 68 percent of EWIS problems before a failure occurs.'' This was based on an FAA review of service difficulty reports (SDR) for EWIS failures for the period 1995–2002 and expert judgment. The commenter said that it could not determine the validity of the SDR analysis, but that NTSB data over the last 10 years does not show the wiring

[8] An electrical contactor located in the avionics compartment beneath the floor and slightly aft of the captain's seat.

malfunctions projected by this benefit analysis. The RAA contended that the SDR review and expert judgment of SDR data does not reflect the types of malfunctions that would cause unscheduled landings or non-fatal and fatal events, and that the effectiveness measure for this proposal is no better than 23%.

Our evaluation was based on a review of thousands of SDR entries and on the ATSRAC-produced Intrusive Inspection Report. In the NPRM, we did not assume that the rule would be 100 percent effective. Instead we measured expected effectiveness at 68%. The judgment used to evaluate EWIS failures in the regulatory evaluation refers to conclusions reached by experienced FAA and industry engineering and operational personnel reviewing operator-reported data and applying their considerable expertise to determine operational impacts of the EWIS conditions identified. In response to comment, we have re-evaluated the expected effectiveness and lowered it to 60%. Total potential benefits are multiplied by the 60% effectiveness measure to arrive at the expected total benefits. The initial and final regulatory evaluations provide a detailed description of how we arrived at 68% and 60% effectiveness rates. Despite the effectiveness measure decreasing from 68% (in the NPRM) to 60% (in the final rule), the total benefits increase. This is because the wiring problems were much greater than we originally estimated. Because of our comprehensive examination since the NPRM, we learned that there are more unscheduled landings and operational problems occurring from electrical wiring failures than originally included in our calculations. Since the NPRM we have analyzed all of the most recent data available.

Existing rules require operators to submit reports notifying the FAA of the occurrence or detection of failures, malfunctions, or defects in systems and components of aircraft. These service difficulty reports (SDR) are filed when a system, component, or part of an aircraft, power plant, propeller, or appliance fails to operate in the normal or usual manner.

The FAA reviewed all of the most recent reports from operators. The most recent reports from operators demonstrate that failures of the electrical wiring interconnection systems (EWIS) are much greater than previously anticipated and estimated in the NPRM.

In our analysis, we quantify and estimate the economic impact that will occur when these electrical failures and malfunctions are averted. Although we categorize and quantify averting such failures as ''operational benefits,'' the occurrence of these failures has a direct effect on passenger safety and such failures are often precursors to more serious events.

In the NPRM we forecasted 1,118 unscheduled landings caused by wiring problems; of which 760 (68%) would be averted. In addition to the averted unscheduled landings, we estimated 968 events would cause delays; of which 658 (68%) would be averted.

Based on the most recent data and our comprehensive review, in the final rule, we estimate roughly 2,202 unscheduled landings; of which 1,321 (60%) will be averted. In addition, there will be 13,649 electrical wiring failures that will have an operational impact; of which 8,189 (60%) will be averted.

Accordingly, operational benefits increased in the final rule from $192 million (NPRM estimate) to $506 million.

The revised safety benefits as reflected in the final rule are based on a revised effectiveness estimate of 60% and an updated forecast showing the trend of operators to use smaller aircraft with higher load factors. This caused an overall decrease in the estimated safety benefits as reflected in the final rule. A detailed discussion of the effectiveness determination can be found in the regulatory evaluation.

6. Operational Impacts

UPS requested that we remove the operational improvements portion of the benefits calculation and restrict cost calculations to tangible safety benefits versus direct compliance costs. The commenter stated that this change would reduce the overall benefit calculation by $192.3 million.

The commenter contrasted the following to justify this request:

- The proposal calculates that averting a 3.5 hour delay will save airlines $35,739.
- The calculation in the proposed rule for Fuel Tank Flammability Reduction (FTFR), dated November 2005, uses a delay cost of $24.43 per minute, so a delay of 3.5 hours yields an estimated cost of $5,130 per event.

UPS stated it is notable that the FAA cites the benefit of an averted delay in one proposed rule, and the cost of a similar delay in another. Both were open for comment at the same time. The commenter contended that the value of operational improvements is highly subjective, inconsistent, doesn't yield accurate results, and is specific to each operator.

Boeing commented that it is unusual that the FAA has included averted delays, unscheduled landings, and failures of in-flight entertainment systems, which are essentially airline economic concerns, as part of the benefits accruing from the proposed rule. Boeing noted that the FAA included these benefits because, to quote the NPRM, ''delays and unscheduled landings contain safety risks for passengers and crew and increase the likelihood of a more serious event.'' This commenter questioned the relationship between these non-normal but safe events. It disagreed with their inclusion in this analysis as a method of justifying rulemaking. Boeing stated that in past endeavors, the FAA has not permitted Boeing use of these events as benefits.

We have decided to retain the operational impacts estimated in the benefit calculations. As prescribed by the Office of Management and Budget (OMB), the regulatory evaluation should attempt to quantify all potential real incremental benefits to society in monetary terms, and this includes operational improvements that would result from adoption of these requirements. We have clarified our terminology since the NPRM. This final rule evaluates operational impacts.

The operational impacts (''delays'' in the NPRM) that are quantified in the final regulatory evaluation of EAPAS/FTS cannot be compared with delays estimated in the Fuel Tank Flammability Reduction NPRM (FTFR). The estimates contained in FTFR include crew costs, ground handling costs, and fuel costs. The operational impact benefits for EAPAS/FTS evaluate impacts from operator equipment malfunctions and failures in wiring as reported by operators in SDRs.

Operational impacts caused by EWIS failures are more serious and have a higher cost impact than the delays characterized in the FTFR NPRM. Wiring failures have an immediate impact on operations and the model estimates them accordingly. Fuel tank inerting problems, addressed in FTFR, are not necessarily fixed immediately. The operational impact estimated in the regulatory evaluation for this rule uses operator reports of failures, malfunctions, or defects of systems and components of the aircraft. The five years of data and accompanying analysis is included in the final regulatory evaluation and in appendix C. These types of failures are more serious (in terms of cost and time) than the delay of $24.43 per minute as reported by ATA and used in that evaluation. The operational impacts (as

estimated in the final regulatory evaluation) of wiring failures have safety impacts and increase the likelihood of a more serious event.

7. Training Costs

GE commented that training addressed in proposed AC 120–YY is commercially available, at $60 per employee trained, to be repeated biannually. It stated that costs of having employees occupied in training rather than production were not factored into our estimate. GE said the training it investigated involves 17 modules, at an average of 30 minutes each, resulting in 8.5 hours per trained employee, biannually, in addition to the $60 /employee/year. GE said the cost to operators and service shops of providing training is therefore $308/employee/ year. U.S. Airways stated that the average annual cost of $131,108 for developing a training program seems to be significantly below actual costs. United Airlines asked if operators will be expected to follow proposed AC120–YY. It says ''target level one'' training alone takes 40 hours and the three hours quoted in the NPRM seems extremely low.

The FAA agrees that the required training might be available commercially. We base our cost estimates on module C of AC 120–94, which requires less intensive training than the program identified by commenters. The training required by this final rule does not apply to production personnel, but to maintenance and inspection personnel only, as required by § 121.375. Therefore we did not consider the cost of having production personnel in training. We believe that the training covered by Module C is the minimum additional training required to comply with the new EWIS inspection requirements. We estimated the time to conduct this training at 3 hours for target groups 1, 2, 4, and 6, as provided by ATSRAC and stated in the initial regulatory evaluation. Training for the remaining modules and target groups is voluntary and not required for compliance with this final rule. No changes were made as a result of these comments.

RAA stated that using care when working around wiring, being knowledgeable about electrical systems, and teaching technicians that a maintenance/alteration task is not complete until the area is thoroughly cleaned are simply common sense and need not be mandated. The commenter expressed confidence these maintenance practices already exist among its members, and said that specific retrofit requirements can be more efficiently mandated by Airworthiness Directives.

RAA said one member suggested it would enhance its training not on how to develop inspection programs, but as a preventative maintenance aide for technicians. The commenter suggested the FAA (with industry assistance) issue an ''Electrical Systems Installation & Repair Standard Practices Hand Book'' that supplements or replaces the sections in AC 43.13, along with video training modules. RAA suggested that training on concepts like proper routing of wire bundles with sufficient supports that are not so tight as to increase the possibility of chafing within the bundle would be more beneficial than inspecting after the fact. The commenter said that availability of quality training to many technicians will result in a cultural change in the industry that can roll over to other practices.

The final regulatory evaluation clearly shows that the benefits exceed the costs of the proposed EWIS maintenance requirements. As stated in the NPRM preamble discussion, investigations of previous accidents and examinations of other airplanes shows that deteriorated wiring, corrosion, improper wire installation and repairs, and contamination of wire bundles with various contaminants are common conditions in today's transport category fleet. Current maintenance practices do not adequately address wiring components, wiring inspection criteria are too general, and unacceptable conditions, such as improper repairs and installations, are not described in enough detail in maintenance instructions. We commend the RAA member airline for volunteering to enhance its EWIS training program and we encourage other companies to do the same. A complete EWIS training course, developed by ATSRAC, is contained in AC 120–94. Also, we have produced a course on good wiring practices which is available to the public through our Oklahoma City training center.

8. Costs for EZAP Analysis and Inspection of Engines

GE commented that reviewing an engine manual to identify tasks that touch or approach wiring is estimated at 160 hours. Checking a manual for the 41 items listed on pages 10–11 of proposed AC120–XX (this material is now in the DAH EZAP AC), for each of the 14 harnesses per engine, is estimated at 40 hours. It estimated compliance costs to GE at $438,000. GE stated that incorporating all 41 elements on pages 10–11 of proposed AC120–XX into a C-check would increase C-check time by a minimum of 1 day, resulting in 15,000 extra days of maintenance a year for operators, at a cost of $150 million annually.

Our final regulatory evaluation accounts for additional cost estimates in part due to the comments received from the engine manufacturer. Since we are not making any changes to part 33, engine manufacturers will not be required to perform an EZAP. The FAA disagrees with GE's estimate because airplane manufacturers have already completed EZAP analyses on existing airplanes without support from engine manufacturers.

We do not concur with GE's statement that performing an EZAP on engine-mounted EWIS components will result in an additional day being added to the length of a C-check (assuming that the frequency of the maintenance tasks require them to be completed on a C-check cycle). Based on data provided by one airplane manufacturer, we estimate that an additional 1 to 3 inspection tasks per engine will be necessary based on the results of applying EZAP to the engine zone. Since we anticipate that these additional tasks will be incorporated into scheduled maintenance down-times, no additional time for gaining access to the engines will be required. We expect that these additional tasks will be performed during scheduled maintenance visits and the corresponding costs are contained in the cleaning, inspection, and downtime sections of the regulatory evaluation.

GE contended that supporting manufacturer compliance with proposed subpart I (now part 26) will involve an estimated 240 work days, or $140,000, plus travel expenses of $100,000, per program. Even with cost savings for technically similar engines, GE said its costs for the DAH requirements would be $3,600,000.

Airplane manufacturers have already completed EZAP analyses on several different models of aircraft, and engine manufacturers have not provided support for these activities. We are not making any changes to part 33. Engine manufacturers are not required to support airframe manufacturers in complying with this final rule for either existing or future certification programs.

9. Engine Costs for § 25.1362

GE commented that costs of § 25.1362 were not addressed. As discussed previously, this rule requires that a suitable electrical supply be provided to those services required for emergency procedures after an emergency landing or ditching. GE stated that because very low levels of electrical energy can ignite

fuel under laboratory conditions, it is not clear that any electrical supply to the fuel shut-off valve could be predicted to meet this rule. GE suggested that one way to comply would be by substituting a mechanical cable for the electrical signal to the engine fuel shut-off valve. It stated that such a cable, extending from the engine to the wing/body join, would increase costs by approximately $20,000 per engine installation. It would also be less reliable, leading to an incremental unreliability of 0.4 cable seizures per million attempted engine shutdowns, and incremental maintenance costs. GE estimated an average annual cost to operators of $1,000,000.

We do not concur with GE's cost estimate for § 25.1362 compliance. GE interpreted the requirement to mean that electrical faults must be minimized to prevent them from causing a fire. The FAA's intent here is to ensure that there is necessary electrical power available to allow the emergency service equipment, such as a fuel shut-off valve, to operate after an emergency landing or ditching. Also as discussed previously, we have revised final § 25.1362 to clarify this point. We made no changes due to this comment.

10. Wire Labeling Costs

GE commented that the cost estimate for the labeling requirements of § 25.1711 appears based on mechanics adding labels during final assembly. GE stated that identifying wires at 15-inch intervals requires many more than the estimated 3,500 labels per airplane. Since fly-by-wire aircraft typically contain 100 miles of wiring, a label at 15-inch intervals equals over 422,000 labels per aircraft. GE stated that manufacturing wire with labels is more practical but would require that manufacturers invest in more tooling, plus drawing changes to harnesses and cables. GE estimated its cost at $9,300,000 over 25 years or $370,000 per year. Spectrum Technologies contended that the burden for wire identification labeling was significantly underestimated, particularly in relation to heat shrink labels and probably other types. The NPRM estimates a wire identification time of 30 seconds per label. Spectrum said that, based on industry practice, the time for heat shrink labeling is more like 240 seconds per sleeve.

In response to the estimated cost of $0.05 per label, Spectrum contended that the typical figure for industry brand name heat shrink labels is more like $1.50, depending on size. It said that the total cost of adding just one heat shrink sleeve can be calculated as $2.88.

The new rule does not require that additional labels be manually added to wiring. It only requires additional information to be included in the wire labeling that already exists. It appears that the commenter assumes that there are no labeling requirements in effect today. Section 25.1301 already requires that components be identified. The requirement contained in this final rule expands on those requirements by imposing additional labeling requirements. Complying with § 25.1711 will be a matter of providing additions to, or changing the type of, information already on the EWIS labels that exist today. Based upon existing practices, our analysis estimates this additional cost.

Spectrum Technologies commented on the technical and economic advantages of a specific prescriptive means of compliance. Based on comments since the NPRM, we have verified our estimates. While we disagree with the specific estimates in the illustrative comment, we believe that manufacturers will demonstrate compliance using the most efficient and cost effective technology available.

11. Additional Certification and Operator Costs

Boeing and AIA/GAMA commented that we failed to account for additional certification costs in complying with the new requirements in subpart H and supporting all subpart H requirements for amendments to existing type certificates. Boeing maintained that the FAA should account for these costs, as well as:

- Additional ''ongoing coordination necessary to ensure ongoing communication and cooperation between the applicants and the FAA'' described in draft Advisory Circular 25–XX.
- Costs borne by DAHs to perform the EZAP process detailed in draft Advisory Circular 120–XX (now in the DAH EZAP AC).
- Most importantly, increased costs associated with enhanced maintenance of wiring on all in-service airplanes.

Boeing asked that we include these costs in the analysis to get a true understanding of the burden associated with the projected benefits of the proposed rule. AIA/GAMA requested we include costs to operators for enhanced EWIS maintenance and updated labor rates for engineers as well as these additional items:

- Additional DAH manufacturing costs for future part 25 TC and STC products that include new subpart H (regardless of seating capacity).
- Training for maintenance personnel. This should include existing airplanes subject to new § 121.911 (now § 121.1111), § 125.507, and § 129.111 EWIS ICA requirements as well as future airplanes that include new subpart H and associated EWIS ICA requirements.
- Additional general aviation operator (part 91/135) costs associated with enhanced maintenance of EWIS on all future airplanes that include new part 25 subpart H and associated EWIS ICA requirements. This should consider additional airplane downtime and necessary training for maintenance personnel.
- Additional repair station costs to update FAA-approved maintenance training manuals and provide training to their maintenance personnel.

In response to these comments, the FAA estimates the costs for ongoing coordination necessary to ensure ongoing communication and cooperation between the applicants and the FAA. Neither the preliminary nor final regulatory evaluation includes cleaning and inspection costs for deliveries of future aircraft operated in parts 91 and 135 because there is no operational requirement to do so. Other than the increased cost of EWIS component identification addressed in the regulatory evaluation, we believe that there will be minimal additional manufacturing costs associated with complying with the new EWIS certification requirements.

As in the preliminary regulatory evaluation, we continue to estimate the following costs:

- Subpart H TC certification costs.
- Subpart H STC certification costs.
- EZAP costs for existing TCs, future TCs, and future STCs.
- SWPM update costs.
- EWIS identification costs for TCs and STCs.
- Training costs for maintenance personnel.
- Planning costs to part 121 operators.
- Cleaning/inspection costs to part 121 operators.
- Downtime costs to part 121 operators.

12. Previous Rulemaking

The RAA requested that the cost-benefit analysis be revised to account for previous rulemaking actions that mitigate likelihood that an accident/incident similar to those that prompted this rulemaking action will occur in the future. The RAA requested that if benefits of a revised cost-benefits analysis are less than the cost of adopting the operating rule, proposed

part 121 & 129 affecting the current fleet be withdrawn.

The commenter considered the benefits analysis a ''double count,'' or a count of the same fatalities as a benefit in future accident avoidance as were counted to justify previous rulemaking. It stated that industry has spent millions of dollars in fleet retrofit and inspection improvements, mostly mandated by rulemaking, and there has been a dramatic decrease in the accident rate despite increased fleet growth. RAA said the estimated 5.3% ratio of accidents to incidents has changed dramatically in the last 10 years, but the benefits analysis does not acknowledge this.

GE stated that the benefit claimed for this rule does not account for previous rules introduced to address the MD11 in-flight fire and accident, specifically the rule on cabin insulation materials. GE said that the effect of that rule was to prevent wire arcing from propagating into a fire within the pressurized fuselage, by removing flammable materials. The commenter argues that since significant measures have already been taken to prevent a recurrence of this kind of accident, the benefit claimed for the EAPAS rule package should be reduced accordingly, but says is not clear whether this has been done.

The cost-benefit analysis evaluates the risk of passenger deaths associated with wiring failures. We analyze the historical number of wire failures and evaluate them in the context of this rulemaking. The accidents and incidents listed in appendix B of the preliminary regulatory evaluation included neither TWA 800 nor Swissair 111, so we have not ''double counted'' benefits as the RAA contends.

Although we have issued various ADs and other rules dealing with flammability of insulation blankets, those rules do not address the issue of wire contamination that can also be a source of fuel for on-board fires. Adoption of EAPAS will help minimize likelihood of an on-board fire due to wire contamination and wire failures.

We continue to observe an overall increase in wire-related failures as demonstrated in EWIS SDRs, accidents, and incidents. Although wire type and insulation materials have evolved over the years, the means to design, install, and maintain EWIS remain much the same. To reduce occurrences of wire-related incidents and accidents, it is necessary to adopt the requirements contained in this final rule.

13. Relevance to the Current Fleet

The RAA requested that we revise the cost-benefit analysis to determine relevance of the ASTRAC analysis to the current fleet. It stated that the analysis and recommendations were largely based on inspections of wiring on decommissioned airplanes that at the time (1998) were older than 20 years (DC–8, DC–9, DC–10, 727, etc.). The RAA estimated that those airplane wiring systems were certified at least 50 years ago, and since then aircraft wiring systems have improved. It further stated that the analysis estimates such airplanes represent less than 1% of the current fleet. The commenter asked how we can imply that ASTRAC's analysis has any relevance to today's fleet.

The RAA also questioned the validity of using a 25-year period for determining benefits. It questioned projecting 25 years into the future to justify benefits for a retrofit rule and stated that all other retrofit rules have projected 10 to 20 years. The RAA called it unrealistic to use an accident/incident review for older aircraft projected to be retired from service before the end of the 25-year amortization period.

We believe that ATSRAC's analysis is relevant to today's fleet. The regulatory evaluation cites ATSRAC's non-intrusive inspection report finding 3,372 total discrepancies during the non-intrusive wiring inspections of 81 airplanes. The ''effectiveness measure'' looks at continuing failures, malfunctions, or defects in the current fleet as reported by operators, and evaluates them with respect to the Intrusive Inspection Report. This final rule will change the certification, design, installation, and maintenance practices for EWIS, which, up to this time, have changed very little since the jet age began. In addition, the physical environments in which wires are installed and the types of hazards they are exposed to are very similar regardless of airplane age. At the same time, airplane designs have become more vulnerable to EWIS safety problems because they are more dependent on electrical systems and less dependent on mechanical systems, as in the case of electronic flight control systems.

We chose the 25-year benefit period because we expect, on average, that a newly manufactured airplane would be in service for that period of time. There will also be airplanes delivered in the next 25 years that are impacted by these requirements. As stated in the preliminary regulatory evaluation the 25-year analysis parallels the expected useful life of an aircraft impacted by this proposal.

14. Accidents Indirectly Initiated by EWIS

The NTSB was concerned that the cost-benefit analysis does not account for indirect EWIS-initiated accident causes, such as those that occurred during the June 6, 1992, accident involving COPA flight 201 that crashed near Tucuti, Panama. For that accident, an instrument's gyroscope wire was believed to have frayed and shorted, leading to erroneous instrument indications and the pilots' loss of control of the airplane. The Board believes that the number of EWIS-related accidents and incidents that can be prevented will exceed that predicted by the FAA.

We acknowledge that functional effects of wiring failures may have contributed to additional incidents and accidents. Although additional benefits could be estimated for indirect causes, we have focused our analysis on direct causes only.

I. Harmonization Changes to Transport Category Certification Rules (Part 25)

1. FAA/JAA (Joint Aviation Authority) Harmonization

At the time the EWIS certification requirements in this final rule were being developed, several existing part 25 certification requirements were also undergoing revision as part of a separate joint harmonization effort with the European JAA.[9] These rules were the result of an effort to develop a common, or ''harmonized'' set of standards between 14 CFR part 25 and JAR–25, which was then the European counterpart to part 25. Because this harmonization effort was essentially complete when drafting of this final rule began, the harmonized rules were used as the baseline for the new EWIS certification rules. The harmonized rules are finalized here. This final rule also further revises several of the harmonized rules to accommodate the new EWIS requirements.

We received no comments about sections 25.899, 25.1309, and 25.1310.

[9] The JAA is the Joint Aviation Authority of Europe and the JAR is its Joint Aviation Requirements, the equivalent of our Federal Aviation Regulations. In the time since these rules were developed, in 2003, the European Aviation Safety Agency (EASA) was formed. EASA is now the principal aviation regulatory agency in Europe, and we intend to continue to work with EASA to ensure that this rule is also harmonized with its Certification Specifications (CS). But since the harmonization efforts involved in developing these rules occurred before EASA was formed, it was the JAA that was involved with them. So while the JAR and CS are essentially equivalent, and in the future we will be focusing on the CS, it is the JAR that will be referred to in the historical background discussions in this final rule.

They are finalized here in the same form in which they were proposed.

2. Circuit Protective Devices (§ 25.1357)

Section 25.1357 specifies standards for use, functional requirements, and installation requirements for electrical circuit protective devices. These standards protect the airplane's wiring from electrical faults or malfunctions. JAR paragraph 25.1357(d) contains a requirement to provide sufficient spare fuses, formerly located in paragraph (f). The reason the JAA moved this text from paragraph (f) to (d) was to make it clear that the spare fuse requirement does not apply to fuses that are inaccessible in flight. We are moving the spare fuse requirement of paragraph (f) to paragraph (d) to harmonize with the JAR requirement. This rule continues to address the underlying safety issue by providing protection for the airplane's electrical system from wiring faults or malfunctions, and by ensuring that there is no confusion about use of spare fuses in flight.

In addition to the harmonization changes we made to § 25.1757, we also added a requirement that airplane systems normally requiring power removal have a power switch to accomplish this, instead of relying on using the circuit breaker.

Continental Airlines asked if the prohibition against circuit breaker use as the primary means of power removal or reset during normal operations applies to existing STC installations or to future amendments to existing STCs.

Section 25.1357(f) will not require an existing installed STC system to be changed. As with any other change to the airworthiness standards of part 25, whether future amendments to those STCs would be required to comply with the requirements of § 25.1357(f) would be determined in accordance with § 21.101.

AIA/GAMA and GE requested that we clarify what is meant in § 25.1357(f) by ''normal operation.'' They asked whether consideration for the need of a switch extends to non-normal or emergency situations.

It is not the intent of the requirement that every electrically powered system in the airplane have a means to remove power other than a circuit breaker. We distinguish between airplane systems normally turned on and off during normal operations, such as passenger convenience systems, and those systems normally powered at all times, such as flight deck multi-function displays or the flight-management computer. But if, for example, the flight-management computer requires power cycling regularly as a part of normal operations, this system would also be required to have a means to do this other than using circuit breakers that are not specifically designed for use as a switch. Non-normal or emergency situations do not need to be considered when determining the need for a switch.

3. Precautions Against Injury (§ 25.1360)

Section 25.1360 is a new rule requiring that the electrical system and equipment be designed to minimize risk of electrical shock and burns to the crew, passengers, and maintenance and servicing personnel during normal operations. This rule adopts the current JAR standard and is in line with current industry practice. It is unchanged from the form in which it was proposed.

AIA/GAMA and GE requested that the term ''maintenance'' in § 25.1360 be limited to line maintenance.

We infer from GE's comment that it wants § 25.1360 amended to revise the phrase ''maintenance personnel'' to read ''line maintenance personnel.'' We are not adopting GE's request. We believe the intent of the requirement is clear because of the phrase ''using normal precautions.'' Maintenance personnel, whether working line or shop maintenance, are trained to use caution when working on, or around, live electrical circuits. Section 25.1360 requires, in part, that the airplane's electrical system be designed so that shock hazards to maintenance personnel are minimized when they are taking normal precautionary measures to avoid shock hazards. We made no changes due to this comment.

4. Electrical Supplies for Emergency Conditions (§ 25.1362)

Section 25.1362 is a new rule that duplicates current JAR standards. It requires that a suitable electrical supply be provided to those services required for emergency procedures after an emergency landing or ditching. The circuits for these services must be designed, protected, and installed so that risk of the services being rendered ineffective under these emergency conditions is minimized. Section 25.1362 has been changed from the form in which it was originally proposed in order to clarify meaning, as discussed below.

Boeing Wichita requested that we clarify what is meant by the words ''protected'' and ''minimized.'' Honeywell and GE asked that the second sentence of the section be deleted. They said there is no clear approach to providing electrical power to the fuel shut-off valve on an engine or APU without potential for it being an ignition source after an emergency landing. They suggested wording could be added to AC 25.1362–1X as follows:

> Use of the normal aircraft supply voltage has been found to acceptably minimize the risk of fire.

We do not agree to delete the second sentence of § 25.1362. The intent of the requirement is to prevent disconnection of the electrical supply to the required services before the emergency procedures are completed. The concern of this rule is not that the circuits are the source of the fire but rather that they be capable of shutting off the services that could contribute to the fire. We concur with Boeing Wichita's request to clarify the intent of the requirements and we have revised the final § 25.1362 to do this. We have also revised the associated advisory circular to clarify appropriate means of compliance.

5. Electrical Appliances, Motors, and Transformers (§ 25.1365)

Section 25.1365 is a new rule within the ''Miscellaneous Equipment'' section of subpart F concerning design and installation of domestic appliances, electrical motors, and transformers. The term ''domestic appliance'' is used to refer to those items placed on the airplane to provide service amenities to passengers. Examples of domestic appliances are cooktops, ovens, microwave ovens, coffee makers, water heaters, refrigerators, and toilet flush systems. Section 25.1365 requires that domestic appliances be designed and installed so that in the event of failures, the requirements of §§ 25.1309 (b), (c), and (d) would be satisfied. It requires that galleys and cooking appliances be such as to minimize risk of overheating or fire and that they be installed to prevent damage or contamination of other equipment from fluids or vapors resulting from spillage during use of the appliances. It also requires that all electric motors and transformers be provided with a thermal protection device unless it can be shown that the circuit protective device required by § 25.1357(a) would be sufficient to show compliance with requirements of § 25.1309(b). We made no changes to this rule.

Honeywell and GE requested that we change the wording of § 25.1365(d) to limit it to motors and transformers for domestic systems.

We have decided against limiting applicability of § 25.1365(d) to domestic appliances. Our intent is that § 25.1365(d) apply to all motors and transformers on the airplane. While the NPRM only discussed domestic appliances, the risk of smoke or fire hazard addressed by this paragraph is

not limited to domestic appliances. The exception to this would be if a circuit protective device is shown to negate the need for the thermal protective device (as allowed by the rule language). We would anticipate that engine- and APU-mounted motors and transformers would fall into this category because adding thermal protection devices in those cases could negatively impact the reliability of those devices. The intended scope of this paragraph is apparent both from the rule language and from the advisory material for that section:

> Section 25.1365(d) is broader in scope [than just domestic appliances] and requires that all electric motors and transformers, including those on domestic appliances, have a thermal protection device * * *.

J. Additional Certification Rule Changes

1. Rules Changed to Accommodate Subpart H

To create the new subpart H as the single place for the majority of wiring certification requirements, some existing requirements applying to wire were moved out of the rules in which they currently exist and placed in the new subpart. The rules of which those EWIS requirements were previously a part or which were the basis of a new EWIS requirement have thus been revised to support the new EWIS subpart. They are:

- § 25.611.
- § 25.855.
- § 25.869.
- § 25.1203.
- § 25.1301.
- § 25.1309.
- § 25.1353.
- § 25.1357.

We did not receive any comments about most of these rule revisions, and they are finalized here in the same form in which they were proposed. Some rules received minor editorial changes that did not change their meaning and do not require discussion here. We did receive comments about § 25.1353 and made revisions to it, as discussed below.

2. Electrical Equipment and Installations (§ 25.1353)

Section 25.1353 requires that electrical equipment and controls must be installed so that operation of any one unit or system of units will not adversely affect the simultaneous operation of any other electrical unit or system essential to safe operation. Any electrical interference likely to be present in the airplane must not result in hazardous effects upon the airplane or its systems. Section 25.1353 is revised to remove references to wiring and cables to accommodate the relocation of wiring requirements to the new subpart H. We've further revised this rule in response to comments and to avoid redundancy.

AIA/GAMA and GE requested that we delete the reference to § 25.1357 from proposed § 25.1353(b). We agree that the proposed § 25.1353(b) references to § 25.1357 and the subpart H requirements are unnecessary. Section 25.1301(b) requires that EWIS meet requirements of subpart H of part 25. So the reference to some of those requirements in proposed § 25.1353(b) is redundant. The reference to § 25.1357 in § 25.1353(b) is not necessary because § 25.1717 requires that electrical wires and cables be designed and installed so they are compatible with the circuit protection devices required by § 25.1357. We've amended the final rule to reflect this.

Boeing Wichita asked, in regard to § 25.1353(a), that we clarify whether ''any electrical interference likely to be present on the airplane'' is limited to items approved for installation, or includes anything likely to be carried onto the airplane, like customer printers and fax machines.

This rule applies to equipment that is installed and certified to part 25. It does not cover interference that may come from items carried on board by people. Operational rules cover such items (i.e., §§ 121.306, 125.204, 135.144).

U.S. Airways asked that we clarify the electrical bonding requirements in § 25.1353. It contended that, by definition, the bonding point is part of the EWIS and as such could be the fault. In that instance it would not provide the required return path.

The intent of the requirement is that electrical return paths be adequately sized and properly installed to handle the highest normal and fault current levels that would be expected to occur. The requirement is not addressing a fault of the bonding path itself.

IV. Regulatory Notices and Analyses

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of the new information collection requirements in this final rule to the Office of Management and Budget for its review. OMB approved the collection of this information and assigned OMB Control Number 2120–0723.

This final rule consists of regulatory changes applying to wiring systems and fuel tank systems in transport category airplanes. Some of those changes will require new information collection. Comments received about these requirements and the FAA's response are discussed earlier in this document, under the Disposition of Comments section. The new information requirements and the persons who would be required to provide that information are described below.

Required Information, Use, and Respondents

(1) Section § 25.1711 requires that electrical wiring interconnection systems (EWIS) components be labeled to identify the component, its function, and its design limitations, if any. If the EWIS is part of a system that requires redundancy, the labeling must also include component part number, function, and separation requirements for bundles. This specificity of labeling will be required to ensure that maintenance can be handled properly and with the appropriate caution for maintaining the safety features the wiring system was designed to provide. The information marked on the wires will be used by maintenance personnel for repair and cautionary tasks, and by modifiers so that original safety features are retained during modifications. The future airplane manufacturer and anyone who modifies the airplane will bear the burden of this labeling requirement.

(2) Section § 26.11 requires that existing TC holders develop Instructions for Continued Airworthiness (ICA) for EWIS, and that those ICA be approved by the FAA. Applicants for approval of design changes will be required to develop revisions to those EWIS ICA for any modifications to the airplane that might affect them. Section § 25.1729 and Appendix H will apply the requirement for EWIS ICA to future applicants for TCs. EWIS ICA will be used by operators to prepare their maintenance programs. This requirement is necessary to ensure that wiring is properly maintained and inspected to avoid problems that could affect safety.

(3) Section 26.11 will also require that TC holders submit to the FAA a plan detailing how they intend to comply with its requirements. This information will be used by the FAA to assist the TC holder in complying with requirements. The compliance plan is necessary to ensure that TC holders fully understand the requirements and are able to provide information needed by the operators for the operators' timely compliance with the rule.

(4) Anyone operating an airplane under part 121 will be required to revise their existing maintenance program to incorporate the maintenance and inspection tasks for EWIS contained in

the EWIS ICA. The information incorporated into the maintenance program will be used by maintenance personnel to maintain the integrity of airplane wiring systems. This requirement is necessary to ensure that wiring is properly maintained and inspected to avoid problems that could affect safety.

(5) As a result of the revised maintenance programs that will be required for airplanes operating under part 121, maintenance personnel will be performing inspections and maintenance procedures to address safety issues specific to wiring systems. Although this final rule does not specifically require new training, existing § 121.375 requires that certificate holders or persons performing maintenance have a training program to ensure that persons determining the adequacy of such work (including inspectors) are fully informed about the procedures and techniques involved and are competent to perform them. To comply with this requirement in relation to requirements for revised maintenance programs for EWIS included in this final rule, certificate holders will be required to develop any additional training program needed to ensure that the appropriate personnel are adequately prepared to carry out the revised maintenance programs.

(6) The revision to part 25 Appendix H requires that future manufacturers include acceptable EWIS practices in their ICA, presented in a standard format. This information will be used by maintenance personnel for wiring maintenance and repairs. The requirement is necessary because information about cautionary tasks during maintenance that can prevent situations that could compromise safety need to be available to maintenance personnel. Standard wiring practices manuals, in which this information is presented, often differ from manufacturer to manufacturer and so are difficult for maintenance personnel to find specific information in. The requirement for a standard format is meant to correct this. Because of this rule, manufacturers will change their Standard Wiring Practices Manuals (SWPM).

Annual Burden Estimate

To provide estimates of the burden to collect information, the FAA developed categories. The following summary table contains the impacted entities, average annual hours and the corresponding average annual cost. Details of the estimates are in the paragraphs below.

	Requirement/entities affected	Annual hours	Annual cost
1a	TC Labeling—Hardware		$21,525
1b	TC Labeling—Labor	1,788	89,400
1c	STC Labeling—Hardware		83,688
1d	STC Labeling—Labor	6,953	347,634
2a	Existing TC Holders—EZAP	11,450	858,720
2b	Future TC Applicants—EZAP	7,156	536,700
2c	Future STC Applicants—EZAP	6,283	471,225
2d	ICA Approval	96	7,200
3	Compliance Plan Development	128	9,600
4	Operators Revise Maintenance Program	2,550	191,268
5	Training Development	2,208	165,600
6	SWPM	734	55,040
	Total	39,346	2,837,600

1a. The FAA estimates that an additional 3,500 labels might be installed in each newly certificated part 25 airplane. We calculate hardware costs by multiplying 3,500 labels per airplane by 5 cents per label, and then by the total annual estimated deliveries (123) of affected aircraft. Thus, the annual cost for TC identification hardware is $21,525.

1b. With 3,500 labels installed in 123 affected aircraft annually, we estimate a total of 430,500 labels. The total estimated annual average hours are 1,788. Using the burdened hourly cost for a mechanic ($50), the annual labor cost burden for TC identification is $89,400.

1c. The requirements contained in this final rule will also affect airplane modifiers when electrical wiring supplemental type certificates (STC) are installed on airplanes. We estimate that approximately 103 STCs a year will require additional identification of roughly 250 additional labels (.05 per label) per STC installation. Since we estimate 250 labels at .05 per label, each STC installation will cost an additional $12.50. The annual hardware cost of $83,688 is estimated by multiplying the number of STCs (103) by the number of airplane installations per STC (65) and finally by the additional hardware cost of $12.50.

1d. For the STC identification labor costs, we estimate roughly 1,673,750 additional labels will be installed annually (103 STCs × 250 labels × 65 aircraft). The identification requirements for STCs will require an annual burden of approximately 6,953 hours. Using the burdened hourly cost of a mechanic ($50), the annual labor cost for the identification requirement to airplane modifiers is $347,634.

2a. Part 26 requires TC holders to perform an EZAP analysis to develop Instructions for Continued Airworthiness (ICA) for EWIS. Over the period of analysis, the FAA estimates the proposal would require 11,450 average annual engineering hours resulting in the average annual cost of $858,720 (using the fully burdened hourly rate of $75 for an engineer).

2b. Future TC applicants will also perform an EZAP analysis to develop ICA for EWIS. The FAA estimates one part 25 type certificate per year, with the estimated average annual labor hours to perform the analysis of 7,156. This would result in average annual costs of $536,700.

2c. Future applicants for supplemental type certificates will also perform an EZAP analysis to develop ICA for EWIS. The total annual number of affected STCs is 103. The annual burden hours of 6,283 is calculated by multiplying the annual number of STCs (103) by the hourly estimate to perform EZAP on an STC (61). Using the estimate of 61 hours per STC and the burdened hourly cost of $75, the corresponding costs to perform EZAP on 103 STCs annually will be $471,225.

2d. The FAA estimates 60 labor hours (per airplane model) to submit ICA to the FAA for approval. The FAA estimates 2,400 hours for roughly 40 models. The average annual hours are 96, with corresponding average annual

costs of $7,200 (using the burdened hourly cost of $75).

3. Manufacturers will present a compliance plan for approval describing how they intend to comply with the requirements in the final rule. Over the period of analysis, the average annual estimated cost to the manufacturer to develop the compliance plan is $9,600, with annual hours of 128.

4. Operators will revise their existing maintenance program to incorporate the maintenance and inspection tasks for EWIS contained in the ICA. Over the period of analysis, the FAA estimates 63,756 total hours, or 2,550 average annual hours required to revise existing maintenance programs. Using the burdened labor cost for an engineer, the average annual planning cost is $191,268.

5. The estimated cost to develop training considers the industry's standard training factor of 200 hours per one hour of prepared training material. 600 hours is the estimated training development time for the 3-hour training course for each operator. When combined with 92 operators, the total hours would be 55,200 or 2,208 annually. Combined with the burdened hourly cost of $75, the average annual cost for training development would be $165,600.

6. Manufacturers will change the Standard Wiring Practices Manual (SWPM). The FAA calculates 734 as the average annual hours required to update manuals resulting in the average annual burden of roughly $55,040.

An agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a federal mandate likely to result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995).

In conducting these analyses, the FAA has determined that this final rule: (1) Has benefits that justify its costs; (2) will not have a significant economic impact on a substantial number of small entities; (3) will not create unnecessary obstacles to the foreign commerce of the United States; and (4) will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. While this rule is not economically significant as defined in section 3(f) of Executive Order 12866 or in DOT's Regulatory Policy and Procedures, it is otherwise significant under both documents. Accordingly, the rulemaking package has been reviewed by OMB. These analyses are summarized below.

Total Costs and Benefits of This Rulemaking

The total estimated cost of this final rule is $416 million ($233 million present value). The total estimated benefits are $801 million ($388 million present value). In the NPRM, we examined certain specific (narrower) categories of operational benefits for the operators. Since the NPRM, and at the request of commenters, we have performed an all-encompassing and exhaustive review of all wiring failures as required to be reported by the operators. This review demonstrated that airline operational impact from electrical wiring interconnection system (EWIS) failures alone was greater than previously anticipated and estimated in the NPRM. Appropriately, in this final rule, we estimate the higher benefits.

Cost category	Nominal values (in millions)	Present value (in millions)
Harmonization	$–	$–
Part 25 Subpart H—Certification	$68.1	$35.6
Part 25 Subpart H—Engines	31.6	26.6
Part 26 ICA	22.9	22.1
Part 121 ICA Operater Cost	292.2	147.6
Approval Cost	1.7	1.4
Total Cost	416	233
Benefit category	**Nominal values**	**Present values**
Total Operational Benefits	$506.3	$237.5
Total Safety Benefits	294.6	150.6
Total—All Benefits	801	388

* Minor differences in totals due to rounding.

Who Will Be Affected by This Rulemaking?

- Manufacturers of Part 25 Airplanes
- Operators of large transport category airplanes
- Part 25 applicants
- Engine Manufacturers

Assumptions and Sources of Information

• Discount rate—7%

• Period of analysis—25 Years, 2006 through 2030

• Burdened labor rate (as shown in key assumptions and labor rates in regulatory evaluation)

—Aerospace engineers—$75/hour

—Maintenance personnel—$50/hour

• Value of fatality avoided—Value of fatality avoided—$3.0 million (Source: ''Revised Departmental Guidance, Treatment of Value of Life and Injuries in Preparing Economic Evaluations,'' Office of the Secretary of Transportation Memorandum'', January 29, 2002)''. Value of Life and Injuries in Preparing Economic Evaluations,'' Office of the Secretary of Transportation Memorandum'', January 29, 2002).

• Fleet-Safety Performance Analysis System (SPAS)

• Fleet Growth (2.8% per year) & Passenger Occupancy Rates—FAA Aerospace Forecasts Years 2006–2017

• Failures, Incidents and Accidents—The National Aviation Safety Data Analysis Center

• Aircraft Value—Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Programs 1998

Articles Referenced

• Irrgang, M.E. ''Airline Irregular Operations'' Handbook of Airline Economics, 1995.

• Wojcik, Leonard A. ''Models To Understand Airline and Air Traffic Management Authority Decision-Making Interactions in Schedule Disruptions: From Simple Games to Agent-Based Models,'' Handbook of Airline Strategy, 2001.

• Wright, T.P. ''American Methods of Aircraft Production'' 1939.

Alternatives We Considered

Alternative 1—Require operators to clean & inspect each airplane every C-check or every three years. This would result in an estimated additional $179.3 million ($72.2 million present value) in cleaning and inspection costs, and an additional $88 million ($31.6 million present value) in downtime. This alternative would result in additional costs of $251.5 million ($120.3 million present value) with no commensurate increase in benefits.

Alternative 2—Explicitly require EWIS training for other groups of people in addition to maintenance workers. The groups and additional costs are:

• Flight deck crew—$126 million ($76 million present value).

• Cabin crew—$63 million ($38 million present value).

The total estimated additional cost of this alternative is roughly $189 million ($113 million present value) with no commensurate increase in benefits.

Alternative 3—No new regulation (status quo)—

There was a midair explosion in 1996 involving a 747 airplane. Two years later, another commercial airplane (an MD–11) crashed into the Atlantic Ocean, killing all 229 people aboard. The investigations and later examinations of other airplanes showed deteriorated wiring, corrosion, improper wire installation and repairs, and the contamination of wiring in commercial aircraft. We have observed and analyzed a continuing trend in electrical wiring events. The continuance of these events is demonstrated in accidents, incidents, and service difficulties that endanger passengers. The FAA believes that this trend of events is unacceptable, that this rulemaking is necessary to improve aviation safety, and that this final rule will decrease the frequency of these events. By introducing the new maintenance, inspection, and design criteria for airplane wiring contained in this final rule, we are ensuring that there will be a substantial decrease in the number of electrical-wiring-related accidents and incidents, and thereby an increase in aviation safety.

Benefits of This Rulemaking

The FAA estimates $801 million ($388 million present value) as the total benefits of this final rule. In the table below, the categories of benefits are shown. The middle column gives the nominal values of quantified benefits, and the right-hand column gives the total incremental present value benefits broken down by category type.

Costs of This Rulemaking

The FAA estimates $416 million ($233 million present value) as the total cost of this final rule. The following table specifies the cost categories, incremental nominal costs and incremental present value costs.

Benefits	Nominal values (in millions)	Present values (in millions)
Operational Impacts		
Averted unscheduled landings	$274.3	$128.8
Other Operational Impacts	232.0	108.7
Total Operation Benefits	506.3	237.5
Safety Benefits		
Averted Non fatal events	$44.4	$22.7
Averted Fatal events	250.2	127.9
Total Safety Benefits	294.6	150.6
Total—All Benefits	801	388

COST SUMMARY

Cost	Nominal values (in millions)	Present values (in millions)
Harmonization	$–	$–
Part 25 Subpart H—Certification		
TC Certification Cost	$31.0	$15.8
TC–EZAP Future	12.9	6.6
STC Certification Cost	11.3	5.8
STC Labeling Hardware	2.0	1.0

COST SUMMARY—Continued

Cost	Nominal values (in millions)	Present values (in millions)
STC Labeling Labor	8.3	4.8
TC Labeling Hardware	0.5	0.3
TC Labeling Labor	2.1	1.2
Total Certification Costs	68.1	35.5
Part 25 Subpart H—Engines		
Engine Certification	$25.0	$23.4
Safety Analysis	6.6	3.2
Total Engine Costs	31.6	26.6
Part 26 ICA		
EZAP	$21.5	$20.8
SWPM	1.4	1.3
Total Part 26 ICA Costs	22.9	22.1
Part 121 ICA Operater Costs		
Planning	$4.8	$4.2
Training	20.7	14.2
Training Development	4.1	3.6
Cleaning & Inspections	189.5	94.0
Downtime	72.1	31.6
Total Operator Costs	291.2	147.6
Approval Costs		
Approve EWIS ICA For Future TCs	$0.126	$0.064
Approve ICA For Existing TCs	0.156	0.151
Approve ICA for Future STCs	0.556	0.284
Approve Inspection & Maintenance Program	0.828	0.801
Compliance Plan	0.240	0.232
Total Approval Costs	1.9	1.5
Total Costs	416	233

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

We have conducted a complete regulatory flexibility analysis to assess the impact on small entities. The FAA uses the size standards from the Small Business Administration for Air Transportation and Aircraft Manufacturing specifying companies with less than 1,500 employees as small entities.

The FAA believes that this final rule will not result in a significant economic impact on a substantial number of small entities. The purpose of this analysis is to provide the reasoning underlying the FAA determination. The FAA has determined that:

- No part 25 manufacturers are small entities.
- There will not be a significant impact on a substantial number of amended TC or supplemental TC (STC) applicants.
- There will not be a significant impact on a substantial number of small carriers as a result of this final rule.

The current United States part 25 airplane manufacturers include: Boeing, Cessna Aircraft, Gulfstream Aerospace, Learjet (owned by Bombardier), Lockheed Martin, McDonnell Douglas (a wholly-owned subsidiary of The Boeing Company), Raytheon Aircraft, and Sabreliner Corporation. These manufacturers will incur type certificate (TC) and amended TC costs. Because all U.S. transport-aircraft category manufacturers have more than 1,500 employees, none are considered small entities.

Future STC applicants will incur additional compliance costs. These applicants will incur the cost only if the applicant believes the expected revenue from additional sales will exceed the expected cost. While future STC costs will be passed on to airplane operators, it is not possible to determine operator

would buy and install such STCs. Because expected revenue would be greater than the expected cost, the FAA believes there will not be a significant impact on a substantial number of STC applicants.

Furthermore, the FAA also calculates economic impact on small-business part 121 operators. We measured the economic impact on small part 121 operators by dividing the compliance cost by the firm's annual revenue. The impact of this final rule is below ½ of one percent for eighteen small entities where data was available. For the remaining 3, where data was available, the cost impact is 0.83%, 1.08% and 1.68% of revenues. Therefore, the FAA believes that this final rule will not have a significant economic impact on a substantial number of small-business part 121 operators.

The full regulatory flexibility analysis can be found in the final regulatory evaluation. No part 25 manufacturers are small entities, there will not be a significant impact on a substantial number of amended TC or STC applicants, and there will not be a significant impact on a substantial number of small operators. Therefore, as the Acting FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

Final International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it will impose the same costs on domestic and international entities and thus has a neutral trade impact.

Final Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $128.1 million in lieu of $100 million.

This final rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the FAA, when modifying its regulations in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. In the NPRM, we requested comments on whether the proposed rule should apply differently to intrastate operations in Alaska. We did receive comments from Senators Stevens and Murkowski and Everts Air Cargo on this subject, as discussed earlier. Also as discussed earlier, however, we have determined that there would not be an adverse effect on Alaska intrastate operators, the burden of this rule on affected intrastate operators in Alaska would be minimal, and based on the administrative record of this rulemaking, that there is no need to make any regulatory distinctions applicable to intrastate aviation in Alaska.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by—

(1) Searching the *Federal* eRulemaking Portal *http://www.regulations.gov*

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/*; or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov.*

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects

14 CFR Part 1

Air Transportation.

14 CFR Part 21

Aircraft, Aviation safety, Exports, Imports, Reporting and recordkeeping.

14 CFR Parts 25, 91, 125

Aircraft, Aviation safety, Reporting and recordkeeping requirements, Continued airworthiness.

14 CFT Part 26

Aircraft, Aviation safety, Continued airworthiness.

14 CFR Parts 121, 129

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Continued airworthiness.

V. The Amendments

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations parts 1, 21, 25, 26, 91, 121, 125, and 129 as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

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

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

■ 2. Amend § 1.2 to add the abbreviation ''EWIS'' in alphabetical order to read as follows:

§ 1.2 Abbreviations and symbols.

* * * * *

EWIS, as defined by § 25.1701 of this chapter, means electrical wiring interconnection system.

* * * * *

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

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

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44704, 44707, 44709, 44711, 44713, 44715, 45303.

Subpart A—General

■ 4. Amend part 21 by adding a new § 21.7 to read as follows:

§ 21.7 Continued airworthiness and safety improvements for transport category airplanes.

(a) On or after December 10, 2007, the holder of a design approval and an applicant for a design approval must comply with the applicable continued airworthiness and safety improvement requirements of part 26 of this subchapter.

(b) For new transport category airplanes manufactured under the authority of the FAA, the holder or licensee of a type certificate must meet the applicable continued airworthiness and safety improvement requirements specified in part 26 of this subchapter for new production airplanes. Those requirements only apply if the FAA has jurisdiction over the organization responsible for final assembly of the airplane.

Subpart B—Type Certification

■ 5. Amend § 21.17 by revising paragraph (a) introductory text to read as follows:

§ 21.17 Designation of applicable regulations.

(a) Except as provided in § 23.2, § 25.2, § 27.2, § 29.2, and in parts 26, 34 and 36 of this subchapter, an applicant for a type certificate must show that the aircraft, aircraft engine, or propeller concerned meets—

* * * * *

■ 6. Amend § 21.31 by revising paragraph (c) to read as follows:

§ 21.31 Type design.

* * * * *

(c) The Airworthiness Limitations section of the Instructions for Continued Airworthiness as required by parts 23, 25, 26, 27, 29, 31, 33 and 35 of this subchapter, or as otherwise required by the Administrator; and as specified in the applicable airworthiness criteria for special classes of aircraft defined in § 21.17(b); and

* * * * *

■ 7. Amend § 21.50 by revising paragraph (b) to read as follows:

§ 21.50 Instructions for continued airworthiness and manufacturer's maintenance manuals having airworthiness limitations sections.

* * * * *

(b) The holder of a design approval, including either the type certificate or supplemental type certificate for an aircraft, aircraft engine, or propeller for which application was made after January 28, 1981, shall furnish at least one set of complete Instructions for Continued Airworthiness, to the owner of each type aircraft, aircraft engine, or propeller upon its delivery, or upon issuance of the first standard airworthiness certificate for the affected aircraft, whichever occurs later. The Instructions must be prepared in accordance with §§ 23.1529, 25.1529, 25.1729, 27.1529, 29.1529, 31.82, 33.4, 35.4, or part 26 of this subchapter, or as specified in the applicable airworthiness criteria for special classes of aircraft defined in § 21.17(b), as applicable. Thereafter, the holder of a design approval must make those instructions available to any other person required by this chapter to comply with any of the terms of those instructions. In addition, changes to the Instructions for Continued Airworthiness shall be made available to any person required by this chapter to comply with any of those instructions.

Subpart D—Changes to Type Certificates

■ 8. Amend § 21.101 by revising paragraph (b) introductory text and adding a new paragraph (g) to read as follows:

§ 21.101 Designation of applicable regulations.

* * * * *

(b) Except as provided in paragraph (g) of this section, if paragraphs (b)(1), (2), or (3) of this section apply, an applicant may show that the changed product complies with an earlier amendment of a regulation required by paragraph (a) of this section, and of any other regulation the Administrator finds is directly related. However, the earlier amended regulation may not precede either the corresponding regulation incorporated by reference in the type certificate, or any regulation in §§ 23.2, 25.2, 27.2, or 29.2 of this subchapter that is related to the change. The applicant may show compliance with an earlier amendment of a regulation for any of the following:

* * * * *

(g) Notwithstanding paragraph (b) of this section, for transport category airplanes, the applicant must show compliance with each applicable provision of part 26 of this chapter, unless the applicant has elected or was required to comply with a corresponding amendment to part 25 of this chapter that was issued on or after the date of the applicable part 26 provision.

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

■ 9. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702 and 44704.

■ 10. Amend § 25.611 by re-designating the existing paragraph as paragraph (a) and adding new paragraph (b) to read as follows:

§ 25.611 Accessibility provisions.

(a) * * *

(b) EWIS must meet the accessibility requirements of § 25.1719.

■ 11. Amend § 25.855 by revising paragraph (e) introductory text and adding new paragraph (j) as follows:

§ 25.855 Cargo or baggage compartments.

* * * * *

(e) No compartment may contain any controls, lines, equipment, or accessories whose damage or failure would affect safe operation, unless those items are protected so that—

* * * * *

(j) Cargo or baggage compartment electrical wiring interconnection system components must meet the requirements of § 25.1721.

■ 12. Amend § 25.869 by removing paragraph (a)(4) and revising paragraphs (a)(2) and (a)(3) as follows:

§ 25.869 Fire protection: systems.

(a) * * *

(2) Equipment that is located in designated fire zones and is used during emergency procedures must be at least fire resistant.

(3) EWIS components must meet the requirements of § 25.1713.

* * * * *

■ 13. Amend part 25 by adding a new § 25.899 to subpart D to read as follows:

§ 25.899 Electrical bonding and protection against static electricity.

(a) Electrical bonding and protection against static electricity must be designed to minimize accumulation of electrostatic charge that would cause—

(1) Human injury from electrical shock,

(2) Ignition of flammable vapors, or

(3) Interference with installed electrical/electronic equipment.

(b) Compliance with paragraph (a) of this section may be shown by—

(1) Bonding the components properly to the airframe; or

(2) Incorporating other acceptable means to dissipate the static charge so as not to endanger the airplane, personnel, or operation of the installed electrical/electronic systems.

■ 14. Amend § 25.1203 by revising paragraph (e) and adding a new paragraph (h) as follows:

§ 25.1203 Fire detector system.

* * * * *

(e) Components of each fire or overheat detector system in a fire zone must be fire-resistant.

* * * * *

(h) EWIS for each fire or overheat detector system in a fire zone must meet the requirements of § 25.1731.

■ 15. Amend § 25.1301 by designating the introductory text as paragraph (a), re-designating paragraphs (a) through (d) as (a)(1) through (4), and adding a new paragraph (b) as follows:

§ 25.1301 Function and installation.

* * * * *

(b) EWIS must meet the requirements of subpart H of this part.

■ 16. Amend § 25.1309 by removing paragraph (e) and re-designating paragraph (g) as paragraph (e), and revising paragraph (f) as follows:

§ 25.1309 Equipment, systems, and installations.

* * * * *

(f) EWIS must be assessed in accordance with the requirements of § 25.1709.

■ 17. Amend part 25 by adding a new § 25.1310, to read as follows:

§ 25.1310 Power source capacity and distribution.

(a) Each installation whose functioning is required for type certification or under operating rules and that requires a power supply is an ''essential load'' on the power supply. The power sources and the system must be able to supply the following power loads in probable operating combinations and for probable durations:

(1) Loads connected to the system with the system functioning normally.

(2) Essential loads, after failure of any one prime mover, power converter, or energy storage device.

(3) Essential loads after failure of—

(i) Any one engine on two-engine airplanes; and

(ii) Any two engines on airplanes with three or more engines.

(4) Essential loads for which an alternate source of power is required, after any failure or malfunction in any one power supply system, distribution system, or other utilization system.

(b) In determining compliance with paragraphs (a)(2) and (3) of this section, the power loads may be assumed to be reduced under a monitoring procedure consistent with safety in the kinds of operation authorized. Loads not required in controlled flight need not be considered for the two-engine-inoperative condition on airplanes with three or more engines.

■ 18. Revise § 25.1353 to read as follows:

§ 25.1353 Electrical equipment and installations.

(a) Electrical equipment and controls must be installed so that operation of any one unit or system of units will not adversely affect the simultaneous operation of any other electrical unit or system essential to safe operation. Any electrical interference likely to be present in the airplane must not result in hazardous effects on the airplane or its systems.

(b) Storage batteries must be designed and installed as follows:

(1) Safe cell temperatures and pressures must be maintained during any probable charging or discharging condition. No uncontrolled increase in cell temperature may result when the battery is recharged (after previous complete discharge)—

(i) At maximum regulated voltage or power;

(ii) During a flight of maximum duration; and

(iii) Under the most adverse cooling condition likely to occur in service.

(2) Compliance with paragraph (b)(1) of this section must be shown by test unless experience with similar batteries and installations has shown that maintaining safe cell temperatures and pressures presents no problem.

(3) No explosive or toxic gases emitted by any battery in normal operation, or as the result of any probable malfunction in the charging system or battery installation, may accumulate in hazardous quantities within the airplane.

(4) No corrosive fluids or gases that may escape from the battery may damage surrounding airplane structures or adjacent essential equipment.

(5) Each nickel cadmium battery installation must have provisions to prevent any hazardous effect on structure or essential systems that may be caused by the maximum amount of heat the battery can generate during a short circuit of the battery or of individual cells.

(6) Nickel cadmium battery installations must have—

(i) A system to control the charging rate of the battery automatically so as to prevent battery overheating;

(ii) A battery temperature sensing and over-temperature warning system with a means for disconnecting the battery from its charging source in the event of an over-temperature condition; or

(iii) A battery failure sensing and warning system with a means for disconnecting the battery from its charging source in the event of battery failure.

(c) Electrical bonding must provide an adequate electrical return path under both normal and fault conditions, on airplanes having grounded electrical systems.

■ 19. Amend § 25.1357 by revising paragraphs (d) and (f) to read as follows:

§ 25.1357 Circuit protective devices.

* * * * *

(d) If the ability to reset a circuit breaker or replace a fuse is essential to safety in flight, that circuit breaker or fuse must be located and identified so that it can be readily reset or replaced in flight. Where fuses are used, there must be spare fuses for use in flight equal to at least 50% of the number of fuses of each rating required for complete circuit protection.

* * * * *

(f) For airplane systems for which the ability to remove or reset power during normal operations is necessary, the system must be designed so that circuit breakers are not the primary means to remove or reset system power unless specifically designed for use as a switch.

* * * * *

■ 20. Amend part 25 by adding a new § 25.1360 to read as follows:

§ 25.1360 Precautions against injury.

(a) Shock. The electrical system must be designed to minimize risk of electric shock to crew, passengers, and servicing personnel and to maintenance personnel using normal precautions.

(b) Burns. The temperature of any part that may be handled by a crewmember during normal operations must not cause dangerous inadvertent movement by the crewmember or injury to the crewmember.

■ 21. Amend part 25 by adding a new § 25.1362 to read as follows:

§ 25.1362 Electrical supplies for emergency conditions.

A suitable electrical supply must be provided to those services required for emergency procedures after an emergency landing or ditching. The circuits for these services must be designed, protected, and installed so that the risk of the services being rendered ineffective under these emergency conditions is minimized.

■ 22. Amend part 25 by adding a new § 25.1365 to read as follows:

§ 25.1365 Electrical appliances, motors, and transformers.

(a) Domestic appliances must be designed and installed so that in the event of failures of the electrical supply or control system, the requirements of § 25.1309(b), (c), and (d) will be satisfied. Domestic appliances are items such as cooktops, ovens, coffee makers, water heaters, refrigerators, and toilet flush systems that are placed on the airplane to provide service amenities to passengers.

(b) Galleys and cooking appliances must be installed in a way that minimizes risk of overheat or fire.

(c) Domestic appliances, particularly those in galley areas, must be installed or protected so as to prevent damage or contamination of other equipment or systems from fluids or vapors which may be present during normal operation or as a result of spillage, if such damage or contamination could create a hazardous condition.

(d) Unless compliance with § 25.1309(b) is provided by the circuit protective device required by § 25.1357(a), electric motors and transformers, including those installed in domestic systems, must have a suitable thermal protection device to prevent overheating under normal operation and failure conditions, if overheating could create a smoke or fire hazard.

■ 23. Amend part 25 by adding new subpart H to read as follows:

Subpart H—Electrical Wiring Interconnection Systems (EWIS)

Sec.

25.1701 Definition.
25.1703 Function and installation: EWIS.
25.1705 Systems and functions: EWIS.
25.1707 System separation: EWIS.
25.1709 System safety: EWIS.
25.1711 Component identification: EWIS.
25.1713 Fire protection: EWIS.
25.1715 Electrical bonding and protection against static electricity: EWIS.
25.1717 Circuit protective devices: EWIS.
25.1719 Accessibility provisions: EWIS.
25.1721 Protection of EWIS.
25.1723 Flammable fluid fire protection: EWIS.
25.1725 Powerplants: EWIS.
25.1727 Flammable fluid shutoff means: EWIS.
25.1729 Instructions for Continued Airworthiness: EWIS.
25.1731 Powerplant and APU fire detector system: EWIS.
25.1733 Fire detector systems, general: EWIS.

Subpart H—Electrical Wiring Interconnection Systems (EWIS)

§ 25.1701 Definition.

(a) As used in this chapter, electrical wiring interconnection system (EWIS) means any wire, wiring device, or combination of these, including termination devices, installed in any area of the airplane for the purpose of transmitting electrical energy, including data and signals, between two or more intended termination points. This includes:

(1) Wires and cables.

(2) Bus bars.

(3) The termination point on electrical devices, including those on relays, interrupters, switches, contactors, terminal blocks and circuit breakers, and other circuit protection devices.

(4) Connectors, including feed-through connectors.

(5) Connector accessories.

(6) Electrical grounding and bonding devices and their associated connections.

(7) Electrical splices.

(8) Materials used to provide additional protection for wires, including wire insulation, wire sleeving, and conduits that have electrical termination for the purpose of bonding.

(9) Shields or braids.

(10) Clamps and other devices used to route and support the wire bundle.

(11) Cable tie devices.

(12) Labels or other means of identification.

(13) Pressure seals.

(14) EWIS components inside shelves, panels, racks, junction boxes, distribution panels, and back-planes of equipment racks, including, but not limited to, circuit board back-planes, wire integration units, and external wiring of equipment.

(b) Except for the equipment indicated in paragraph (a)(14) of this section, EWIS components inside the following equipment, and the external connectors that are part of that equipment, are excluded from the definition in paragraph (a) of this section:

(1) Electrical equipment or avionics that are qualified to environmental conditions and testing procedures when those conditions and procedures are—

(i) Appropriate for the intended function and operating environment, and

(ii) Acceptable to the FAA.

(2) Portable electrical devices that are not part of the type design of the airplane. This includes personal entertainment devices and laptop computers.

(3) Fiber optics.

§ 25.1703 Function and installation: EWIS.

(a) Each EWIS component installed in any area of the aircraft must:

(1) Be of a kind and design appropriate to its intended function.

(2) Be installed according to limitations specified for the EWIS components.

(3) Perform the function for which it was intended without degrading the airworthiness of the airplane.

(4) Be designed and installed in a way that will minimize mechanical strain.

(b) Selection of wires must take into account known characteristics of the wire in relation to each installation and application to minimize the risk of wire damage, including any arc tracking phenomena.

(c) The design and installation of the main power cables (including generator cables) in the fuselage must allow for a reasonable degree of deformation and stretching without failure.

(d) EWIS components located in areas of known moisture accumulation must be protected to minimize any hazardous effects due to moisture.

§ 25.1705 Systems and functions: EWIS.

(a) EWIS associated with any system required for type certification or by operating rules must be considered an integral part of that system and must be considered in showing compliance with the applicable requirements for that system.

(b) For systems to which the following rules apply, the components of EWIS associated with those systems must be considered an integral part of that system or systems and must be considered in showing compliance with the applicable requirements for that system.

(1) § 25.773(b)(2) Pilot compartment view.

(2) § 25.981 Fuel tank ignition prevention.

(3) § 25.1165 Engine ignition systems.

(4) § 25.1310 Power source capacity and distribution.

(5) § 25.1316 System lightning protection.

(6) § 25.1331(a)(2) Instruments using a power supply.

(7) § 25.1351 General.

(8) § 25.1355 Distribution system.

(9) § 25.1360 Precautions against injury.

(10) § 25.1362 Electrical supplies for emergency conditions.

(11) § 25.1365 Electrical appliances, motors, and transformers.

(12) § 25.1431(c) and (d) Electronic equipment.

§ 25.1707 System separation: EWIS.

(a) Each EWIS must be designed and installed with adequate physical separation from other EWIS and airplane systems so that an EWIS component failure will not create a hazardous condition. Unless otherwise stated, for the purposes of this section, adequate physical separation must be achieved by separation distance or by a barrier that provides protection equivalent to that separation distance.

(b) Each EWIS must be designed and installed so that any electrical interference likely to be present in the airplane will not result in hazardous effects upon the airplane or its systems.

(c) Wires and cables carrying heavy current, and their associated EWIS components, must be designed and installed to ensure adequate physical separation and electrical isolation so that damage to circuits associated with essential functions will be minimized under fault conditions.

(d) Each EWIS associated with independent airplane power sources or power sources connected in combination must be designed and installed to ensure adequate physical separation and electrical isolation so that a fault in any one airplane power source EWIS will not adversely affect any other independent power sources. In addition:

(1) Airplane independent electrical power sources must not share a common ground terminating location.

(2) Airplane system static grounds must not share a common ground terminating location with any of the airplane's independent electrical power sources.

(e) Except to the extent necessary to provide electrical connection to the fuel systems components, the EWIS must be designed and installed with adequate physical separation from fuel lines and other fuel system components, so that:

(1) An EWIS component failure will not create a hazardous condition.

(2) Any fuel leakage onto EWIS components will not create a hazardous condition.

(f) Except to the extent necessary to provide electrical connection to the hydraulic systems components, EWIS must be designed and installed with adequate physical separation from hydraulic lines and other hydraulic system components, so that:

(1) An EWIS component failure will not create a hazardous condition.

(2) Any hydraulic fluid leakage onto EWIS components will not create a hazardous condition.

(g) Except to the extent necessary to provide electrical connection to the oxygen systems components, EWIS must be designed and installed with adequate physical separation from oxygen lines and other oxygen system components, so that an EWIS component failure will not create a hazardous condition.

(h) Except to the extent necessary to provide electrical connection to the water/waste systems components, EWIS must be designed and installed with adequate physical separation from water/waste lines and other water/waste system components, so that:

(1) An EWIS component failure will not create a hazardous condition.

(2) Any water/waste leakage onto EWIS components will not create a hazardous condition.

(i) EWIS must be designed and installed with adequate physical separation between the EWIS and flight or other mechanical control systems cables and associated system components, so that:

(1) Chafing, jamming, or other interference are prevented.

(2) An EWIS component failure will not create a hazardous condition.

(3) Failure of any flight or other mechanical control systems cables or systems components will not damage the EWIS and create a hazardous condition.

(j) EWIS must be designed and installed with adequate physical separation between the EWIS components and heated equipment, hot air ducts, and lines, so that:

(1) An EWIS component failure will not create a hazardous condition.

(2) Any hot air leakage or heat generated onto EWIS components will not create a hazardous condition.

(k) For systems for which redundancy is required, by certification rules, by operating rules, or as a result of the assessment required by § 25.1709, EWIS components associated with those systems must be designed and installed with adequate physical separation.

(l) Each EWIS must be designed and installed so there is adequate physical separation between it and other aircraft components and aircraft structure, and so that the EWIS is protected from sharp edges and corners, to minimize potential for abrasion/chafing, vibration damage, and other types of mechanical damage.

§ 25.1709 System safety: EWIS.

Each EWIS must be designed and installed so that:

(a) Each catastrophic failure condition—

(1) Is extremely improbable; and

(2) Does not result from a single failure.

(b) Each hazardous failure condition is extremely remote.

§ 25.1711 Component identification: EWIS.

(a) EWIS components must be labeled or otherwise identified using a consistent method that facilitates identification of the EWIS component, its function, and its design limitations, if any.

(b) For systems for which redundancy is required, by certification rules, by operating rules, or as a result of the assessment required by § 25.1709, EWIS components associated with those systems must be specifically identified with component part number, function, and separation requirement for bundles.

(1) The identification must be placed along the wire, cable, or wire bundle at appropriate intervals and in areas of the airplane where it is readily visible to maintenance, repair, or alteration personnel.

(2) If an EWIS component cannot be marked physically, then other means of identification must be provided.

(c) The identifying markings required by paragraphs (a) and (b) of this section must remain legible throughout the expected service life of the EWIS component.

(d) The means used for identifying each EWIS component as required by this section must not have an adverse effect on the performance of that component throughout its expected service life.

(e) Identification for EWIS modifications to the type design must be consistent with the identification scheme of the original type design.

§ 25.1713 Fire protection: EWIS.

(a) All EWIS components must meet the applicable fire and smoke protection requirements of § 25.831(c) of this part.

(b) EWIS components that are located in designated fire zones and are used during emergency procedures must be fire resistant.

(c) Insulation on electrical wire and electrical cable, and materials used to provide additional protection for the wire and cable, installed in any area of the airplane, must be self-extinguishing when tested in accordance with the applicable portions of Appendix F, part I, of 14 CFR part 25.

§ 25.1715 Electrical bonding and protection against static electricity: EWIS.

(a) EWIS components used for electrical bonding and protection against static electricity must meet the requirements of § 25.899.

(b) On airplanes having grounded electrical systems, electrical bonding provided by EWIS components must provide an electrical return path capable of carrying both normal and fault currents without creating a shock hazard or damage to the EWIS components, other airplane system components, or airplane structure.

§ 25.1717 Circuit protective devices: EWIS.

Electrical wires and cables must be designed and installed so they are compatible with the circuit protection devices required by § 25.1357, so that a fire or smoke hazard cannot be created under temporary or continuous fault conditions.

§ 25.1719 Accessibility provisions: EWIS.

Access must be provided to allow inspection and replacement of any EWIS component as necessary for continued airworthiness.

§ 25.1721 Protection of EWIS.

(a) No cargo or baggage compartment may contain any EWIS whose damage or failure may affect safe operation, unless the EWIS is protected so that:

(1) It cannot be damaged by movement of cargo or baggage in the compartment.

(2) Its breakage or failure will not create a fire hazard.

(b) EWIS must be designed and installed to minimize damage and risk of damage to EWIS by movement of people in the airplane during all phases of flight, maintenance, and servicing.

(c) EWIS must be designed and installed to minimize damage and risk of damage to EWIS by items carried onto the aircraft by passengers or cabin crew.

§ 25.1723 Flammable fluid fire protection: EWIS.

EWIS components located in each area where flammable fluid or vapors might escape by leakage of a fluid system must be considered a potential ignition source and must meet the requirements of § 25.863.

§ 25.1725 Powerplants: EWIS.

(a) EWIS associated with any powerplant must be designed and installed so that the failure of an EWIS component will not prevent the continued safe operation of the remaining powerplants or require immediate action by any crewmember for continued safe operation, in accordance with the requirements of § 25.903(b).

(b) Design precautions must be taken to minimize hazards to the airplane due to EWIS damage in the event of a powerplant rotor failure or a fire originating within the powerplant that burns through the powerplant case, in accordance with the requirements of § 25.903(d)(1).

§ 25.1727 Flammable fluid shutoff means: EWIS.

EWIS associated with each flammable fluid shutoff means and control must be fireproof or must be located and protected so that any fire in a fire zone will not affect operation of the flammable fluid shutoff means, in accordance with the requirements of § 25.1189.

§ 25.1729 Instructions for Continued Airworthiness: EWIS.

The applicant must prepare Instructions for Continued Airworthiness applicable to EWIS in accordance with Appendix H sections H25.4 and H25.5 to this part that are approved by the FAA.

§ 25.1731 Powerplant and APU fire detector system: EWIS.

(a) EWIS that are part of each fire or overheat detector system in a fire zone must be fire-resistant.

(b) No EWIS component of any fire or overheat detector system for any fire zone may pass through another fire zone, unless:

(1) It is protected against the possibility of false warnings resulting from fires in zones through which it passes; or

(2) Each zone involved is simultaneously protected by the same detector and extinguishing system.

(c) EWIS that are part of each fire or overheat detector system in a fire zone must meet the requirements of § 25.1203.

§ 25.1733 Fire detector systems, general: EWIS.

EWIS associated with any installed fire protection system, including those required by §§ 25.854 and 25.858, must be considered an integral part of the system in showing compliance with the applicable requirements for that system.

■ 24. Amend H25.1 of Appendix H to part 25 by revising paragraph (a) to read as follows:

Appendix H To Part 25—Instructions For Continued Airworthiness

H25.1 *General.*

(a) This appendix specifies requirements for preparation of Instructions for Continued Airworthiness as required by §§ 25.1529, 25.1729, and applicable provisions of parts 21 and 26 of this chapter.

* * * * *

■ 25. Amend H25.4 of Appendix H to part 25 by revising paragraph (a)(1) and adding new paragraph (a)(3) to read as follows:

Appendix H To Part 25—Instructions for Continued Airworthiness

* * * * *

H25.4 *Airworthiness Limitations section.*

(a) * * *

(1) Each mandatory replacement time, structural inspection interval, and related structural inspection procedures approved under § 25.571.

* * * * *

(3) Any mandatory replacement time of EWIS components as defined in section 25.1701.

* * * * *

■ 26. Amend Appendix H to part 25 by adding new paragraph H25.5 to read as follows:

Appendix H To Part 25—Instructions for Continued Airworthiness

* * * * *

H25.5 *Electrical Wiring Interconnection System (EWIS) Instructions for Continued Airworthiness.*

(a) The applicant must prepare Instructions for Continued Airworthiness (ICA) applicable to EWIS as defined by § 25.1701 that are

approved by the FAA and include the following:

(1) Maintenance and inspection requirements for the EWIS developed with the use of an enhanced zonal analysis procedure that includes:

(i) Identification of each zone of the airplane.

(ii) Identification of each zone that contains EWIS.

(iii) Identification of each zone containing EWIS that also contains combustible materials.

(iv) Identification of each zone in which EWIS is in close proximity to both primary and back-up hydraulic, mechanical, or electrical flight controls and lines.

(v) Identification of—

(A) Tasks, and the intervals for performing those tasks, that will reduce the likelihood of ignition sources and accumulation of combustible material, and

(B) Procedures, and the intervals for performing those procedures, that will effectively clean the EWIS components of combustible material if there is not an effective task to reduce the likelihood of combustible material accumulation.

(vi) Instructions for protections and caution information that will minimize contamination and accidental damage to EWIS, as applicable, during performance of maintenance, alteration, or repairs.

(2) Acceptable EWIS maintenance practices in a standard format.

(3) Wire separation requirements as determined under § 25.1707.

(4) Information explaining the EWIS identification method and requirements for identifying any changes to EWIS under § 25.1711.

(5) Electrical load data and instructions for updating that data.

(b) The EWIS ICA developed in accordance with the requirements of H25.5(a)(1) must be in the form of a document appropriate for the information to be provided, and they must be easily recognizable as EWIS ICA. This document must either contain the required EWIS ICA or specifically reference other portions of the ICA that contain this information.

■ 27. Amend 14 CFR by adding new part 26 to read as follows:

PART 26—CONTINUED AIRWORTHINESS AND SAFETY IMPROVEMENTS FOR TRANSPORT CATEGORY AIRPLANES

Subpart A—General

Sec.

26.1 Purpose and scope.
26.3 Definitions.
26.5 Applicability table.

Subpart B—Enhanced Airworthiness Program for Aging Systems 26.11 Electrical wiring interconnection systems (EWIS) maintenance program.

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702 and 44704.

Subpart A—General

§ 26.1 Purpose and scope.

(a) This part establishes requirements for support of the continued airworthiness of and safety improvements for transport category airplanes. These requirements may include performing assessments, developing design changes, developing revisions to Instructions for Continued Airworthiness (ICA), and making necessary documentation available to affected persons. Requirements of this part that establish standards for design changes and revisions to the ICA are considered airworthiness requirements.

(b) Except as provided in paragraph (c) of this section, this part applies to the following persons, as specified in each subpart of this part:

(1) Holders of type certificates and supplemental type certificates.

(2) Applicants for type certificates and supplemental type certificates and changes to those certificates (including service bulletins describing design changes).

(3) Persons seeking design approval for airplane repairs, alterations, or modifications that may affect airworthiness.

(4) Holders of type certificates and their licensees producing new airplanes.

(c) An applicant for approval of a design change is not required to comply with any applicable airworthiness requirement of this part if the applicant elects or is required to comply with a corresponding amendment to part 25 of this chapter that is adopted concurrently or after that airworthiness requirement.

(d) For the purposes of this part, the word ''type certificate'' does not include supplemental type certificates.

§ 26.3 Definitions.

For the purposes of this part:

FAA Oversight Office is the aircraft certification office or office of the Transport Airplane Directorate with oversight responsibility for the relevant type certificate, supplemental type certificate, or manufacturer, as determined by the Administrator.

§ 26.5 Applicability table.

Table 1 of this section provides an overview of the applicability of this part. It provides guidance in identifying what sections apply to various types of entities. The specific applicability of each subpart and section is specified in the regulatory text.

TABLE 1.—APPLICABILITY OF PART 26 RULES

	Applicable sections
	Subpart B (EAPAS/FTS)
Effective Date of Rule	TBD
Existing [1] TC Holders	26.11
Pending [1] TC Applicants	26.11
Existing [1] STC Holders	N/A
Pending [1] STC/ATC Applicants	26.11
Future [2] STC/ATC Applicants	26.11
Manufacturers	N/A
Persons Seeking Design Approval of Repairs	N/A

[1] As of the effective date of the identified rule.

[2] Application made after the effective date of the identified rule.

Subpart B—Enhanced Airworthiness Program for Aging Systems

§ 26.11 Electrical wiring interconnection systems (EWIS) maintenance program.

(a) Except as provided in paragraph (g) of this section, this section applies to transport category, turbine-powered airplanes with a type certificate issued after January 1, 1958, that, as a result of the original certification, or later increase in capacity, have—

(1) A maximum type-certificated passenger capacity of 30 or more or

(2) A maximum payload capacity of 7,500 pounds or more.

(b) Holders of, and applicants for, type certificates, as identified in paragraph (d) of this section must develop Instructions for Continued Airworthiness (ICA) for the representative airplane's EWIS in accordance with part 25, Appendix H paragraphs H25.5(a)(1) and (b) of this subchapter in effect on December 10, 2007 for each affected type design, and submit those ICA for review and approval by the FAA Oversight Office. For purposes of this section, the ''representative airplane'' is the configuration of each model series airplane that incorporates all variations of EWIS used in production on that series airplane, and all TC-holder-designed modifications mandated by airworthiness directive as of the effective date of this rule. Each person specified in paragraph (d) of this section must also review any fuel tank system ICA developed by that person to comply with SFAR 88 to ensure compatibility with the EWIS ICA, including minimizing redundant requirements.

(c) Applicants for amendments to type certificates and supplemental type certificates, as identified in paragraph (d) of this section, must:

(1) Evaluate whether the design change for which approval is sought necessitates a revision to the ICA required by paragraph (b) of this section to comply with the requirements of Appendix H, paragraphs H25.5(a)(1) and (b). If so, the applicant must develop and submit the necessary revisions for review and approval by the FAA Oversight Office.

(2) Ensure that any revised EWIS ICA remain compatible with any fuel tank system ICA previously developed to comply with SFAR 88 and any redundant requirements between them are minimized.

(d) The following persons must comply with the requirements of paragraph (b) or (c) of this section, as applicable, before the dates specified.

(1) Holders of type certificates (TC): December 10, 2009.

(2) Applicants for TCs, and amendments to TCs (including service bulletins describing design changes), if the date of application was before December 10, 2007 and the certificate was issued on or after December 10, 2007: December 10, 2009 or the date the certificate is issued, whichever occurs later.

(3) Unless compliance with § 25.1729 of this subchapter is required or elected, applicants for amendments to TCs, if the application was filed on or after December 10, 2007: December 10, 2009, or the date of approval of the certificate, whichever occurs later.

(4) Applicants for supplemental type certificates (STC), including changes to existing STCs, if the date of application was before December 10, 2007 and the certificate was issued on or after December 10, 2007: June 7, 2010, or the date of approval of the certificate, whichever occurs later.

(5) Unless compliance with § 25.1729 of this subchapter is required or elected, applicants for STCs, including changes to existing STCs, if the application was filed on or after December 10, 2007, December 10, 2009, or the date of approval of the certificate, whichever occurs later.

(e) Each person identified in paragraphs (d)(1), (d)(2), and (d)(4) of this section must submit to the FAA Oversight Office for approval a compliance plan by March 10, 2008. The compliance plan must include the following information:

(1) A proposed project schedule, identifying all major milestones, for meeting the compliance dates specified in paragraph (d) of this section.

(2) A proposed means of compliance with this section, identifying all required submissions, including all compliance items as mandated in part 25, Appendix H paragraphs H25.5(a)(1) and (b) of this subchapter in effect on December 10, 2007, and all data to be developed to substantiate compliance.

(3) A proposal for submitting a draft of all compliance items required by paragraph (e)(2) of this section for review by the FAA Oversight Office not less than 60 days before the compliance time specified in paragraph (d) of this section.

(4) A proposal for how the approved ICA will be made available to affected persons.

(f) Each person specified in paragraph (e) must implement the compliance plan, or later approved revisions, as approved in compliance with paragraph (e) of this section.

(g) This section does not apply to the following airplane models:

(1) Lockheed L–188
(2) Bombardier CL–44
(3) Mitsubishi YS–11
(4) British Aerospace BAC 1–11
(5) Concorde
(6) deHavilland D.H. 106 Comet 4C
(7) VFW—Vereinigte Flugtechnische Werk VFW–614
(8) Illyushin Aviation IL 96T
(9) Bristol Aircraft Britannia 305
(10) Handley Page Herald Type 300
(11) Avions Marcel Dassault—Breguet Aviation Mercure 100C
(12) Airbus Caravelle
(13) Lockheed L–300

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 28. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

■ 29. Amend § 91.1 by adding a new paragraph (d) to read as follows:

§ 91.1 Applicability.

* * * * *

(d) This part also establishes requirements for operators to take actions to support the continued airworthiness of each airplane.

■ 30. Amend part 91 by adding new Subpart L as follows:

Subpart L—Continued Airworthiness and Safety Improvements

Sec.
91.1501 Purpose and definition.
91.1503 [Reserved]
91.1505 [Reserved]
91.1507 Fuel tank system inspection program.

Subpart L—Continued Airworthiness and Safety Improvements

§ 91.1501 Purpose and definition.

(a) This subpart requires operators to support the continued airworthiness of each airplane. These requirements may include, but are not limited to, revising the inspection program, incorporating design changes, and incorporating revisions to Instructions for Continued Airworthiness.

(b) For purposes of this subpart, the ''FAA Oversight Office'' is the aircraft certification office or office of the Transport Airplane Directorate with oversight responsibility for the relevant type certificate or supplemental type certificate, as determined by the Administrator.

§ 91.1503 [Reserved]

§ 91.1505 [Reserved]

§ 91.1507 Fuel tank system inspection program.

(a) Except as provided in paragraph (g) of this section, this section applies to transport category, turbine-powered airplanes with a type certificate issued after January 1, 1958, that, as a result of original type certification or later increase in capacity, have—

(1) A maximum type-certificated passenger capacity of 30 or more, or

(2) A maximum payload capacity of 7,500 pounds or more.

(b) For each airplane on which an auxiliary fuel tank is installed under a field approval, before June 16, 2008, the operator must submit to the FAA Oversight Office proposed maintenance instructions for the tank that meet the requirements of Special Federal Aviation Regulation No. 88 (SFAR 88) of this chapter.

(c) After December 16, 2008, no operator may operate an airplane identified in paragraph (a) of this section unless the inspection program for that airplane has been revised to include applicable inspections, procedures, and limitations for fuel tank systems.

(d) The proposed fuel tank system inspection program revisions specified in paragraph (c) of this section must be based on fuel tank system Instructions for Continued Airworthiness (ICA) that have been developed in accordance with the applicable provisions of SFAR 88 of this chapter or § 25.1529 and part 25, Appendix H, of this chapter, in effect on June 6, 2001 (including those developed for auxiliary fuel tanks, if any, installed under supplemental type certificates or other design approval) and that have been approved by the FAA Oversight Office.

(e) After December 16, 2008, before returning an airplane to service after any alterations for which fuel tank ICA are developed under SFAR 88, or under § 25.1529 in effect on June 6, 2001, the operator must include in the inspection program for the airplane inspections and procedures for the fuel tank system based on those ICA.

(f) The fuel tank system inspection program changes identified in paragraphs (d) and (e) of this section and any later fuel tank system revisions must be submitted to the Flight Standards District Office (FSDO) responsible for review and approval.

(g) This section does not apply to the following airplane models:

(1) Bombardier CL–44
(2) Concorde
(3) deHavilland D.H. 106 Comet 4C
(4) VFW-Vereinigte Flugtechnische Werk VFW–614
(5) Illyushin Aviation IL 96T
(6) Bristol Aircraft Britannia 305
(7) Handley Page Herald Type 300
(8) Avions Marcel Dassault—Breguet Aviation Mercure 100C
(9) Airbus Caravelle
(10) Lockheed L–300

■ 31. Re-designate the text of § 91.410 as new § 91.1505, remove and reserve paragraph (b), and revise the section heading of newly re-designated § 91.1505 to read as follows:

§ 91.1505 Repairs assessment for pressurized fuselages.

* * * * *

§ 91.410 [Reserved]

■ 32. Add and reserve a new § 91.410.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 33. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 45101–45105, 46105, 46301.

■ 34. Amend § 121.1 by adding a new paragraph (g) to read as follows:

§ 121.1 Applicability

* * * * *

(g) This part also establishes requirements for operators to take actions to support the continued airworthiness of each airplane.

■ 35. Amend part 121 by adding new subpart AA to read as follows:

Subpart AA—Continued Airworthiness and Safety Improvements

Sec.

121.1101 Purpose and definition.
121.1103 [Reserved]
121.1105 [Reserved]
121.1107 [Reserved]
121.1109 [Reserved]
121.1111 Electrical wiring interconnection systems (EWIS) maintenance program.
121.1113 Fuel tank system maintenance program.

Subpart AA—Continued Airworthiness and Safety Improvements

§ 121.1101 Purpose and definition.

(a) This subpart requires persons holding an air carrier or operating certificate under part 119 of this chapter to support the continued airworthiness of each airplane. These requirements may include, but are not limited to, revising the maintenance program, incorporating design changes, and incorporating revisions to Instructions for Continued Airworthiness.

(b) For purposes of this subpart, the ''FAA Oversight Office'' is the aircraft certification office or office of the Transport Airplane Directorate with oversight responsibility for the relevant type certificate or supplemental type certificate, as determined by the Administrator.

§ 121.1103 [Reserved]

§ 121.1105 [Reserved]

§ 121.1107 [Reserved]

§ 121.1109 [Reserved]

§ 121.1111 Electrical wiring interconnection systems (EWIS) maintenance program.

(a) Except as provided in paragraph (f) of this section, this section applies to transport category, turbine-powered airplanes with a type certificate issued after January 1, 1958, that, as a result of original type certification or later increase in capacity, have—

(1) A maximum type-certificated passenger capacity of 30 or more, or

(2) A maximum payload capacity of 7500 pounds or more.

(b) After March 10, 2011, no certificate holder may operate an airplane identified in paragraph (a) of this section unless the maintenance program for that airplane includes inspections and procedures for electrical wiring interconnection systems (EWIS).

(c) The proposed EWIS maintenance program changes must be based on EWIS Instructions for Continued Airworthiness (ICA) that have been developed in accordance with the provisions of Appendix H of part 25 of this chapter applicable to each affected airplane (including those ICA developed for supplemental type certificates installed on each airplane) and that have been approved by the FAA Oversight Office.

(1) For airplanes subject to § 26.11 of this chapter, the EWIS ICA must comply with paragraphs H25.5(a)(1) and (b).

(2) For airplanes subject to § 25.1729 of this chapter, the EWIS ICA must comply with paragraph H25.4 and all of paragraph H25.5.

(d) After March 10, 2011, before returning an airplane to service after any alterations for which EWIS ICA are developed, the certificate holder must include in the airplane's maintenance program inspections and procedures for EWIS based on those ICA.

(e) The EWIS maintenance program changes identified in paragraphs (c) and (d) of this section and any later EWIS revisions must be submitted to the Principal Inspector for review and approval.

(f) This section does not apply to the following airplane models:

(1) Lockheed L–188
(2) Bombardier CL–44
(3) Mitsubishi YS–11
(4) British Aerospace BAC 1–11
(5) Concorde
(6) deHavilland D.H. 106 Comet 4C
(7) VFW-Vereinigte Flugtechnische Werk VFW–614
(8) Illyushin Aviation IL 96T
(9) Bristol Aircraft Britannia 305
(10) Handley Page Herald Type 300
(11) Avions Marcel Dassault—Breguet Aviation Mercure 100C
(12) Airbus Caravelle
(13) Lockheed L–300

§ 121.1113 Fuel tank system maintenance program.

(a) Except as provided in paragraph (g) of this section, this section applies to transport category, turbine-powered airplanes with a type certificate issued after January 1, 1958, that, as a result of original type certification or later increase in capacity, have—

(1) A maximum type-certificated passenger capacity of 30 or more, or

(2) A maximum payload capacity of 7500 pounds or more.

(b) For each airplane on which an auxiliary fuel tank is installed under a field approval, before June 16, 2008, the certificate holder must submit to the FAA Oversight Office proposed maintenance instructions for the tank that meet the requirements of Special Federal Aviation Regulation No. 88 (SFAR 88) of this chapter.

(c) After December 16, 2008, no certificate holder may operate an airplane identified in paragraph (a) of this section unless the maintenance program for that airplane has been revised to include applicable

inspections, procedures, and limitations for fuel tanks systems.

(d) The proposed fuel tank system maintenance program revisions must be based on fuel tank system Instructions for Continued Airworthiness (ICA) that have been developed in accordance with the applicable provisions of SFAR 88 of this chapter or § 25.1529 and part 25, Appendix H, of this chapter, in effect on June 6, 2001 (including those developed for auxiliary fuel tanks, if any, installed under supplemental type certificates or other design approval) and that have been approved by the FAA Oversight Office.

(e) After December 16, 2008, before returning an aircraft to service after any alteration for which fuel tank ICA are developed under SFAR 88 or under § 25.1529 in effect on June 6, 2001, the certificate holder must include in the maintenance program for the airplane inspections and procedures for the fuel tank system based on those ICA.

(f) The fuel tank system maintenance program changes identified in paragraphs (d) and (e) of this section and any later fuel tank system revisions must be submitted to the Principal Inspector for review and approval.

(g) This section does not apply to the following airplane models:

(1) Bombardier CL–44
(2) Concorde
(3) deHavilland D.H. 106 Comet 4C
(4) VFW–Vereinigte Flugtechnische Werk VFW–614
(5) Illyushin Aviation IL 96T
(6) Bristol Aircraft Britannia 305
(7) Handley Page Herald Type 300
(8) Avions Marcel Dassault—Breguet Aviation Mercure 100C
(9) Airbus Caravelle
(10) Lockheed L–300

§ 121.368 [Re-designated as § 121.1105]

■ 36. Re-designate § 121.368 as new § 121.1105.

§ 121.368 [Reserved]

■ 37. Add and reserve a new § 121.368.

■ 38. Re-designate § 121.370 as new § 121.1107, remove and reserve paragraph (b), and revise the section heading to read as follows:

§ 121.1107 Repairs assessment for pressurized fuselages.

* * * * *

§ 121.370 [Reserved]

■ 39. Add and reserve a new § 121.370.

§ 121.370a [Re-designated as § 121.1109]

■ 40. Re-designate § 121.370a as new § 121.1109.

§ 121.370a [Reserved]

■ 41. Add and reserve a new § 121.370a.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 42. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

■ 43. Amend § 125.1 by adding a new paragraph (e) to read as follows:

§ 125.1 Applicability.

* * * * *

(e) This part also establishes requirements for operators to take actions to support the continued airworthiness of each airplane.

■ 44. Amend part 125 by adding new subpart M to read as follows:

Subpart M—Continued Airworthiness and Safety Improvements

Sec.
125.501 Purpose and definition.
125.503 [Reserved]
125.505 [Reserved]
125.507 Fuel tank system inspection program.

Subpart M—Continued Airworthiness and Safety Improvements

§ 125.501 Purpose and definition.

(a) This subpart requires operators to support the continued airworthiness of each airplane. These requirements may include, but are not limited to, revising the inspection program, incorporating design changes, and incorporating revisions to Instructions for Continued Airworthiness.

(b) For purposes of this subpart, the ''FAA Oversight Office'' is the aircraft certification office or office of the Transport Airplane Directorate with oversight responsibility for the relevant type certificate or supplemental type certificate, as determined by the Administrator.

§ 125.503 [Reserved]

§ 125.505 [Reserved]

§ 125.507 Fuel tank system inspection program.

(a) Except as provided in paragraph (g) of this section, this section applies to transport category, turbine-powered airplanes with a type certificate issued after January 1, 1958, that, as a result of original type certification or later increase in capacity, have—

(1) A maximum type-certificated passenger capacity of 30 or more, or

(2) A maximum payload capacity of 7500 pounds or more.

(b) For each airplane on which an auxiliary fuel tank is installed under a field approval, before June 16, 2008, the certificate holder must submit to the FAA Oversight Office proposed maintenance instructions for the tank that meet the requirements of Special Federal Aviation Regulation No. 88 (SFAR 88) of this chapter.

(c) After December 16, 2008, no certificate holder may operate an airplane identified in paragraph (a) of this section unless the inspection program for that airplane has been revised to include applicable inspections, procedures, and limitations for fuel tank systems.

(d) The proposed fuel tank system inspection program revisions must be based on fuel tank system Instructions for Continued Airworthiness (ICA) that have been developed in accordance with the applicable provisions of SFAR 88 of this chapter or § 25.1529 and part 25, Appendix H, of this chapter, in effect on June 6, 2001 (including those developed for auxiliary fuel tanks, if any, installed under supplemental type certificates or other design approval) and that have been approved by the FAA Oversight Office.

(e) After December 16, 2008, before returning an aircraft to service after any alteration for which fuel tank ICA are developed under SFAR 88, or under § 25.1529 in effect on June 6, 2001, the certificate holder must include in the inspection program for the airplane inspections and procedures for the fuel tank system based on those ICA.

(f) The fuel tank system inspection program changes identified in paragraphs (d) and (e) of this section and any later fuel tank system revisions must be submitted to the Principal Inspector for review and approval.

(g) This section does not apply to the following airplane models:

(1) Bombardier CL–44
(2) Concorde
(3) deHavilland D.H. 106 Comet 4C
(4) VFW–Vereinigte Flugtechnische Werk VFW–614
(5) Illyushin Aviation IL 96T
(6) Bristol Aircraft Britannia 305
(7) Handley Page Herald Type 300
(8) Avions Marcel Dassault—Breguet Aviation Mercure 100C
(9) Airbus Caravelle
(10) Lockheed L–300

■ 45. Re-designate § 125.248 as new § 125.505, remove and reserve paragraph (b), and revise the section heading of newly re-designated § 125.505 to read as follows:

§ 125.505 Repairs assessment for pressurized fuselages.

* * * * *

§ 125.248 [Reserved]

■ 46. Add and reserve a new § 125.248.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

■ 47. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. 1372, 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901–44904, 44906, 44912, 46105, Pub. L. 107–71 sec. 104.

§ 129.16 [Re-designated as § 129.109]

■ 48. Re-designate § 129.16 as § 129.109.

§ 129.32 [Re-designated as § 129.107]

■ 49. Re-designate § 129.32 as § 129.107, revise the section heading of newly re-designated § 129.107, and remove and reserve paragraph (b). The revised heading reads as follows:

§ 129.107 Repairs assessment for pressurized fuselages.

* * * * *

§ 129.33 [Re-designated as § 129.105]

■ 50. Re-designate § 129.33 as § 129.105.

■ 51. Designate newly re-designated §§ 129.105, 129.107, and 129.109 as Subpart B and add a new subpart heading to read as follows:

Subpart B—Continued Airworthiness and Safety Improvements

* * * * *

■ 52. Designate existing §§ 129.1, 129.11, 129.13, 129.14, 129.15, 129.17, 129.18, 129.19, 129.20, 129.21, 129.22, 129.23, 129.25, 129.28, and 129.29, as Subpart A and add a new subpart heading to read as follows:

Subpart A—General

* * * * *

■ 53. Revise paragraph (b) of § 129.1 to read as follows:

§ 129.1 Applicability and definitions.

* * * * *

(b) *Operations of U.S.-registered aircraft solely outside the United States.* In addition to the operations specified under paragraph (a) of this section, §§ 129.14 and 129.20 and subpart B of this part also apply to U.S.-registered aircraft operated solely outside the United States in common carriage by a foreign person or foreign air carrier.

* * * * *

■ 54. Add § 129.101 to subpart B to read as follows:

§ 129.101 Purpose and definition.

(a) This subpart requires a foreign person or foreign air carrier operating a U.S. registered airplane in common carriage to support the continued airworthiness of each airplane. These requirements may include, but are not limited to, revising the maintenance program, incorporating design changes, and incorporating revisions to Instructions for Continued Airworthiness.

(b) For purposes of this subpart, the ''FAA Oversight Office'' is the aircraft certification office or office of the Transport Airplane Directorate with oversight responsibility for the relevant type certificate or supplemental type certificate, as determined by the Administrator.

§ 129.103 [Reserved]

■ 55. Add and reserve § 129.103 to subpart B.

■ 56. Add § 129.111 to subpart B to read as follows:

§ 129.111 Electrical wiring interconnection systems (EWIS) maintenance program.

(a) Except as provided in paragraph (f) of this section, this section applies to transport category, turbine-powered airplanes with a type certificate issued after January 1, 1958, that, as a result of original type certification or later increase in capacity, have—

(1) A maximum type-certificated passenger capacity of 30 or more, or

(2) A maximum payload capacity of 7500 pounds or more.

(b) After March 10, 2011, no foreign person or foreign air carrier may operate a U.S.-registered airplane identified in paragraph (a) of this section unless the maintenance program for that airplane includes inspections and procedures for EWIS.

(c) The proposed EWIS maintenance program changes must be based on EWIS Instructions for Continued Airworthiness (ICA) that have been developed in accordance with the provisions of Appendix H of part 25 of this chapter applicable to each affected airplane (including those ICA developed for supplemental type certificates installed on each airplane) and that have been approved by the FAA Oversight Office.

(1) For airplanes subject to § 26.11 of this chapter, the EWIS ICA must comply with paragraphs H25.5(a)(1) and (b).

(2) For airplanes subject to § 25.1729 of this chapter, the EWIS ICA must comply with paragraph H25.4 and all of paragraph H25.5.

(d) After March 10, 2011, before returning a U.S.-registered airplane to service after any alterations for which EWIS ICA are developed, the foreign person or foreign air carrier must include in the maintenance program for that airplane inspections and procedures for EWIS based on those ICA.

(e) The EWIS maintenance program changes identified in paragraphs (c) and (d) of this section and any later EWIS revisions must be submitted to the Principal Inspector or Flight Standards International Field Office responsible for review and approval.

(f) This section does not apply to the following airplane models:

(1) Lockheed L–188
(2) Bombardier CL–44
(3) Mitsubishi YS–11
(4) British Aerospace BAC 1–11
(5) Concorde
(6) deHavilland D.H. 106 Comet 4C
(7) VFW–Vereinigte Flugtechnische Werk VFW–614
(8) Illyushin Aviation IL 96T
(9) Bristol Aircraft Britannia 305
(10) Handley Page Herald Type 300
(11) Avions Marcel Dassault—Breguet Aviation Mercure 100C
(12) Airbus Caravelle
(13) Lockheed L–300

■ 57. Add § 129.113 to subpart B to read as follows:

§ 129.113 Fuel tank system maintenance program.

(a) Except as provided in paragraph (g) of this section, this section applies to transport category, turbine-powered airplanes with a type certificate issued after January 1, 1958, that, as a result of original type certification or later increase in capacity, have—

(1) A maximum type-certificated passenger capacity of 30 or more, or

(2) A maximum payload capacity of 7500 pounds or more.

(b) For each U.S.-registered airplane on which an auxiliary fuel tank is installed under a field approval, before June 16, 2008, the foreign person or foreign air carrier operating the airplane must submit to the FAA Oversight Office proposed maintenance instructions for the tank that meet the requirements of Special Federal Aviation Regulation No. 88 (SFAR 88) of this chapter.

(c) After December 16, 2008, no foreign person or foreign air carrier may operate a U.S.-registered airplane identified in paragraph (a) of this section unless the maintenance program for that airplane has been revised to include applicable inspections, procedures, and limitations for fuel tank systems.

(d) The proposed fuel tank system maintenance program revisions must be based on fuel tank system Instructions for Continued Airworthiness (ICA) that have been developed in accordance with the applicable provisions of SFAR 88 of this chapter or § 25.1529 and part 25, Appendix H, of this chapter, in effect on June 6, 2001 (including those developed for auxiliary fuel tanks, if any, installed under supplemental type certificates or other design approval) and that have been approved by the FAA Oversight Office.

(e) After December 16, 2008, before returning a U.S.-registered airplane to service after any alteration for which fuel tank ICA are developed under SFAR 88, or under § 25.1529 in effect on June 6, 2001, the foreign person or foreign air carrier must include in the maintenance program for the airplane inspections and procedures for the fuel tank system based on those ICA.

(f) The fuel tank system maintenance program changes identified in paragraphs (d) and (e) of this section and any later fuel tank system revisions must be submitted to the Principal Inspector or Flight Standards International Field Office responsible for review and approval.

(g) This section does not apply to the following airplane models:

(1) Bombardier CL–44

(2) Concorde

(3) deHavilland D.H. 106 Comet 4C

(4) VFW–Vereinigte Flugtechnische Werk VFW–614

(5) Illyushin Aviation IL 96T

(6) Bristol Aircraft Britannia 305

(7) Handley Page Herald Type 300

(8) Avions Marcel Dassault—Breguet Aviation Mercure 100C

(9) Airbus Caravelle

(10) Lockheed L–300

Issued in Washington, DC, on October 22, 2007.

Robert A. Sturgell,

Acting Administrator.

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Federal Register

Thursday,
November 8, 2007

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 606, 610, et al.

Requirements for Human Blood and Blood Components Intended for Transfusion or for Further Manufacturing Use; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 606, 610, 630, 640, 660, 820, and 1270

[Docket No. 2006N–0221]

Requirements for Human Blood and Blood Components Intended for Transfusion or for Further Manufacturing Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) proposes to revise and update the regulations applicable to blood and blood components, including Source Plasma and Source Leukocytes, to add donor requirements that are consistent with current practices in the blood industry, and to more closely align the regulations with current FDA recommendations. FDA is taking this action to help ensure the safety of the national blood supply and to help protect donor health by requiring establishments to evaluate donors for factors that may adversely affect the safety, purity, and potency of blood and blood components or the health of a donor during the donation process.

DATES: Submit written or electronic comments on the proposed rule by February 6, 2008. Submit comments regarding information collection by December 10, 2007 to OMB (see **ADDRESSES**). See section IV of this document for the proposed effective date of a final rule based on this proposal.

ADDRESSES: You may submit comments, identified by Docket No. 2006N–0221, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described previously, in the **ADDRESSES** portion of this document under *Electronic Submissions*.

Instructions: All submissions received must include the agency name and Docket No(s). and Regulatory Information Number (RIN) (if a RIN number has been assigned) for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Information Collection Provisions: Submit written comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Brenda R. Friend, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

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I. Introduction

A. The Blood Initiative

For a variety of reasons we, FDA, decided to review comprehensively and, as necessary, revise our regulations to include definitions, policies, guidance,

and procedures related to the licensing and regulation of blood products. In the **Federal Register** of June 3, 1994 (59 FR 28821 and 28822, respectively), we issued two documents, ''Review of General Biologics and Licensing Regulations'' (Docket No. 1994N–0066) and ''Review of Regulations for Blood Establishments and Blood Products'' (Docket No. 1994N–0080). These documents announced our intent to review biologics regulations (parts 600, 601, 606, 607, 610, 640, and 660 (21 CFR parts 600, 601, 606, 607, 610, 640, and 660)), and requested written comments from the public. We gave interested persons until August 17, 1994, to respond to the documents. In response to requests for additional time, we twice extended the comment period, as announced in the **Federal Register** of August 17, 1994 (59 FR 42193), and November 14, 1994 (59 FR 56448). In addition, we responded to requests for a public meeting to allow the public to present comments regarding our review of the biologics regulations. At the public meeting on January 26, 1995, interested individuals presented their comments, which assisted us in determining whether certain regulations should be revised, rescinded, or continued without change. Since the time of the regulation review, we have implemented a number of changes to the regulations and policies applicable to the general biologics and licensing requirements, some of which applied to blood products as well as other biological products.

The United States House of Representatives Committee on Government Reform and Oversight, Subcommittee on Human Resources and Intergovernmental Relations (the Subcommittee) and other groups such as the Government Accountability Office (previously, the General Accounting Office GAO), and the Institute of Medicine (IOM), have reviewed our policies, practices, and regulations. Reports issued following the respective reviews made a number of recommendations to improve the biologics regulations, particularly as they apply to assuring the continued safety of blood products. The relevant reports are:

- ''Blood Supply Generally Adequate Despite New Donor Restrictions'' by GAO (July 22, 2002);
- ''Protecting the Nation's Blood Supply From Infectious Agents: The Need for New Standards to Meet New Threats'' by the Subcommittee (August 2, 1996);
- ''Blood Supply: FDA Oversight and Remaining Issues of Safety'' by GAO (February 25, 1997);
- ''Blood Supply: Transfusion-Associated Risks'' by GAO (February 25, 1997); and,
- ''HIV and the Blood Supply: An Analysis of Crisis Decisionmaking'' by IOM (July 13, 1995).

These reports are on file with the Division of Dockets Management (see **ADDRESSES**) under the docket number found in the heading of this document.

We have reviewed these reports and agree with the majority of the recommendations contained within them. We are not describing all the specific recommendations we received and the numerous objectives of the Blood Initiative in this document. However, in response to the GAO recommendations, FDA has completed rulemakings, including the following: (1) Requirements for Testing Human Blood Donors for Evidence of Infection Due to Communicable Disease Agents (66 FR 31146; June 11, 2001); (2) General Requirements for Blood, Blood Components, and Blood Derivatives; Donor Notification (66 FR 31165; June 11, 2001); (3) Revisions to the Requirements Applicable to Blood, Blood Components and Source Plasma, Confirmation in Part and Technical Amendment (66 FR 1834; January 10, 2001); (4) Current Good Manufacturing Practice for Blood and Blood Components; Notification of Consignees and Transfusion Recipients Receiving Blood and Blood Components at Increased Risk of Transmitting HCV Infection (''Lookback'') (65 FR 69378; November 16, 2000); and (5) Biological Products: Reporting of Biological Product Deviations in Manufacturing (65 FR 66621; November 7, 2000, and 65 FR 67477; November 9, 2000 (Correction)). This rulemaking and other notices describe and discuss specific recommendations and regulatory objectives as they apply to each rulemaking.

Through the years, we issued a number of guidance documents containing recommendations intended to assure a safe, pure, and potent blood supply. One objective of this rulemaking is to make more visible the connections between the regulations and current recommendations. In many cases in this preamble, we will describe the general intended meaning of the proposed regulations and will also discuss those recommendations, contained in current guidance, which fall under a proposed regulation. Although it is neither possible nor desirable to codify all the specific details contained in recommendations, we believe the proposed rule will more explicitly describe donor eligibility standards and will clarify the relationship between the regulations and the applicable recommendations.

The Secretary of the Department of Health and Human Services (HHS) seeks to maximize blood safety and blood availability and has designated the Assistant Secretary of Health to be responsible for these issues. The supply of blood is generally adequate to meet medical needs; however, only about 6 percent of the U.S. general public donates blood each year. Periodically, local, regional or national shortages can occur. Although blood establishments are primarily responsible for recruiting and retaining blood donors, HHS plays a key role in monitoring the blood supply to identify potential shortages. Also, the Secretary of HHS has developed a number of initiatives to encourage individuals to donate routinely and during times of shortage or national disasters. In times of acute blood shortage, HHS has sponsored national appeals for blood donation.

Under the HHS Blood Action Plan, HHS and the Public Health Service agencies of HHS act to increase blood availability by removing unnecessary restrictions to blood donation while maintaining the highest level of safety for the recipient. HHS brings donor eligibility issues for discussion at scientific workshops and at FDA scientific advisory committees, including the Blood Products Advisory Committee and the Transmissible Spongiform Encephalopathies Advisory Committee, where we seek advice and scientific-based recommendations. Additionally the HHS Advisory Committee on Blood Safety and Availability provides advice on global public health, economic, social, and ethical issues related to FDA policies on donor eligibility. These discussions have often focused on the impact of donor deferrals on blood availability as well as the safety of blood for the recipient. During the development of policies on donor eligibility, including donor screening, testing and deferral, FDA considers the impact of candidate policies on blood availability and tries to balance anticipated donor loss with safety gained. One example of this balancing approach may be found in FDA's development of a guidance recommending deferral of persons who may have been exposed to the Bovine Spongiform Encephalopathy (BSE) agent (the agent that causes Mad Cow Disease) and thus create an increased risk of transfusion transmission of variant Creutzfeldt-Jakob Disease (vCJD). FDA commissioned the studies that produced the first available data regarding donor travel patterns and used the data to optimize the balance between a

reduction in the risk of transfusion-transmitted vCJD (estimated at 91 percent) and donor loss (estimated at 7 percent).

In developing this proposed rule, FDA has reviewed the proceedings of numerous workshops and advisory committee meetings, mindful of the goals of the HHS Blood Action plan: increasing blood availability by removing unnecessary restrictions to blood donation, while maintaining the highest level of safety for the recipient. For example, we have tried to achieve those goals by our proposal to change labeling requirements for certain donations from patients with hereditary hemochromatosis. This provision would remove a barrier to safe blood collection from these individuals. FDA welcomes comments on the risks and benefits of the donor eligibility criteria proposed in this rulemaking with regard to potential donor loss versus gains in blood product safety and donor safety.

B. Existing Donor Screening Requirements

We have developed five ''layers of safety'' to help ensure a safe blood supply:

- Donor suitability standards (part 640);
- Donor deferral lists (§ 606.160(e));
- Testing blood for communicable disease agents (§ 610.40);
- Quarantining unsuitable blood and blood components (§ 606.40(a)(6)); and
- Monitoring establishments by requiring the investigation of problems in manufacturing (21 CFR 211.192), reporting of fatalities (§ 606.170) and reporting of product deviations (§ 606.171).

The five layers of safety are designed to overlap and help prevent the distribution of blood and blood components that are at increased risk for transmitting infectious agents such as human immunodeficiency virus (HIV), hepatitis B virus (HBV), and hepatitis C virus (HCV).

In addition to safeguarding against transmission of disease agents from donor to recipient, the current donor suitability standards are designed to prevent harm to a donor from the donation process, and to help ensure the safety, purity, and potency of blood and blood components. Usually, collecting establishments review donor deferral lists to identify, before donation, individuals not eligible to donate. Collecting establishments conduct a prescribed limited physical examination and medical history interview for each donor. These steps are performed to:

- Establish that the donor is in good health;
- Rule out relevant disease infection; and,
- Identify any risk factors that would increase the possibility of transmitting a transfusion-transmitted infection through the donation.

In addition, under § 610.40, a blood sample collected from the donor at the time of donation must be tested for evidence of infection due to communicable disease agents such as HIV and viral hepatitis. By performing these steps, the collecting establishment helps assure the safety, purity, and potency of blood and blood components.

C. Proposed Regulations for Determining Donor Eligibility (Proposed Part 630)

Although we currently have donor suitability requirements applicable to blood and blood components, including Source Plasma and Source Leukocytes, parts 606, 610, 640, and 660, we intend to reorganize and revise current regulations, to make more visible the connections between the regulations and current FDA recommendations, to make them consistent with current practices in the blood industry, and to remove unnecessary or outdated requirements. Based on the recommendations of the 1997 GAO report, ''Blood Supply: FDA Oversight and Remaining Issues of Safety,'' we are issuing in the form of regulations provisions of the memoranda and guidance on donor eligibility that we believe are essential to help ensure the safety of the national blood supply.

Subsequent to the February 1997 GAO report, we conducted numerous workshops to obtain public input. The subjects discussed included for example:

- Screening and testing for evidence of infection due to communicable diseases;
- Donor history of hepatitis;
- Use of a donor deferral registry;
- Donor blood volume;
- Donor deferral based on cancer; and,
- Streamlining the donor history questionnaire.

We have consolidated information from memoranda, guidances, other workshops, advisory committee meetings, current § 630.6 requiring donor notification, and the donor suitability requirements in § 640.3 and 640.63 in developing the requirements for donors of blood and blood components intended for transfusion or for further manufacturing use in proposed part 630. For the purpose of this proposed rulemaking, when the term ''blood and blood components'' is used, Source Plasma and Source Leukocytes are included. We also use the term ''donor eligibility'' when referring to criteria to permit donation. This proposed rule uses the term ''suitability'' only when discussing the acceptability of the donated blood and blood components for transfusion or for further manufacturing use. (For further discussion, see section III.E of this document.)

II. Legal Authority

FDA is proposing to issue this new rule under the authority of sections 351 and 361 of the Public Health Service Act (PHS Act) (42 U.S.C. 262 and 264), and the provisions of the Federal Food, Drug, and Cosmetic Act (the act) that apply to drugs and devices (21 U.S.C. 201 *et seq.*).

The establishment of these criteria for determining the eligibility of a donor of blood and blood components and the suitability of blood and blood components for transfusion or for further manufacturing, is intended to prevent unsafe units of blood or blood components that may transmit a relevant transfusion-transmitted infection from entering the blood supply, while safeguarding the health of donors.

FDA has been delegated authority under section 361 of the PHS Act to make and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable disease from foreign countries into the States or possessions, or from one State or possession into any other State or possession. Intrastate transactions affecting communicable disease transmission may also be regulated under section 361 of the PHS Act (see *Louisiana* v. *Mathews*, 427 F. Supp. 174, 176 (E.D. La. 1977)). FDA recently exercised this authority when the agency issued three rules requiring tissue establishments to register and list the human tissues manufactured; to conduct donor screening and testing; and to manufacture tissues in accordance with good tissue practices, including manufacturing practices, SOPs, recordkeeping, and other practices designed to prevent the transmission of communicable disease (66 FR 5447 (January 19, 2001), 69 FR 29786 (May 25, 2004), 69 FR 68612 (November 24, 2004)).

It is important to recognize that blood manufacturing presents significant risks of communicable disease transmission. As FDA has previously noted, section 361 of the PHS Act authority ''is designated to eliminate the introduction of communicable disease, such as hepatitis, from one state to another. Of

necessity, therefore, this authority must be exercised upon the disease causing substance within the state where it is collected, manufactured, or otherwise found. Thus, the Commissioner of Food and Drugs may promulgate current good manufacturing practice regulations for intrastate blood banking, pursuant to the act, as hepatitis is a communicable disease. Without proper controls, it is likely to spread on an interstate basis.'' (39 FR 18614, May 28, 1974). These statements are equally true today, where the spectrum of disease agents has increased to include, for example, HIV–1 and –2, agents that cause AIDS, and HCV, an additional cause of hepatitis. We understand communicable diseases to include, but not be limited to, those transmitted by viruses, bacteria, fungi, parasites, and transmissible spongiform encephalopathy agents. Preventing the spread of communicable disease is the important purpose underlying the comprehensive regulations for blood establishments now in place, which this proposed rule would somewhat modify and modernize.

Under section 361 of the PHS Act, FDA is authorized to enforce the regulations it issues to prevent the introduction, transmission, or spread of communicable disease interstate through such means as inspection, disinfection, sanitation, destruction of animals or articles found to be so infected or contaminated as to be sources of dangerous infection in human beings, and other measures that may be necessary. In addition, under section 368(a) of the PHS Act, any person who violates a regulation prescribed under section 361 of the PHS Act may be punished by imprisonment for up to 1 year. Individuals may also be punished for violating such a regulation by a fine of up to $100,000 if death has not resulted from the violation or up to $250,000 if death has resulted. For organizational defendants, fines range up to $200,000 and $500,000. Individuals and organizations also face possible alternative fines based on the amount of gain or loss (18 U.S.C. 3559 and 3571(b) through (d)). Federal District Courts also have jurisdiction to enjoin individuals and organizations from violating regulations implementing section 361 of the PHS Act. (See *Califano* v. *Yamasaki*, 442 U.S. 682, 704-05 (1979); *United States* v. *Beatrice Foods Co.*, 493 F.2d 1259, 1271-72 (8th Cir. 1974), cert. denied, 420 U.S. 961 (1975).)

Blood and blood components introduced or delivered for introduction into interstate commerce are subject to section 351 of the PHS Act, which requires that such products be licensed (42 U.S.C. 262). Section 351 of the PHS Act further authorizes FDA, by delegation, to establish requirements for such biologics licenses (42 U.S.C. 262(a)(2)(A)). In addition to its authority under section 361 of the PHS Act, FDA relies on this authority when the proposed regulations would be applied to products subject to biologics license. To obtain a license, applicants must show that the manufacturing establishment meets all applicable standards designed to assure the continued safety, purity, and potency of the blood and blood components, and that the product is safe, pure, and potent. FDA's license revocation regulations provide for the initiation of revocation proceedings if, among other reasons, the establishment or the product fails to conform to the standards in the license application or in the regulations designed to ensure the continued safety, purity, or potency of the product (§ 601.5). Violations of section 351 are punishable by a 1-year term of imprisonment, a fine as described in the preceding paragraph, or both (42 U.S.C. 262(f), 18 U.S.C. 3571).

Blood and blood components are also drugs or devices, as those terms are defined in sections 201(g)(1) and (h) of the act (21 U.S.C. 321(g)(1) and (h); see *United States* v. *Calise*, 217 F. Supp. 705, 708–09 (S.D.N.Y. 1962)); 42 U.S.C. 262(j) (''The Federal Food, Drug, and Cosmetic Act applies to a biological product subject to regulation under this section, except that a product for which a license has been approved * * * shall not be required to have an approved [new drug] application''). Since blood and blood components are drugs or devices generally subject to the act, in issuing these regulations, FDA relies on the act's grant of authority to issue regulations for the efficient enforcement of the act (21 U.S.C. 371(a)). The act requires collecting establishments to comply with the act's current good manufacturing practice provisions and related regulatory scheme. Under section 501 of the act (21 U.S.C. 351), drugs, including blood and blood components, are deemed ''adulterated'' if the methods used in their manufacturing, processing, packing, or holding do not conform with current good manufacturing practice (21 U.S.C. 351(a)(2)(B)). Devices are deemed ''adulterated'' if the methods used in, or the facilities or controls used for, their manufacture, packing, storage, or installation are not in conformity with good manufacturing practice requirements established by FDA in regulations (21 U.S.C. 351(h) and 360j(f)(1)). We propose to specify that the provisions of the proposed rule are critical aspects of good manufacturing practice. The proposed rule would require collecting establishments to assure that donors of blood and blood components meet the essential criteria for eligibility, and that blood and blood components are suitable for transfusion or further manufacturing. Blood and blood components not manufactured in accordance with good manufacturing practice, including the provisions of the proposed rule, would be considered adulterated under 21 U.S.C. 351(a)(2)(B) or 21 U.S.C. 351(h) and 360j(f)(1), and collecting establishments and blood and blood components would be subject to the act's enforcement provisions for violations of the act. These include seizure of violative products (section 304 of the act) (21 U.S.C. 332)), injunction against ongoing and future violations, and criminal penalties (section 303 of the act) (21 U.S.C. 333 and 18 U.S.C. 3571)). The act punishes both misdemeanor and felony violations of the act. Misdemeanor violations are punishable by a term of imprisonment of up to 1 year, a fine as described previously, or both. (21 U.S.C. 333(a)(1), 18 U.S.C. 3571). Individuals convicted of felony violations may be sentenced to a term of imprisonment of up to 3 years, a fine of up to $250,000, or both. Organizations convicted of felony violations may be sentenced to a fine of up to $500,000. Individuals and organizations also face possible alternative fines based on the amount of gain or loss (18 U.S.C. 3571(b) through (d)).

III. Summary of the Proposed Rule

A. General Description

The proposed regulations in subparts A, B, and C of part 630 would apply to you, establishments that collect and process blood and blood components. The proposed rule would add donor requirements for blood and blood components, including Source Plasma and Source Leukocytes, to make them consistent with current practices in the blood industry. The proposed regulations also would assemble into one part certain current provisions applicable to determining the eligibility of a donor. These general regulations would apply to any blood and blood component intended for transfusion or for further manufacturing use, including Source Plasma and Source Leukocytes, and those blood and blood components used in the manufacture of a medical device. We are proposing a new title for part 630 to reflect this application. For purposes of this document, whenever

we discuss blood and blood components, the source is human.

B. Standard Operating Procedures (SOPs) (Proposed § 606.100(b))

We propose to clarify current § 606.100(b) to state that you must not only establish and maintain, but must also follow written procedures, in accordance with all applicable regulations for all steps in the collection, processing, compatibility testing, storage and distribution of blood and blood components intended for transfusion and for further manufacturing use. We propose to distinguish the types of transfusions as ''allogeneic'' and ''autologous.'' We also propose to add, to current § 606.100(b), language making explicit the requirement that you establish, maintain, and follow SOPs for investigating product deviations (§ 606.171), and for recordkeeping related to current good manufacturing practice requirements (part 606) and biological product standards (part 610).

C. Records (Proposed § 606.160(e))

Current § 606.160(e) requires collecting establishments to have records available to identify unsuitable donors and prevent the distribution of blood and blood components collected from such individuals. This is sometimes accomplished by establishing a coding system, which allows personnel to identify a donor as ineligible without revealing the reason for the deferral to those who do not have a need to know the information. We propose to continue this requirement in § 606.160(e), which would require establishments to maintain a record of donors determined to be ineligible to donate in order to prevent the collection of blood or blood components from such individuals while they are ineligible or deferred. We also are proposing in § 606.160(e)(2) that all donor screening locations of a collecting establishment operating under a common organization, e.g., under the same license number, use a collective master list of donors determined at each location to be ineligible to donate. This list is also known as a donor deferral registry. Under proposed § 630.10(d)(1), the collecting establishment would be required to review the donor deferral registry before collection to prevent the collection of blood and blood components from donors deferred from donation temporarily (when the temporary deferral is in effect when the donor presents), indefinitely, or permanently.

Under proposed § 606.160(e)(2), we are proposing to limit entry into the shared donor deferral registry to those donors who are determined to be ineligible to donate due to a possible exposure to a relevant transfusion-transmitted infection (proposed § 630.10(f)), or to certain other factors that may adversely affect the health of the donor, or the safety, purity, or potency of the blood or blood component (proposed § 630.10(g)(1) through (g)(6)). We are interested in receiving comments on:

- The information that should be included on a donor deferral registry used in common by all donor screening locations of a collecting establishment operating under a common organization (e.g., under the same license number);
- The adequacy of the criteria listed in proposed § 630.10(f) and (g)(1) through (g)(6) to prevent the collection of blood and blood components that may be harmful to the donor or that may result in an unsuitable product due to possible exposure of the donor to a transfusion-transmitted infection; and
- The technical feasibility of complying with the proposed requirement.

We are also seeking comments on the feasibility of sharing donor deferral lists between licensed establishments for deferrals required by the FDA. Such national deferral registries have existed for Source Plasma collections for many years.

Proposed § 606.160(e) would help prevent the collection of unsuitable blood and blood components and reduce recipients' exposure to blood and blood components with an increased risk of transmitting an infectious agent. For example, under proposed § 606.160(e)(2), if a collecting establishment collected blood at four locations and three mobile sites, donors deferred from further donation at any of the seven sites would be listed on a donor deferral registry available at all seven sites. The requirement to review the record of ineligible donors before collection and to make the record of ineligible donors available to collecting establishments operating under a common organization would improve blood safety by reducing the likelihood of accidental release of potentially infectious units. We discussed the practice of reviewing a donor deferral registry before the collection of blood and blood components at the Blood Product Advisory Committee meeting of October 20, 1994, and recommended the practice in the guidance document entitled ''Guideline for Quality Assurance in Blood Establishments'' (60 FR 36290, July 14, 1995).

We are considering whether to include, in the final rule, a provision requiring that donor deferral records be used and disclosed only for purposes consistent with subchapter F of 21 CFR Chapter I.

- We request comment on this proposal, including the following specific issues:

Whether the current practices and protections adequately protect the confidentiality of donor records;

Whether those current practices and protections will still be adequate if FDA requires that establishments make donor deferral records available at all collection sites operating under the same license or common management; and

Whether a regulation limiting the use and disclosure of such records would actually further the goal of protecting the confidentiality of the records.

In addition, we request comment on the following:

We believe that few, if any, blood collection establishments are HIPAA-covered entities under the HIPAA Privacy Rule. However, to evaluate the impact of this rule on any such HIPAA-covered entities, we are seeking public comment from any facilities that may be covered by the HIPAA Privacy Rule, regarding whether or how HIPAA requirements may impact their ability to comply with this proposed rule.

D. Testing Requirements (Proposed § 610.40(a) and (e) and § 630.30(a)(5))

1. Testing for Relevant Transfusion-transmitted Infections

Section 610.40(a) requires that a collecting establishment test each donation of blood or blood component intended for transfusion or for further manufacturing use in preparing a product for evidence of infection due to the listed communicable disease agents. We are proposing to revise § 610.40(a) by replacing ''communicable disease agents'' with ''relevant transfusion-transmitted infections described in § 630.3(g).'' This change would require testing and, where appropriate, screening, for additional relevant transfusion-transmitted infections that present a potential risk to the health of the recipient and for which appropriate testing methods are available. Donor screening or testing for a relevant transfusion-transmitted infection may vary based on the characteristics of the blood product. For example, we do not currently require testing of Source Plasma for human T-lymphotropic virus (type I or II) because the virus is cell-associated and readily removed and inactivated during manufacturing. Similarly, testing for another relevant transfusion-transmitted infection may

not be required if viral inactivation or removal procedures have been validated to ensure inactivation or removal of the infectious agent and screening for risk factors is available, unless the risk of harm from transmission is too great to rely solely on viral inactivation procedures and screening for risk factors.

2. Testing Further With One or More Supplemental (Additional, More Specific) Test(s)

When a donation is found to be reactive by a screening test, § 610.40(e) currently requires that the establishment further test the donation with a supplemental (additional, more specific) test approved for such use by FDA. In proposed § 610.40(e), we are proposing to require that additional testing may be performed with additional tests that are not necessarily ''more specific'' provided that the additional test(s) is appropriate to determine the donor's infection status prior to notification. At a meeting of the Blood Products Advisory Committee (BPAC) on March 18 and 19, 2004, the committee heard presentations on alternative algorithms for additional testing for HIV and HCV after an initially reactive screening test. The committee recommended that FDA reconsider its requirement that supplemental testing be performed using more specific tests. At that meeting, industry representatives provided information on the need for and the use of alternative testing algorithms to confirm the deferred donor's infection status that involved the use of more than one enzyme immunoassay (EIA) screening test, including the use of multiple EIA screening tests in lieu of a supplemental test. A Public Health Service (PHS) working group reviewed the data presented at the March 2004 BPAC and all available data and concluded that when donor screening tests were reactive for antibody to HIV and reactive on an individual HIV–1 nucleic acid test (NAT) test, supplemental testing for HIV antibody was not necessary. A similar conclusion that supplemental testing for HCV was not necessary was reached for donor screening tests that were reactive for antibody to HCV and reactive on an individual HCV NAT test. However, the PHS working group was unable to recommend the use of multiple EIA screening tests in lieu of the HIV–1 or HCV supplemental tests when the individual HIV–1 or HCV NAT test was non-reactive.

The intent of this section is to allow for the use of multiple screening tests to ''confirm'' infection or to provide additional information on the presence of the analyte when described in guidance, as appropriate. It is not FDA's intention to move away from confirmatory or supplemental testing where such an approved test exists, but rather to recognize that under certain circumstances alternative testing schemes may provide confirmatory or supplemental testing information. In the case of HIV NAT, FDA has allowed the HIV–1 Western Blot not to be performed when the HIV EIA is reactive and HIV NAT is positive. If the HIV NAT is negative, the Western Blot must still be performed. If this rule is finalized, we intend to make initial recommendations for additional testing algorithms in draft guidance issued for public comment.

3. Testing for Bacterial Contamination for Platelets and Other Transfusible Blood Components

Bacteria remain a significant contaminant in blood and blood components (Ref. 1). Bacterial contamination of platelets has been discussed at an FDA workshop held on September 24, 1999, at the December 2002 BPAC meeting, and at the April 2004 meeting of the Public Health Service Advisory Committee on Blood Safety and Availability. AABB (formerly known as the American Association of Blood Banks) established an accreditation standard, effective March 2004, requiring accredited blood banks and transfusion services to have methods to limit and detect bacterial contamination in all platelet components. Currently, bacterial detection is being performed using a variety of methods, including FDA-approved quality control tests. However, we are proposing in § 630.30(a)(5) that a platelet component would not be suitable until tests for bacterial contamination are found negative. (See section III.L of this document.) In some instances, specific bacteria identified as contaminants in a blood component could indicate an underlying bacteremia or serious illness in the donor. Therefore, we are also soliciting comments on: (1) Whether to require, in the context of testing of platelet components prior to release, the identification of the species of the bacterial contaminant and (2) whether to require donor deferral and notification when identification of the contaminant indicates possible endogenous bacteremia, and not contamination during collection and processing. Additionally, we are also considering whether to extend, to other blood components for transfusion, the requirement for testing for bacterial contamination, and donor deferral and notification based on the results. We also invite comment on this issue.

E. Purpose and Scope (Proposed § 630.1)

The proposed rule would require that a blood establishment make two determinations: (1) The donor is eligible to donate and (2) the donation is suitable for use in transfusion or further manufacturing use. The proposed requirements in part 630 would provide criteria for the collecting establishment to use to determine the eligibility of the donor to donate. We would require that the collecting establishment determine on the day of donation that the donor is in good health and is not deferred from donating. Proposed § 630.1 also makes reference to previously issued requirements in part 630 that describe the process for notifying donors of their deferral due to failure to satisfy the eligibility criteria or test results for relevant transfusion-transmitted infections required under § 610.40.

This proposed rule would apply to any establishment or facility that collects any blood or blood component from donors:

- For transfusion, including autologous use;
- For further manufacturing use; or
- For use as a component of a medical device.

Creating this separate part for donor eligibility requirements for donors of blood and blood components would allow for a consistent set of criteria for all individuals participating in various collection programs.

F. Definitions (Proposed § 630.3)

Section 630.3(a) through (l) of the proposed rule contains proposed definitions of terms specifically used in this rulemaking.

We are proposing in § 630.3(a) and (b) to define *blood* and *blood component* as used in part 630. We would define blood as a product and describe the product as a fluid containing dissolved and suspended elements, which circulates in a human's vascular system. *Blood component* also would be defined as a product, and described as containing a part of blood separated by physical or mechanical means.

In proposed § 630.3(e), the definition for *intimate contact* is intended to help you determine whether the donor is at risk for contracting a transfusion-transmitted infection from another individual who may be infected with a transfusion-transmitted infection.

We are defining *relevant transfusion-transmitted infection* in proposed § 630.3(g)(1) to identify the currently recognized disease agents that are

associated with transmission from the donor to the recipient by transfusion, infusion, or injection of a blood component or blood derivative and for which there are appropriate screening and/or testing measures available. These are: HIV, types 1 and 2; HBV; HCV; human T-lymphotropic virus (HTLV), types I and II; *Treponema pallidum* (syphilis); Creuztfeldt-Jakob disease (CJD), variant Creutzfeldt-Jakob disease (vCJD); and *Plasmodium sp.* (malaria).

In the proposed rule entitled ''Requirements for Testing Human Blood Donors for Evidence of Infection Due to Communicable Disease Agents'' (64 FR 45340, August 19, 1999), we solicited comments, with supporting data, from the public in regard to the value of donor testing for syphilis as a marker of increased risk behavior, as a surrogate test for other infectious diseases, and in preventing the transmission of syphilis through blood transfusion. After reviewing the comments and submitted scientific data, we determined that the comments did not provide sufficient supporting data to justify eliminating the requirements for screening and testing the donor for syphilis. We continue to consider this issue, including any further studies that address the issues of transfusion-related syphilis infection or testing for syphilis as a surrogate marker for other communicable diseases; and we again request comments and data concerning whether establishments could discontinue syphilis testing without adversely affecting the safety of the blood supply. If we receive adequate data, we will eliminate or modify this testing requirement in the final rule.

The second part of the definition in § 630.3(g)(2), proposes criteria for identifying additional disease agents that present a risk of transmission from the donor to the recipient by transfusion of blood or blood components. This risk would include disease and disease agents with a known, presumptive, or theoretical risk of infection through transfusion, such as West Nile virus. (See ''Guidance for Industry: Assessing Donor Suitability and Blood and Blood Product Safety in Cases of Known or Suspected West Nile Virus Infection,'' dated June 2005.) To be a relevant transfusion-transmitted infection, a disease agent or disease must meet all of the following criteria:

- The disease agent or disease must present a significant health risk that could be fatal, life-threatening, cause permanent impairment of a body function or damage to body structure, or necessitate medical intervention to preclude such impairment or damage; and
- There must be appropriate screening and/or testing methods available; and
- The disease agent or disease must present a risk of transmission by the transfusion of the blood or blood component collected, or by the use of a blood derivative product manufactured from collected blood or blood components, to the potential recipient. The disease agent or disease must be potentially transmissible by that blood, blood component, or blood derivative product; and either have sufficient incidence and/or prevalence to affect the potential donor population; or have been accidentally or intentionally released in a manner that would place donors at risk of infection, such as a bioterrorism attack or laboratory accident that releases an agent, e.g., anthrax or smallpox, into the population.

We are also proposing in § 630.3(k) a definition for *transfusion-transmitted infection*. This definition would include any transfusion-transmitted disease not included under proposed § 630.3(g). The criteria for a transfusion-transmitted infection are as follows:

- The transfusion-transmitted infection must present a significant health risk that could be fatal, life-threatening, cause permanent impairment of a body function or damage to body structure, or necessitate medical intervention to preclude such impairment or damage; and
- The disease agent or disease may present a risk of transmission by the transfusion of the blood or blood component collected, or by the use of a blood derivative product manufactured from collected blood or blood components, to the potential recipient.

The definition of a transfusion-transmitted infection differs from a relevant transfusion-transmitted infection in that the existence of sufficient incidence and/or prevalence to affect the potential donor population is not a part of the definition. Available screening and testing methods may also be limited. One example of such a transfusion-transmitted infection is leishmania.

It is our intention to issue guidance following the good guidance practices in 21 CFR 10.115 to advise you when we believe that a new disease agent or disease meets the criteria for a relevant transfusion-transmitted infection, and that we recommend that you take steps to screen and/or test donors of all or certain blood components for that particular risk of transmission. The criteria expressed in this provision would support such a notification only when there is a significant concern. Moreover, good guidance practices provide the public with an opportunity to comment on guidance before its implementation, unless prior public participation is not feasible or appropriate, e.g., in a public health emergency. In addition, we intend to hold public meetings and/or consult with advisory committees where appropriate, to help us determine whether a disease agent or disease meets these criteria, and whether FDA should recommend that establishments perform donor screening and/or testing for it.

We believe that the issuance of such guidance will assist collecting establishments, especially small establishments that are not able to track emerging disease agents and diseases in a timely manner. By providing these notifications, we will perform an important communications function and assist collecting establishments in meeting their regulatory obligations to screen and test donors.

Donor, as used in the proposed regulation in § 630.3(c), is defined to include a person who is a potential candidate as well as a person who completes the act of donation.

We are defining *eligibility of a donor* in proposed § 630.3(d) and *suitability* of *the donation* in proposed § 630.3(i) so as to distinguish between the acceptability of a donor for donation and the acceptability of the donation for transfusion or for further manufacturing use.

We have defined *physician substitute* in proposed § 630.3(f), *responsible physician* in proposed § 630.3(h), and *trained personnel* in proposed § 630.3(j) according to the education and qualifications required to fulfill the position description.

You, in proposed § 630.3(l), is defined so as to establish who must comply with the requirements in proposed part 630.

G. Medical Supervision (Proposed § 630.5)

In § 630.5, we are proposing to include requirements prescribing the level of medical supervision at collecting establishments responsible for determining the eligibility of a donor, collecting blood and blood components, or performing other procedures with significant implications for both the continued health of donors and the safety of the blood supply. Proposed § 630.5 would:

- Apply to the collection of blood and blood components;
- Amend, combine, and redesignate certain regulations; and
- Codify certain recommendations currently in guidance documents.

Except as provided otherwise, proposed § 630.5(a) would require you to authorize a responsible physician, who is trained and qualified, to determine the eligibility of a donor of blood or blood components in accordance with part 630. We would require that each collecting establishment have a qualified physician on the premises when determining donor eligibility, immunizing donors for the purpose of producing high-titer plasma, collecting Whole Blood or blood components, and returning red blood cells to the donor.

Proposed § 630.5(b) would consolidate these requirements, and would require collecting establishments to have a responsible physician present during the determination of eligibility of a donor, the collection of blood and blood components, the collection of Source Plasma from ineligible donors in an approved program, the return of red blood cells to the donor, and the immunization of donors. The responsible physician would:

- Direct and control the physician substitutes and trained personnel; and
- Approve procedures concerning the determination of donor eligibility, the collection of blood and blood components, the immunization of a donor, and the return of red blood cells or other blood constituents to the donor during apheresis.

Proposed § 630.5(c) would permit a collecting establishment to authorize a physician substitute to perform the same functions of a responsible physician in the collection of Source Plasma, except the responsible physician would be required to be present for red blood cell immunizations. Many plasma collecting establishments currently have FDA approval under alternative procedures regulations in § 640.120 for the use of a physician substitute program for a variety of activities. These include supervising the collection of Source Plasma from donors who meet all normal donor suitability requirements, and for the scheduling and administration of the injection of a licensed vaccine for the production of high titer plasma. However, the responsible physician is required to be present during red blood cell immunization and high-risk collections. This proposed rule is consistent with these alternative procedures and with our recommendations issued in the August 15, 1988, memorandum to all plasma establishments entitled ''Physician Substitutes.'' We believe that the use of a physician substitute is adequate to help ensure the continued safety of Source Plasma donors and that the Source Plasma collected from these donors is safe, pure, and potent.

Proposed § 630.5(d) would permit collecting establishments to authorize trained personnel, including physician substitutes, to determine the donor's eligibility and collect blood and blood components in the absence of a responsible physician. Under § 606.100(b), we would require the collecting establishment to establish, maintain, and follow SOPs specifying criteria for determining donor eligibility, and for the collection of blood and blood components.

The collecting establishment would be required in proposed § 630.5(e) to have SOPs for providing emergency medical services to a donor within 15 minutes when necessary. Although we currently require the presence of appropriately trained medical personnel, our current regulations do not directly address the availability of emergency medical services, which a donor may require. We are interested in receiving comments on what would be considered as appropriate for available emergency medical services.

H. General Donor Eligibility Requirements (Proposed § 630.10)

We propose in § 630.10 to require certain steps for determining the eligibility of a donor to donate blood and blood components. In proposed § 630.10(a), a collecting establishment would be required to perform these prescribed steps, or assessments, to determine if the donation may adversely affect:

- The health of the donor or
- The safety, purity, or potency of blood or blood components.

We are proposing to combine and revise the donor suitability requirements in §§ 640.3 and 640.63 and to redesignate these requirements as § 630.10. Proposed § 630.10 would contain the requirements for determining the eligibility of the donor to donate blood and blood components, whether intended for transfusion or for further manufacturing use.

1. Educational Material

In § 630.10(b), we propose to require collecting establishments to provide to all donors, before donation, information about the relationship among behaviors that increase risks of relevant transfusion-transmitted infections, signs and symptoms of such infections, and the consequent risk to the safety of the blood and blood component. This information may be provided in oral, written, or multimedia form in a manner designed to be understood by the donor, in appropriate language and literacy level and taking into account any disabilities. When screening for behavioral risk factors is required for a relevant transfusion-transmitted infection (for example, HIV, HBV, or HCV), the material would instruct donors to self-defer if they determine that they have participated in an increased-risk behavior for, or show signs or symptoms of, that relevant transfusion-transmitted infection. Currently, we recommend that establishments provide educational material to inform potential donors of the risks of HIV transmission and the need to self-defer. The current recommendations for educational material are described in the memorandum entitled ''Revised Recommendation for the Prevention of Human Immunodeficiency Virus (HIV) Transmission by Blood and Blood Products,'' issued April 23, 1992. We intend to issue additional guidance on educational material in the future. The proposed rule would also require that educational material include behavioral risks and signs and symptoms for hepatitis and other relevant transfusion-transmitted infections determined to present a risk to the blood supply. We are soliciting comments on this provision, particularly on how comprehensive the educational material should be and the format or style in which it is presented.

2. Assessment of the Donor's Eligibility to Donate

Current § 640.3 requires that the donor be in good health and that the collecting establishment determine the donor's suitability for donation on the day of collection. The status of the donor's health is determined by performing a prescribed physical examination, and the donor may not serve as the source of Whole Blood more than once in 8 weeks.

Proposed § 630.10(c) would require that the collecting establishment perform an assessment of the donor's eligibility on the day of donation, and before collection. An exception would be allowed for the collection of blood components that cannot be stored for more than 24 hours, such as granulocytes for transfusion. For such components, the collecting establishment may perform a donor assessment and the testing required under § 610.40(a) and (b) 1 day before the collection of such products. Establishments would be required to have SOPs in place to identify such components.

In proposed § 630.10(d), determination of a donor's eligibility to

donate would consist of four assessments:

- Assessing the donor's deferral status;
- Assuring that the donation interval is appropriate, taking into account whether the donor is participating simultaneously in other blood or blood component collection programs;
- Assessing the donor's medical history; and
- Assessing the donor's health by performing a physical assessment of the donor.

Consistent with the good guidance practice regulations, we intend to issue guidance on determining the eligibility of a donor of blood and blood components. The guidance document would represent our current thinking on describing the assessment factors, signs, and symptoms, and recommended deferral periods to be included in a medical history questionnaire and a physical examination.

a. *Deferral status and donation history.*

After the donor has reviewed the educational material and does not self-defer, under proposed § 630.10(d)(1) the collecting establishment would check the donor deferral registry to determine whether the donor is deferred temporarily, indefinitely or permanently. (See section III.C of this document.) If the donor is deferred from allogeneic donation indefinitely, or permanently, or the temporary deferral period has not expired, the donor is ineligible to donate. Donor deferrals are based on the degree of risk to the donor's health, or the safety, purity, and potency of the donated blood or blood components. Under proposed § 630.10(d)(2), the collecting establishment would check the donor's most recent donation to assure that the donation interval is appropriate for the type of donation, as described in proposed § 630.15(a)(1) (Whole Blood), and § 640.22(b) (Platelets) and 640.65(b)(4) (Plasmapheresis) (§§ 640.22(b) and 640.65(b)(4)). In the interest of donor protection, we are proposing to include in proposed § 630.10(d)(2) the requirement that the establishment take into account whether the donor is participating in other blood or plasma collection programs, which could put the donor at risk by possible over-collection of a blood component. This is currently recommended in a blood memorandum dated March 10, 1995, to registered blood and Source Plasma establishments entitled ''Revision of FDA Memorandum of August 27, 1982: Requirements for Infrequent Plasmapheresis Donors.''

b. *The donor's medical history.*

Proposed § 630.10(e) would require the collecting establishment to establish that the donor is in good health. This is usually accomplished by administering an appropriate medical history questionnaire in oral, written, or multimedia form, and taking into account any disabilities using appropriate language and literacy level, to the donor on each day of donation. With frequent donation, e.g., frequent Source Plasma donations, an appropriate abbreviated questionnaire may be used if it adequately captures necessary donor medical history. The use of an abbreviated donor history questionnaire was discussed at the Blood Products Advisory Committee meeting held on December 11, 2003.

The questionnaire would enable the collecting establishment to do the following:

- Determine if the donor is in good health and if healthcare practitioners have advised the donor not to donate;
- Identify risk factors for relevant transfusion-transmitted infections;
- Determine the possibility of exposure to, or clinical evidence of, relevant transfusion-transmitted infections; and
- Determine whether there are other conditions that may adversely affect the donor or the safety, purity, or potency of the donated blood or blood component, such as by examining the phlebotomy site for infection or inflammation which may cause contamination of the unit being collected.

Proposed § 630.10(f) and (g) describe factors that make a donor ineligible to donate and that must be addressed in medical history questions.

Proposed § 630.10(f).—Proposed § 630.10(f) would require the collecting establishment to assess the donor for certain described factors, which may indicate that the donor is at increased risk for, or has evidence of, a relevant transfusion-transmitted infection; and to determine the donor ineligible to donate when the assessment indicates possible exposure to a relevant transfusion-transmitted infection that is still applicable at the time of donation. These factors are listed in proposed paragraphs (f)(1) through (f)(6). In addition to the following discussion of these factors, we refer you to the following current Memoranda to Blood Establishments and Blood Guidances, which discuss factors related to exposure to a relevant transfusion-transmitted infection. The draft guidances included in the following bulleted list, when finalized, will represent FDA's current thinking on those topics.

- ''Recommendations for the Management of Donor and Units that are Initially Reactive for Hepatitis B Surface Antigen (HBsAg),'' dated December 2, 1987;
- ''FDA Recommendations Concerning Testing for Antibody to Hepatitis B Core Antigen (Anti-HBc),'' dated September 10, 1991;
- ''Revised Recommendations for the Prevention of Human Immunodeficiency Virus (HIV) Transmission by Blood and Blood Products,'' dated April 23, 1992;
- ''Revised Recommendations for Testing Whole Blood, Blood Components, Source Plasma and Source Leukocytes for Antibody to Hepatitis C Virus Encoded Antigen (Anti–HCV),'' dated April 23, 1992;
- ''Draft Guidance for Industry: Revised Recommendations for Donor and Product Management Based on Screening Tests for Syphilis,'' dated June 2003;
- ''Recommendations for the Deferral of Current and Recent Inmates of Correctional Institutions as Donors of Whole Blood, Blood Components, Source Leukocytes, and Source Plasma,'' dated June 8, 1995;
- ''Guidance for Industry: Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and Variant Creutzfeldt-Jakob Disease (vCJD) by Blood and Blood Products,'' dated January 2002;
- Draft ''Guidance for Industry: Recommendations for Donor Questioning Regarding Possible Exposure to Malaria,'' dated June 2000;
- ''Guidance for Industry: Recommendations for Assessment of Donor Suitability and Blood and Blood Product Safety in Cases of Possible Exposure to Anthrax,'' dated October 2001;
- ''Guidance for Industry: Assessing Donor Suitability and Blood and Blood Product Safety in Cases of Known or Suspected West Nile Virus Infection,'' dated June 2005;
- ''Guidance for Industry: Recommendations for Deferral of Donors and Quarantine and Retrieval of Blood and Blood Products in Recent Recipients of Smallpox Vaccine (Vaccinia Virus) and Certain Contacts of Smallpox Vaccine Recipients,'' dated December 2002; and
- ''Guidance for Industry: Revised Recommendations for the Assessment of Donor Suitability and Blood Product Safety in Cases of Suspected Severe Acute Respiratory Syndrome (SARS) or Exposure to SARS,'' dated September 2003.

These memoranda and guidance documents further discuss the applicability of these factors in donor screening. All current memoranda and guidance documents referenced in this rulemaking may be found at *http://www.fda.gov/cber/reading.htm*.

Social behaviors (Proposed § 630.10(f)(1)).—Under proposed § 630.10(f)(1), establishments must determine whether a donor has engaged in social behaviors associated with increased risk of infection with relevant transfusion-transmitted infections. Some examples of social behaviors associated with increased risk of exposure to HIV and viral hepatitis identified in current guidance are men who have had sex with another man even one time since 1977; exchanging sex for drugs or money; or intravenous drug use. Participation in social behaviors associated with relevant transfusion-transmitted infections would cause the donor to be ineligible to donate and to be deferred. We have issued guidance on such deferrals and we will continue to do so, pursuant to our good guidance practices. We include assessment of certain social behaviors because of the risk that testing alone would not detect infection due to testing error, the early stage of the donor's infection (the window period), or the donor's low antibody level or intermittent viremia.

To assist us in developing such guidance documents, we intend to hold workshops and public meetings on social behaviors associated with increased risk of infection with a relevant transfusion-transmitted infection. The public will have the opportunity to submit comments on specific issues as they are presented.

Medical treatment and procedures (Proposed § 630.10 (f)(2)).—We are proposing that you assess donors to determine whether they have received medical treatment or undergone a medical procedure that would put the individual at risk for potential exposure to a relevant transfusion-transmitted infection. Such donors would be ineligible to donate. Some examples of treatments or procedures that may transmit a disease or disease agent are receipt of dura mater graft, transfusion with blood or blood components within the previous 12 months, or the receipt of human-derived clotting factor within the previous 12 months.

Signs and symptoms of relevant transfusion-transmitted infections (Proposed § 630.10(f)(3)).—We would require blood establishments to assess donors for signs or symptoms of relevant transfusion-transmitted infections; donors exhibiting such signs or symptoms would be ineligible to donate blood and blood components. This provision is intended to help ensure that an individual who exhibits one or more of the signs and symptoms of HIV infection or viral hepatitis, or any other relevant transfusion-transmitted infection that would be applicable under proposed § 630.3(g), and who is, therefore, a potential source of transmitting a relevant transfusion-transmitted infection, does not donate blood or blood components.

Institutionalization (Proposed § 630.10(f)(4)).—A collecting establishment would determine whether a donor is currently an inmate of a correctional institution or has been incarcerated within the last 12 months, and if so, whether the risk of exposure related to that incarceration is still applicable at the time of donation. Current guidance recommends that a donor not be eligible to donate if incarcerated in a correctional institution for more than 3 consecutive days during the past 12 months.

Intimate contact (Proposed § 630.10(f)(5)). We would require collecting establishments to determine whether a donor is or was an intimate contact of a person who is at an increased risk for exposure to, or is known to be infected with, a relevant transfusion-transmitted infection that is spread by intimate contact and, is thus, ineligible to donate. One example is a heterosexual partner of an injection drug user. Such individuals are at increased risk for contracting relevant transfusion-transmitted infections due to the exchange of bodily fluids, including blood or saliva.

Percutaneous exposure (Proposed § 630.10(f)(6)).—We would require collecting establishments to assess whether a donor had a nonsterile percutaneous inoculation within the past year. A piercing of the skin with an instrument used previously on another person with a relevant transfusion-transmitted infection could expose the donor to such infections. Under this provision, establishments would defer donors who, within the last 12 months, experienced any piercing of the skin by a nonsterile instrument, such as may be used in tattoos, body or ear piercing, or intentional or accidental needlestick (percutaneous exposure). FDA understands that certain establishments are licensed by a State or credentialed by a responsible certifying body to perform such procedures with sterile needles. FDA does not intend for such a procedure performed by a state-licensed or responsibly certified establishment to be a reason to defer the donor.

Proposed § 630.10(g).—There are other factors that make a donor ineligible because of the risk they present to the health of the donor before, during, and after the donation process, or because they could adversely affect the safety, purity, and potency of the blood and blood component. Proposed paragraph (g) would require the collecting establishment to determine the donor ineligible to donate if the following factors existed and the collecting establishment decided that donation by the donor would present a risk to the health of the donor, or to the safety, purity, and potency of the blood and blood component. In addition to the following discussion, we refer you to the following current Memoranda to Blood Establishments and Guidances, which discuss factors related to donor risk or product safety. The draft guidance documents included in the following bulleted list, when finalized, will represent FDA's current thinking on that topic.

- ''Deferral of Blood and Plasma Donors Based on Medications,'' dated July 28, 1993;
- ''Deferral of Blood Donors Who Have Received the Drug Accutane,'' dated February 28, 1984;
- ''Deferral of Donors Who Have Received Human Pituitary-Derived Growth Hormone,'' dated November 25, 1987;
- Draft ''Guidance for Industry: Precautionary Measures to Reduce the Possible Risk of Transmission of Zoonoses by Blood and Blood Products from Xenotransplantation Product Recipients and Their Intimate Contacts,'' dated February 2002.

Medical or dental treatment, or symptoms of a recent or current illness (Proposed § 630.10(g)(1).—Under proposed paragraph (g)(1), the collecting establishment must assess the health of the donor based on medical or dental treatments. The collecting establishment must also assess the health of the donor for symptoms of recent or current illnesses. The establishment must determine whether the donor is ineligible to donate temporarily, indefinitely, or permanently, depending on the illness or treatment, if that assessment reveals a factor that may adversely affect the safety, purity, or potency of the blood or blood component, or that the donation may adversely affect the health of the donor. For example, if the donor recently was diagnosed with pneumonia, the interviewer would further assess the donor to assure that the donor is in good health at the time of donation and that the donor's health would not be adversely affected by the donation. If

the donor had a recent tooth extraction or oral surgery, the collecting establishment would temporarily defer the donor due to concern for possible contamination of blood or blood components due to transient bacteremia caused by the performance of dental procedures.

Medications (Proposed § 630.10(g)(2)).—We would require collecting establishments to assess the effects of medication taken by the donor and to defer that donor if the medication could have an adverse effect on the blood and blood components, the recipient, or on the developing fetus of a pregnant recipient. The proposed regulation is consistent with current industry practice to screen prospective donors to identify such medications, and evaluate the potential for each medication to have an adverse effect on the safety of the blood supply. For example, following current industry practice and FDA recommendations, collecting establishments would defer from donation, either temporarily or permanently, a donor who had taken certain medications (e.g., Accutane and Tegison). We further discuss the use of certain medications that adversely affect platelet function in section III.O of this document.

Major surgical procedure (Proposed § 630.10(g)(3)).—We would require establishments to defer donors who have experienced major surgery within the past 12 months. This deferral is to protect the donor whose health may be compromised by the donation and to address the possibility that the donor may have unknowingly received blood or blood components during surgery.

Travel to endemic areas for transfusion-transmitted infections (Proposed § 630.10(g)(4)).—It is known that several transfusion-transmitted infections exist for which the risk is closely associated with a geographic area, e.g., leishmania. Typically, such infections would not be ''relevant transfusion-transmitted infections'' requiring broader screening and testing because they do not have sufficient incidence or prevalence in the potential donor population. This provision is designed to identify donors who may be at risk for additional transfusion-transmitted infections. Because donors harboring such infections may be asymptomatic, or the signs and symptoms may be mild enough to go undetected at the time of donation, we would require the collecting establishment to assess whether the donor has visited or is a former resident of endemic areas known to harbor the disease agent or disease, whether the risk of exposure is still applicable at the time of donation, and, if so, determine the donor ineligible to donate.

Xenotransplantation product recipient and intimate contact (Proposed § 630.10(g)(5)).—The potential for infectious disease transmission and public health risks associated with xenotransplantation products has become an increasing concern. Because xenotransplantation disrupts the recipient's usual protective physical and immunologic barriers, receipt of a xenotransplantation product may facilitate transmission of infectious agents to humans. Additionally, transmission of such an infectious agent to an intimate contact of a xenotransplantation product recipient may be possible. Therefore, a xenotransplantation product recipient and an intimate contact of a xenotransplantation product recipient would be determined to be ineligible and deferred from donating.

Exposure to a released disease agent or disease (Proposed § 630.10(g)(6)).—Recent events have made us aware that donors may be affected by a released disease agent or disease. The release may occur accidentally, such as in a laboratory accident, or intentionally, such as in a bioterrorist attack. An example is the exposure in 2001 of individuals to Bacillus anthracis through the U.S. mail. Proposed § 630.10(g)(4) would require the collecting establishment to assess the donor for exposure or possible exposure to a released disease agent or disease with a potential for transmission by transfusion, when the establishment becomes aware that such a release of a disease agent or disease may have occurred in the community. The collecting establishment would find donors ineligible when the disease agent or disease may affect the health of the donor, or the safety, purity, or potency of the blood and blood components.

Pregnancy (Proposed § 630.10(g)(7)).—In order to prevent any adverse effect on the donor or her fetus, collecting establishments would determine a pregnant woman ineligible to donate. A woman who is up to 6 weeks postpartum would also be determined ineligible so as not to jeopardize her health by donating.

Unreliable answers (Proposed § 630.10(g)(8)).—Section § 640.63(d) requires plasma establishments to defer a Source Plasma donor from donating if, in the opinion of the interviewer, the individual appears to be under the influence of drugs or alcohol or does not appear to be providing credible answers to medical history questions. In proposed § 630.10(g)(8), this requirement would apply to all donors of blood and blood components as well as Source Plasma. The establishment would assess the donor for impairment due to the influence of drugs or alcohol, or for providing unreliable answers to the medical history interview. One example of an unreliable answer is when a donor states that he or she is donating for the purpose of getting tested for a relevant transfusion-transmitted infection. Such action would indicate that the donor has reason to believe there is a possibility of infection due to participation in high-risk activities.

c. Physical assessment.

Sections 640.3(b) and 640.63(c) currently require collecting establishments to determine that a donor is in good health on the day of donation, indicated in part by a normal temperature, a blood pressure within normal limits, and a hemoglobin level of no less than 12.5 grams per 100 milliliters (mL) of blood or no less than a hematocrit value of 38 percent. We are moving these requirements to proposed § 630.10(h)(1) through (h)(6) as criteria for determining that a donor is in good health to protect the health of the donor and to ensure the safety, purity, and potency of the blood and blood components.

Temperature (Proposed § 630.10(h)(1)).—We would require the collecting establishment to determine that the donor has a normal body temperature. An elevated temperature could indicate a possible infection. We are proposing that the maximum acceptable temperature not exceed 37.5 °C (99.5 °F) when taken orally, or the equivalent if the temperature is taken at an alternative body site. These acceptable values are consistent with good medical judgment and current industry practice. Collecting establishments determining body temperatures using a device that measures body temperature other than orally, such as by a probe placed in the ear, would list in their SOP the maximum acceptable temperature adjusted according to the method used.

Blood pressure (Proposed § 630.10(h)(2)).—For the purpose of this rulemaking, we would require under proposed paragraph (h)(2) that the collecting establishment determine not to be eligible a donor whose blood pressure measures above 180 mm of mercury or below 90 mm of mercury for the systolic value, and above 100 mm of mercury or below 50 mm of mercury for the diastolic value. These limits are currently an industry standard in use by many blood establishments. We are soliciting comments with supporting

scientific data on the need for such limits on systolic and diastolic values, on the limits we have proposed, and on adverse events associated with donation that have been attributed to blood pressure. In particular, we are seeking comments with supporting scientific data on the necessity, or lack of necessity, of specific upper or lower blood pressure limits in blood donation, and any adverse events attributed to blood pressure and associated with donation. If the record supports the need for different limits on systolic and diastolic values, for example, a lower systolic limit of 90 mm of mercury and a lower diastolic limit of 50 mm of mercury, we will make appropriate changes in the final rule. We are also soliciting comments on whether an abnormal blood pressure may be an indication that the donor has an undetected illness, such as cardiovascular or renal disease, may not be in good physical health and, therefore, may be harmed by the act of donating.

We are also seeking comments on the accuracy and interpretation of blood pressure measurements taken in the setting of blood and plasma donation. Although the occluding cuff technique is simple and easy to learn, errors can still be made. A single blood pressure measurement taken at the time of donation may not represent the donor's true baseline due to variations in the donor's blood pressure throughout the day or under different situations. There are also many other causes of error and inaccuracy in the measurement of blood pressure. There is no uniform standard methodology for day-to-day use by all donor room personnel (Ref. 2).

Both aneroid and electronic instruments have some advantages of portability and ease of use, but few of these instruments have had adequate validation. Still fewer of these instruments are calibrated regularly and most of the instruments have not been validated over a wide range of blood pressures and ages (Ref. 3). Therefore, an isolated measurement of blood pressure may not reliably assess eligibility for blood donation.

Hemoglobin or hematocrit determination (Proposed § 630.10(h)(3)).—The current regulations in § 640.3(b)(3) require that an allogeneic donor have a minimum hemoglobin level of 12.5 grams per deciliter of blood or a hematocrit value of 38 percent to participate in a collection program; and that an autologous donor have a minimum hemoglobin level of 11.0 grams per deciliter of blood or a hematocrit value of 33 percent. In proposed § 630.10(h)(3), we are proposing to continue requiring these minimal hemoglobin levels or hematocrit values for allogeneic donors, including Source Plasma donors, and autologous donors. The collecting establishment would be permitted to obtain the blood sample by fingerstick or venipuncture or by another method providing equivalent results. However, the earlobe would not be an acceptable site for the collection of a blood sample to measure the hemoglobin level or hematocrit value. We propose this restriction based on evidence that a blood sample collected from the earlobe does not accurately reflect the donor's true venous hemoglobin level or hematocrit value (Ref. 4).

We are specifically soliciting comments and supporting data on the following:

- Changing the minimum acceptable hemoglobin level to 12.0 grams per deciliter of blood or a hematocrit value of 36 percent as acceptable minimal values for female allogeneic donors;
- The possibility of adverse effects caused by the collection of blood and blood components from allogeneic donors with such minimum hemoglobin level of 12.5 grams per deciliter of blood or a hematocrit value of 38 percent for males, and hemoglobin level of 12.0 grams per deciliter of blood or a hematocrit value of 36 percent for females, which are considered below normal by medical criteria; or if such decisions should be left to the discretion of the medical director of the collecting establishment on a case-by-case basis;
- Establishing a more stringent inter-donation interval; and
- The use of copper sulfate solution based methods as an appropriate method to determine acceptable hemoglobin levels.

Pulse (Proposed § 630.10(h)(4).—We would require the collecting establishment to take the donor's pulse rate, which is an indicator of the donor's cardiovascular health. We would consider as acceptable a regular pulse rate and any value between 50 and 100 beats per minute. Any irregular pulse, or any value below 50 beats per minute or above 100 beats per minute would be cause to determine the donor ineligible to donate, unless the responsible physician examines the donor and determines that the health of the donor would not be adversely affected.

Weight (Proposed § 630.10(h)(5)).—Proposed § 630.10(h)(5). This paragraph would require that a donor weigh a minimum of 50 kilograms (110 pounds) and not have any unexplained loss of greater than 10 percent of body weight within the past 6 months. Except as stated in proposed § 630.15(b)(2) for donors of Source Plasma, the proposed regulation would not require collecting establishments to physically weigh individuals at each donation, but § 606.160(b)(1)(i) would require the collecting establishments to retain documentation of the donor's responses when asked if the donor weighs more than 110 pounds, and if the donor experienced an unexplained loss of greater than 10 percent of body weight within the past 6 months, which may be a sign or symptom of a relevant transfusion-transmitted infection.

We recognize that some collecting establishments believe it acceptable and safe to collect a reduced volume of blood and blood components from a donor weighing less that 110 pounds. We are requesting comments and supporting scientific data regarding both the volume of blood that can be safely collected from a donor in relation to the donor's body mass, and the criteria to define a standard unit of blood. We are also seeking comments on the feasibility and impact of determining that a donor has experienced a significant recent and unexplained loss of weight, and, if so, whether an unexplained loss of 10 percent of the donor's weight is an appropriate marker of possible underlying illness, and whether loss of weight in the 6 month time period prior to donation is an appropriate time frame to indicate that such weight loss is an appropriate marker for such potential illness.

Collecting establishments routinely weigh donors of Source Plasma so that they may apply the nomograms for volume limits as recommended in the Memorandum to All Licensed Source Plasma Establishments issued November 4, 1992, entitled ''Volume Limits for Automated Collection of Source Plasma.'' Under proposed § 630.15(b)(2), we would require collecting establishments to weigh a donor of Source Plasma at each donation. For donors of Source Plasma, records of donor weight should be examined for unexplained weight loss at the time of the donor's annual medical examination. (See also section III.I.2.b of this document.)

Skin examination (Proposed § 630.10(h)(6)).—We would require that the collecting establishment examine: (1) The phlebotomy site for evidence of infection, inflammation, lesions, or pitted skin (to eliminate contaminating the donation and possibly putting the recipient at risk for sepsis) and (2) the donor's arms and forearms for punctures and scars indicative of injected drugs of abuse. Use of injected drugs not prescribed for medical reasons (drug

abuse), regardless of the site of injection, would place the donor at increased risk for exposure to a relevant transfusion-transmitted infection.

3. Additional Requirements for Determining Donor Eligibility

Proof of identity and mailing address (Proposed § 630.10(i)(1)).—Proposed § 630.10(i)(1) would require the collecting establishment to obtain, before donation, donor identification, such as a photograph identification and an address as required under § 606.160(b)(1)(x). Collecting establishments are required under § 630.6 (proposed redesignation to § 630.40) to notify donors that they are deferred from further donation based on the results of tests for evidence of infection with a communicable disease agent(s). Having a current address will assist the collecting establishment in the notification process when necessary.

Donor's written statement of understanding (Proposed § 630.10(i)(2)).—In order to ensure that the donor has been informed of and understands the collection procedure and the educational material, the collecting establishments would be required to provide a written statement to the donor, using appropriate language and literacy level and taking into account any donor disabilities, to read and sign before phlebotomy is performed. This statement would be written in a clear and understandable terminology and not include language that would waive any of the donor's legal rights. The document would provide the following information as described in proposed § 630.10(i)(2)(i) through (i)(2)(vii):

- The donor reviewed the provided educational material regarding the relevant transfusion-transmitted infections, including HIV, HBV, and HCV, and understands that such infections present potential risks to the safety of the blood supply;
- The donor agrees not to donate if the donation could result in a potential risk to the safety of the blood supply as described by the educational material;
- The donor understands that, a sample of the donor's blood taken at the time of phlebotomy will be tested for specified relevant transfusion-transmitted infections;
- The donor understands that, if any of the tests for the relevant transfusion-transmitted infections required under § 610.40(a) are reactive, the blood sample will be tested further as necessary and appropriate to determine the donor's infection status;
- The donor understands that, if a basis for deferral is discovered, the donor will be deferred from further donation temporarily, indefinitely, or permanently, and notified of the basis of the deferral;
- The donor understands the hazards and risks of the procedure; and
- The donor has the opportunity to ask questions and refuse to donate at any time.
- The collecting establishment must not proceed with the phlebotomy until the donor signs the statement.
- We also note that some blood components may be stored indefinitely before they are used. During that time, we may become aware of new infectious agents, which may be identified only through the use of investigational tests. An establishment may want to test stored blood components using the investigational test, but face obstacles due to the lack of donor consent to the use of an investigational test. An establishment may seek to address this problem, in advance, by obtaining adequate informed consent to investigational tests at the time of donation. We note that consent to authorize investigational testing subject to investigational new drug or investigational device exemption requirements must meet the requirements of 21 CFR part 50.

I. Donor Eligibility Requirements Specific to Whole Blood and Plasma Collected by Plasmapheresis (Proposed § 630.15)

The donor eligibility requirements under proposed § 630.10 would apply to all donors of Whole Blood and blood components, including Plasma collected by plasmapheresis. In addition to these proposed requirements, other requirements specific to Whole Blood or Plasma collected by plasmapheresis are proposed in § 630.15.

1. Whole Blood

The following two sections are specific to Whole Blood donation.

a. *Donation frequency.*

With the establishment of double Red Blood Cells unit collection programs by some establishments, we are proposing to adjust the donation frequency requirements currently in § 640.3(f). Proposed § 630.15(a)(1) would continue the requirement in § 640.3(b) that collecting establishments collect a single unit of Whole Blood from a donor no more than once in 8 weeks. We also are proposing that if a donor is participating in a double Red Blood Cells unit collection program, i.e., where two units of Red Blood Cells are collected by an automated blood cell separator on the same occasion, then the collecting establishment would be required to defer the donor for 16 weeks before allowing the donor to participate in a Whole Blood collection program, in any apheresis program, or in a double Red Blood Cells unit collection program again. This is currently recommended in the January 2001 guidance entitled ''Guidance for Industry: Recommendations for Collecting Red Blood Cells by Automated Apheresis Methods.'' This proposed requirement protects the donor's health. We also are proposing that a donor may donate sooner than the proposed required time period if the collecting establishment's responsible physician examines the donor and certifies the donor to be in good health and one of the following three conditions exist:

- The donor presents a physician's prescription for a therapeutic phlebotomy; or
- The donation is an autologous donation; or
- The donation is dedicated to a specific recipient based on documented medical need.

The responsible physician would explain to the donor in the written statement of understanding (proposed § 630.10(i)(2)(vi)) the hazards or risks from more frequent donations.

b. *Therapeutic phlebotomy.*

Currently, under § 640.3(d), we require that blood drawn to promote the health of the donor not be used as a source of Whole Blood unless the container label conspicuously indicates the donor's disease that necessitated the phlebotomy. Under the new proposed § 630.15(a)(2), we would continue to require that the container label state the donor's disease that necessitated the phlebotomy, but would permit an exception to this provision. In August 2001, we issued ''Guidance for Industry: Variances for Blood Collection from Individuals with Hereditary Hemochromatosis,'' which provides guidance for requesting a variance from the labeling requirement for individuals with hereditary hemochromatosis (HH). This proposed rule would codify those recommendations, eliminate the need for a variance request, and permit all collecting establishments to use a donation from an individual with HH as a source of Whole Blood and not affix a disease label for HH, if the following conditions are met:

- The donor with HH otherwise meets the same eligibility requirements under proposed § 630.10 as for other allogeneic donors whose blood would be used for transfusion or further manufacturing use; and
- The collecting establishment does not charge a fee for any phlebotomies performed on individuals with HH,

including those who do not meet the eligibility requirements proposed under § 630.10. As explained in the August 2001 guidance, if a blood establishment charged a fee for therapeutic phlebotomy, but not for a collection of blood for transfusion, the HH donor would have an incentive to deny risk conditions that might preclude cost-free donation. Accordingly, this provision removes that incentive. Blood and blood components collected from persons undergoing therapeutic phlebotomies who are ineligible to donate would be discarded unless other arrangements are in place to permit the practice, such as license amendments, requests for variance, or short supply agreements (for example, if certain rare antibodies are present, or for manufacture into an in vitro reagent) (§§ 601.12, 610.40(h)(2) and § 640.120).

2. Plasma Collected by Plasmapheresis

a. *Examination by a responsible physician.*

In addition to the eligibility requirements proposed in § 630.10, proposed § 630.15(b)(1) would require the responsible physician to examine the donor initially and annually for medical conditions that would place the donor at risk during the process of plasmapheresis and explain the hazards of the procedure so that the donor may choose not to donate. The initial examination would occur no more than 1 week before the first donation. In addition, under proposed § 630.15(b)(4), if the donor is participating in an immunization program for the collection of high-titer plasma, then the examination must occur no more than 1 week before the first immunization injection. It is not necessary to repeat the physical examination if the immunized donor's plasma is collected within 3 weeks of the first immunization injection. These provisions are currently required under § 640.63(b)(1), (b)(2)(i), and (b)(2)(ii).

b. *Weight.*

In proposed § 630.15(b)(2), we would require that establishments determine a donor's weight at each donation. This information allows you to determine the appropriate amount of plasma that can be safely removed. We note that, although unexplained weight loss can be a sign or symptom of a relevant transfusion-transmitted infection, the proposed rule does not require establishments to measure donor weight at the time of apheresis as an indicator of underlying disease. FDA is soliciting comments with supporting data on the usefulness of measuring weight loss at the time of donation by apheresis as an indicator to identify health problems in the donor.

c. *Total protein.*

Under existing § 640.63(c), we require collecting establishments to test the donor's blood sample for total protein on the day of and before plasmapheresis. We would continue to require under proposed § 630.15(b)(3) that collecting establishments test the donor's sample for a total plasma or serum protein and have a value of no less than 6.0 grams per deciliter or no more than 9.0 grams per deciliter, the minimum and maximum normal values, for the donor to donate. If the value is less than 6.0 grams per deciliter or more than 9.0 grams per deciliter, the collecting establishment would be required to defer the donor until the donor's total protein level is at an acceptable value.

d. *Deferral due to red blood cell loss.*

Under proposed § 630.15(b)(5), in order to protect the donor's health, we would require the collecting establishment to defer a donor from donating plasma for 8 weeks after one of the following events:

- The donor experienced a red blood cell loss of 200 mL or more of red blood cells during a single automated or manual plasmapheresis procedure; or
- The donor experienced an unexpected red blood cell loss of any volume in an automated apheresis procedure on two occasions within the last 8 week period;
- The donor experienced a red blood cell loss equivalent to or greater than 200 mL of red blood cells as a result of failure to return red blood cells during a manual plasmapheresis procedure; or
- The donor donated a unit of Whole Blood.

However, if a donor participates at any time in a double Red Blood Cells unit collection program, then the collecting establishment would be required to defer the donor for 16 weeks after the last double red blood cell donation under proposed § 630.15(a)(1).

Under proposed § 630.15(b)(6), we would allow exceptions to the deferral for red blood cell loss if all of the following criteria are met.

- The donor is examined at the time of donation and certified by the responsible physician to be in good health and the donor's health permits the plasmapheresis; and
- The donor possesses an antibody that is transitory, of a highly unusual or infrequent specificity, or of an unusually high titer; and
- The collecting establishment documents the special characteristics of the antibody and the need for plasmapheresis under proposed § 630.20(c)(2).

e. *Exception to the donor eligibility requirements for Plasma collected by plasmapheresis.*

Under § 640.63(c)(9), a Source Plasma donor must be free from any disease transmissible by blood transfusion, other than malaria, insofar as the disease can be identified by history and examinations. In ''Memorandum to Registered Blood Establishments—Recommendations for Deferral of Donors for Malaria Risk'' issued in July 1994, and a draft guidance issued for public comment in June 2000, entitled ''Guidance for Industry: Recommendations for Donor Questioning Regarding Possible Exposure to Malaria,'' we make recommendations for assessing donors for malaria risk. These apply only to donations containing intact red blood cells or platelets, where the protozoa are found. Donors of Source Plasma collected by plasmapheresis are excluded from the malaria risk assessment since plasma does not contain intact red blood cells, which harbor the infectious agent. Moreover, Source Plasma undergoes further manufacturing to remove or inactivate pathogens. We maintain this exception in proposed § 630.15(b)(7). However, we are interested in receiving comments with supporting data on the following: (1) Whether Fresh Frozen Plasma collected by plasmapheresis can be safely manufactured from donors with risk of malaria and (2) whether this exception should be expanded to apply to other parasitic diseases.

J. General Exceptions from the Donor Eligibility Requirements (Proposed § 630.20)

Proposed § 630.20 would permit, under certain circumstances and under the supervision of the responsible physician, the collection of blood and blood components from individuals who do not meet one or more of the eligibility requirements proposed in §§ 630.10(d), 630.15, and 610.41. We would require that the responsible physician examine the donor and certify that the donor's health permits the collection procedure, and that the collection be performed under the supervision of the responsible physician, who is aware of the donor's health status. We would only allow this exception in the following situations.

- The donation is for autologous use as prescribed by the donor's physician and is not intended for allogeneic transfusion or for further manufacturing use; or

• The donor is participating in a plasmapheresis program that collects plasma for further manufacturing use into products for which there are no alternative sources, and the program has received prior approval from the Director, Center for Biologics Evaluation and Research, consistent with § 606.110. For example, the donor may serve as a source of antibody to hepatitis B surface antigen for the preparation of Hepatitis B Immune Globulin (Human) or as a component of a medical device. Other examples are discussed in the ''Guideline for Collection of Blood or Blood Products from Donors with Positive Tests for Infectious Disease Markers (High Risk Donors),'' dated September 1989; or

• The donation is for the sole use of a specified recipient based on documented medical need, and the responsible physician determines that the donation presents no undue medical risk to the recipient. The donation must test negative in all tests required under § 610.40, unless an exception in § 610.40(h)(2) applies. However, for deferrals under § 610.41, we are soliciting comments on permitting, in the case of documented medical need, the use of donations testing reactive for antibody to hepatitis B core antigen. For example, we are considering whether, when the recipient has a rare red blood cell antibody and the donor is lacking the red blood cell antigen for the antibody, to permit the use of a donation that is reactive when tested for hepatitis B core antibody by a screening test.

K. Exceptions from Certain Donor Eligibility Requirements for Infrequent Plasmapheresis (Proposed § 630.25)

Under proposed § 630.25, we intend to reduce the medical examination and laboratory testing burden on collecting establishments when donors are participating in plasma collection programs at intervals of 4 weeks or more. Consistent with existing guidance in memoranda issued March 10, 1995, entitled ''Memorandum to Registered Blood and Source Plasma Establishments, Revision of FDA Memorandum of August 27, 1982: Requirements for Infrequent Plasmapheresis Donors'' and November 4, 1992, entitled ''Volume Limits for Automated Collection of Source Plasma,'' we would except the collecting establishment from the requirements for frequency of examination in proposed § 630.15(b)(1) and (b)(3), and current § 640.65(b)(1) and (b)(2), if the following occurs:

• The donor has not donated Whole Blood in the preceding 8 weeks or plasma by apheresis in the preceding 4 weeks, or participated in a double Red Blood Cells unit collection program within the preceding 16 weeks;

• The donor has not donated more than 12.0 liters of plasma in the past year (14.4 liters of plasma for donors weighing more than 175 lbs.);

• The donor is determined by the responsible physician to be in good health under proposed § 630.10(d); and

• The donor is not participating in an immunization program for the production of high-titer plasma.

L. Donation Suitability Requirements (Proposed § 630.30)

The collecting establishment would determine a donation as suitable when the following occurs:

• The donor is not currently deferred from donation;

• The results of the medical history and physical examination indicate that the donor is in good health and donating would not adversely affect the health of the donor;

• The donor is free from risk factors for, or evidence of, transfusion-transmitted infections;

• The donor's tests for relevant transfusion-transmitted infections are negative or nonreactive;

For platelet components, the test for bacterial contamination is negative; and

The donor or donation meets other requirements in 21 CFR subchapter F.

When one or more of the criteria in proposed § 630.30 for determining a donation as suitable are not met, the collecting establishment would determine that the donation is not suitable, would defer the donor until the basis of deferral is resolved, and must notify the donor of the reason for the deferral under § 630.6 (redesignated as § 630.40 in this proposed rule). Under § 610.40(h), the collecting establishment must not ship or use donations that test reactive for tests required under § 610.40(a) and (i), unless one of the limited exceptions apply. Under proposed § 606.160(e)(2), we also would require that the collecting establishment provide to appropriate personnel of the establishment a list of those donors who are not eligible to donate under proposed § 630.10(f)(1) through (f)(6) and (g)(1) through (g)(6).

M. Requalification of Previously Deferred Donors (Proposed § 630.35)

We would permit the requalification of a previously deferred donor into the donor pool (commonly referred to as donor re-entry) under proposed § 630.35. If a donor had been deferred from donation because the donor did not meet the requirements in part 630, then the otherwise eligible donor may be determined to be eligible to donate if the basis for the previous deferral is no longer applicable. To requalify a donor deferred under § 610.41(a), because the donor tested reactive by a screening test for evidence of infection due to a relevant transfusion-transmitted infection, the collecting establishment would determine the donor to be eligible for donation by a requalification method found acceptable for such purpose by FDA under § 610.41(b). For example, FDA issued draft guidance on a requalification method or process for reentry of donors deferred because of a reactive screening test for HIV or HCV entitled ''Guidance for Industry: Nucleic Acid Testing (NAT) for Human Immunodeficiency Virus Type 1 (HIV–1) and Hepatitis C Virus (HCV): Testing, Product Disposition, and Donor Deferral and Reentry,'' dated July 2005. Donor screening tests may yield a number of false positive test results. For a donor deferred under such a test, an establishment could retest the donor, following the recommendations for donor re-entry in the guidance, when finalized. If results of the retesting meet the reentry criteria found acceptable for such purposes by FDA, the donor would be requalified under § 610.41(b) and no longer would be deferred. Of course, the donor would be required to meet the eligibility criteria at each subsequent donation.

N. Requirements for Notifying Deferred Donors (Proposed Newly Redesignated § 630.40)

On June 11, 2001, we published a final rule entitled ''General Requirements for Blood, Blood Components, and Blood Derivatives; Donor Notification'' (June 2001 final rule) in the **Federal Register** (66 FR 31165), codified at § 630.6. The June 2001 final rule requires blood and plasma establishments to notify donors, including autologous donors, whenever the donors are deferred or determined not to be eligible for current or future donations of blood and blood components. Blood and plasma establishments also are required to notify the referring physician for an autologous donor when the autologous donor is deferred based on the results of tests for evidence of infection due to communicable disease agent(s). This proposed rule would amend part 630, redesignate current § 630.6 as § 630.40, and revise all references to § 630.6 accordingly. We also are proposing to revise all references to donor eligibility by replacing §§ 640.3 and 640.63 with §§ 630.10 and 630.15. Consistent with proposed § 630.30(b)(4), proposed

newly redesignated § 630.40(a) would require a collecting establishment to notify a donor whose platelet component tests positive for an endogenous bacteremia.

O. Eligibility Requirements Specific for Platelet Donors (Proposed § 640.21)

We are proposing to amend § 640.21 by revising the subject heading and paragraphs (a) through (c), and by adding paragraphs (d) and (e) for consistency with other parts of this rulemaking.

In addition to meeting the proposed requirements in §§ 630.10 and 630.15, under proposed § 640.21(a)(2), the donor's written statement of understanding in proposed § 630.10(i)(2)(vi) would require a statement that the long-term effects of frequent apheresis are unknown.

Proposed § 640.21(b) for plateletpheresis donors, would require that a donor not serve as a source of platelets for transfusion after the donor has ingested drugs that adversely affect platelet function. At a BPAC meeting held in March 2006, we discussed the deferral of donors who had recently ingested aspirin or nonsteroidal anti-inflammatory drugs (NSAIDs). BPAC provided advice on deferral periods for ingestion of these products. Based on the information received at this meeting, we intend to issue for public comment a draft guidance on deferrals for ingestion of drugs that adversely affect platelet function. The draft guidance document, when finalized, will assist blood collecting establishments in appropriately deferring donors as a result of ingestion of aspirin, NSAIDs, and other drugs that may adversely impact platelet function.

We would permit, under proposed § 640.21(c), plateletpheresis donations at intervals shorter than 8 weeks provided:

- The collecting establishment performs a platelet count before the initial procedure and before each subsequent procedure; and
- The pre-donation count is greater than 150,000/μL; and the donor's post-donation count is no less than 100,000/μL; and
- The donor undergoes no more than a total of 24 plateletpheresis collections within 12 months (e.g., either 24 single, double, or triple platelet component collection procedures);
- For single component collection procedures, there are no more than 2 plateletpheresis procedures within 7 calendar days; and there is a minimum of 2 calendar days between procedures;
- For double or triple component collection procedures, there is no more than one plateletpheresis procedure within 7 calendar days.

At the BPAC meeting held in March 2006, we also discussed the frequency of platelet collection and the impact on the donor's safety. Blood establishments commented by providing data on the safety of collecting more than 24 platelet components per year, including 24 triple platelet component collection procedures per year. BPAC advised that the data supported continuation of up to 24 platelet collections of triple components per year. The BPAC also recommended that the donor's post-donation targeted platelet count not fall below 100,000/μL.

Under proposed § 640.21(d), we would permit a donor to serve as a dedicated plateletpheresis donor as often as necessary during a 30-day period if the donor is in good health and the donor's platelet count is greater than 150,000/μL. The collecting establishment must follow the requirements in § 610.40(c)(1) for testing and labeling for dedicated donors.

Under proposed § 640.21(e), if, over an 8-week period, a donor cumulatively loses 450 mL or more of whole blood or 200 mL or more of red blood cells, or donates a unit of Whole Blood, the collecting establishment must defer the donor for 8 weeks; or, if the donor participates in a double Red Blood Cells unit collection program, the collecting establishment must defer the donor for 16 weeks. An exception to this proposed requirement would be permitted when:

- The donor waits 2 calendar days for plateletpheresis after donating Whole Blood or sustaining a blood loss and
- The extracorporeal red blood cell volume during the plateletpheresis procedure is 100 mL or less.

P. Eligibility Requirements Specific for Source Plasma Donors (Proposed §§ 640.65(b) and 640.69)

In addition to proposed technical amendments to § 640.65(b)(1)(i) and (b)(2)(i), proposed § 640.65(b)(2)(i) would add an upper value of 9.0 grams per deciliter of plasma sample for acceptable total protein and a comparable level for a serum sample and would require the responsible physician to review the laboratory data, the calculated values of each component, and the collection records within 14 calendar days after the sample is drawn to determine if the donor should be deferred from further donation. If the review is not completed within 14 calendar days, we would require the collecting establishment to defer the donor pending the review. We have reduced the time period for record review from 21 to 14 calendar days because results are typically transmitted and recorded electronically, permitting faster access.

We are proposing to add to § 640.69 paragraphs (e) and (f). Proposed § 640.69(e) would require collecting establishments to ensure that Source Plasma donated by paid donors not be used for further manufacturing into injectable products unless the paid donor has a record of two suitable donations within the last 6 months at the plasma establishment where the donations occurred. Proposed paragraph § 640.69(f) would require collecting establishments to ensure that Source Plasma donated by paid donors determined to be suitable for further manufacturing into injectable products be held in quarantine for a minimum of 60 days to permit the retrieval of a Source Plasma donation in the event it is later determined to be unsuitable. Any Source Plasma shipped prior to 60 days after the date of collection must be labeled to indicate that the Source Plasma is in quarantine. These proposed requirements would support product safety. In a report entitled ''Blood Plasma Safety: Plasma Product Risks Are Low if Good Manufacturing Practices Are Followed'' (September 9, 1998), the GAO identified certain voluntary industry initiatives as greatly reducing the chances of reactive units being used in manufacturing pools. These voluntary initiatives included the use of repeat donors only and a 60-day inventory hold on all units to allow manufacturers to retrieve units from donors who subsequently test positive or are otherwise deferred. We are proposing to require these practices in the proposed rulemaking. However, we are soliciting comments and supporting data on whether other requirements would achieve the same goal. We are also soliciting comments on whether these provisions should also apply to Source Plasma from paid donors collected for manufacture into non-injectable products.

Q. Reporting of Donor Reactions (Proposed § 640.73)

Section 640.73 requires establishments collecting Source Plasma to report to us any donor fatality associated with plasmapheresis. We are proposing to retain this requirement in proposed § 640.73(a) and to add § 640.73(b), which would require establishments collecting Source Plasma to report to us any donor adverse experience as described in § 600.80(a) related to the administration of an immunizing agent, such as red blood cells or a vaccine.

If the adverse experience is serious or life threatening as described in § 600.80(a), then we would require the establishment to report to us as soon as possible by telephone or other rapid means of communication, and submit a written followup report of the investigation within 7 days of learning of the donor's adverse experience; if the adverse experience is neither serious nor life threatening, the establishment would submit the report in an annual report on the anniversary of FDA's approval of the immunization program.

Because manufacturers of blood and blood components are currently exempt from the safety reporting requirements under § 600.80, we do not receive adequate information to monitor and assess safety-related information (other than fatalities) concerning donors enrolled in immunization programs and the collection of Source Plasma by plasmapheresis. Such information is essential for evaluating our scientific and regulatory policies and for monitoring industry practices and their implications on donor and blood safety.

R. Alternative Procedures (Proposed § 640.120)

We are proposing an amendment which would separate and revise § 640.120(a) into proposed paragraphs (a) and (b), and revise and redesignate current paragraph (b) as paragraph (c).

Under proposed § 640.120(a), a manufacturer could initiate agency review of a proposed alternative procedure. The manufacturer would submit the request either as a written request, which would include a facsimile or e-mail, or as an oral request. This is consistent with § 640.120. We are adding proposed paragraph (b) to permit the Director of the Center for Biologics Evaluation and Research to issue an exception or alternative to the regulations in the event of a public health emergency. This procedure would be initiated only when a variance is necessary to assure the availability of blood, blood components, and blood products, in a specific location and in response to an unanticipated immediate need for blood, blood components, and blood products, as in situations involving large numbers of casualties.

Proposed § 640.120(c) states that FDA periodically would list approved alternative procedures and exceptions on the Center for Biologics Evaluation and Research home page on the Internet.

S. Reagent Red Blood Cells (Proposed § 660.31)

In § 660.31, we are proposing to remove ''§ 640.3'' and ''except in paragraphs (b)(5) and (b)(6), (d), and (e) of § 640.3,'' and add in its place ''§ 630.10 and 630.15.'' This proposed revision would require donor eligibility determination requirements for donations intended as a source material or component of a medical device, including Reagent Red Blood Cells. We would eliminate the current exceptions to be consistent with the applicability of donor eligibility determination requirements for blood and blood components collected for use in the manufacture of other in vitro diagnostic products. We are interested in receiving comments on limiting donor eligibility determination requirements to donations collected in the United States for use in the manufacture of Reagent Red Blood Cells.

T. Quality Systems Regulations (Proposed § 820.1(a)(1))

In part 820, we have issued current good manufacturing practice (CGMP) requirements applicable to manufacturers of all finished devices intended for human use. Section 820.1(a)(1) states that manufacturers of blood and blood components are not subject to part 820, but are subject to part 606. We are proposing in this rule to clarify the applicability of the requirements in 21 CFR Chapter I, subchapter F to donors of human blood or blood components used in the manufacture of a medical device as well as for transfusion.

U. Technical Amendments

We also propose technical changes to existing regulations, for consistency with this proposed rulemaking. We propose to remove §§ 640.3, 640.61, 640.62, and 640.63. We propose to revise § 606.3(a) and (c), and 1270.3(b) for consistency with proposed § 630.3(a) and (b). We propose to revise §§ 606.100(b)(20), 606.110(b), 606.160(b)(1)(ix) and (b)(1)(xi), 640.4, 640.12, 640.22, 640.31, 640.32, 640.51, 640.52, 640.65(b), and 640.72(a)(2), (a)(3), and (a)(4) by changing headings or references to CFR cites, and redesignating paragraphs.

IV. Proposed Effective Date

We propose that any final rule that may issue based on this proposal become effective 180 days after the date of its publication in the **Federal Register**.

V. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this proposed rule incorporates industry's usual and customary business practices, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $122 million, using the most current (2005) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

A. Objectives and Basis of the Action

As discussed previously, we are proposing this action to help protect donor health and to help ensure the safety, purity, and potency of the national blood supply. The safety, purity, and potency of the national blood supply is enhanced when blood donors are assessed for eligibility and blood donations are assessed for suitability. The health of the donor is protected through certain physical assessments, such as those regarding blood pressure and hemoglobin levels.

This action is taken under the authority of sections 351 and 361 of the PHS Act to prevent the introduction, transmission, and spread of communicable disease. Since blood and blood components are also drugs and devices, the provisions of the act (21 U.S.C. *et seq.*) also generally apply. In particular, section 501 of the act provides authority to ensure that methods used in manufacturing conform with CGMP. See section II.A of

this document for further details. We have reviewed related Federal rules and have not identified any rules that duplicate, overlap, or conflict with the rule.

B. Nature of the Impact

The proposed rule requires that for each donation of blood or blood component, blood establishments maintain minimum standards for donor eligibility (proposed §§ 630.10 and 630.15), and blood and blood component suitability (proposed § 630.30). A blood establishment must also establish, maintain, and follow SOPs for the determination of donor eligibility (proposed § 606.100(b)).

C. Type and Number of Entities Affected

This proposed rule would affect all blood establishments that collect blood and blood components, including Source Plasma and Source Leukocytes. Our registration database for blood and plasma establishments has records of approximately 1,709 establishments: 81 licensed Source Plasma establishments with multiple locations and 1,628 registered blood establishments. The DHHS estimates that approximately 15 million blood donations are collected annually (Ref. 5). According to a 2002 report by the Government Accountability Office (at that time, the General Accounting Office), 13 million donations of Source Plasma are collected annually by plasma centers (Ref. 6).

D. Estimated Impact of Requirements for Assessment of Donor Eligibility

The rule provides for the establishment of minimum criteria for the assessment of donor eligibility, and the suitability of the donation of blood and blood components. The rule is expected to have a minor net impact on blood establishments because it is already usual and customary business practice in the blood industry to assess donors for eligibility, and donations for suitability. We believe the primary impact of the rule will be the one-time review of current SOPs that the proposed rule would require each blood collecting establishment to conduct.

The burden imposed by this one-time effort to review and, if necessary, modify current SOPs will vary among the 1,709 establishments, depending on an establishment's existing procedures. For establishments that have already established procedures that conform to the proposed rule, we estimate that it would take approximately 40 hours of staff time to review the establishment's current SOPs to confirm that the SOPs comply with the regulation. A technical specialist who acts as a regulatory reviewer or manager of quality assurance could perform this process. Based on the total average hourly compensation (including benefits) of $37.03 for management, professional and related occupations in private industry healthcare and social assistance workers, as reported by the Bureau of Labor Statistics, the cost would be approximately $1,481 ($37.03 per hour x 40 hours) per establishment (Ref. 7).

For establishments that do not already conform to the proposed rule, we estimate that approximately 60 hours of staff time would be required to align current inadequate SOPs with the provisions of the rule. As we believe most establishments have SOPs that are consistent with the rule, the extent that staff would need to be notified of these updated SOPs would not result in extensive formal training. The cost in this case would be $2,222 ($37.03 x 60) per establishment. Assuming a minimal review is needed at two-thirds of the 1,709 currently operating establishments and a more extensive review is conducted by the other one-third, the total one-time cost for the blood and plasma industries is estimated to be $2,953,000 ((2/3 x 1,709) x $1,481)) + ((1/3 x 1,709) x $2,222)).

Our cost estimate assumes that the assessment of donors for eligibility and donations for suitability are already usual and customary business practices. We believe that most establishments already conform to this proposed rule and others nearly conform to this proposed rule and assume a two-thirds one-third division between the two groups of establishments. Nevertheless, because we lack information on the characteristics or fraction of establishments not currently in compliance, we welcome comment on our assumption. Also, while we assume the costs are limited to a review of SOPs, if these reviews were to uncover deficiencies requiring complex operational changes, the impact of this proposed rule could exceed our estimate. We request comment from blood establishments on our assumption.

E. Expected Benefits of the Rule

This proposed rule would help ensure the continued safety of the blood supply. As described in the preamble to this rule, the assessment of eligibility of donors and the suitability of donations will help prevent unsafe units of blood or blood components from entering the blood supply. This will protect the health of donors and will preserve the safety, purity, and potency of blood and blood components. The rule is intended to increase the safety of all blood and blood components by providing recipients with increased protection against communicable disease transmission.

The gravity of the disease risks associated with blood and blood components is widely recognized. Transfusion transmission of HIV, the virus that causes AIDS, continues to cause great concern. Human T-lymphotropic viruses types I and II were identified in the early 1980s. Infection with these viruses is associated with tropical spastic paraparesis, adult T-cell leukemia/ lymphoma, and some inflammatory disorders (Ref. 8). These viruses are known to be transmitted by transfusion.

HBV is a major cause of acute and chronic hepatitis, cirrhosis, and hepatocellular carcinoma worldwide. The Centers for Disease Control and Prevention (CDC) estimates that 1.25 million Americans are chronically infected with HBV, 15 to 25 percent of whom will die of chronic liver disease, and that there are an additional 60,000 new infections each year (Ref. 9). Approximately 5,000 individuals in the United States die each year from disease caused by HBV (Ref. 10). Prior to the development of hepatitis screening tests, transfusion-related risks were significant.

While recipients of blood products prior to 1992 are at risk for infection with HCV, blood donor screening for HCV has reduced transfusion-associated transmission to less than one in 1.6 million transfused units of blood (Ref. 11). Persons currently at increased risk for HCV infection include parenteral drug users and health care workers with occupational exposure to blood. CDC estimates approximately 26,000 new HCV infections occur annually in the United States and that 4.1 million Americans have been infected with HCV (Ref. 12). Despite advances in treatment with interferon and ribavirin, HCV infection remains a leading indication for liver transplant and up to five percent of those infected will die from the consequences of long-term infection (Ref. 10).

The requirement that, for each donation of blood or blood component, blood establishments maintain standards for donor eligibility and blood and blood component donation suitability significantly reduces the public risk of exposure to the morbidity and mortality risks associated with diseases such as HIV types 1 and 2, HBV, HCV, HTLV types I and II, and syphilis. Such standards also reduce the attendant costs of these diseases.

F. Small Entity Impact

The Regulatory Flexibility Act requires agencies to assess whether a rule may have a significant economic impact on a substantial number of small entities. This rule is not expected to have a significant impact on a substantial number of such entities.

According to size standards established by the Small Business Administration (SBA), a small blood or plasma establishment (NAICS code 621991, Blood and Organ Banks) has annual receipts of less than $9 million (Refs. 13 and 14). The number of blood and plasma collecting establishments that qualify as small entities is uncertain, but is not expected to be substantial. For such small entities, the cost of performing a review of SOPs is expected to be no more than $2,222. We believe a small independent establishment, not associated with a hospital, might collect as few as 200 units per week. A small processing fee for blood and blood components can be between $150 and $300 per unit, depending on the component and the region of the country. Assuming this small independent establishment collects a processing fee for two blood components for every unit collected, and the processing fee is at the lower end of the fee scale for blood components, the annual revenues for such an establishment would be $3.12 million (200 x 2 x 52 x $150). Even for the smallest establishment, the cost of performing a review of SOPs would be less than one tenth of one percent of revenues. For establishments associated with hospitals or establishments with multiple locations, we believe parent company revenues to be much greater than $2.22 million, putting the impact of this rule at less than one tenth of one percent of revenues for those firms, as well. We believe blood establishment employees already have the skills required to perform the tasks specified in the rule, and that the rule does not require establishments to seek out employees with new expertise.

Although the proposed rule would impose some costs on small entities involved in the collection of blood and blood components, including Source Plasma and Source Leukocytes, we believe that the proposed rule represents an effective means of protecting donor health and helping to ensure the safety, purity, and potency of blood and blood components. We considered, as a less burdensome alternative to the proposed rule, continuing with the use of trade organization standards by industry and FDA guidance. We found this approach would be inadequate to assure uniform or consistent compliance and would preclude our ability to effectively monitor the safety, purity, and potency of blood and blood components, including Source Plasma and Source Leukocytes. This proposed rule would enhance both public health and public confidence in the safety and quality of blood and blood components, while imposing only a minimum burden on the affected industry.

VI. The Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). A description of these provisions is given in the following paragraphs with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Requirements for Human Blood and Blood Components Intended for Transfusion or for Further Manufacturing Use

Description: FDA proposes to revise and update the regulations applicable to blood and blood components, including Source Plasma and Source Leukocytes, and to add donor eligibility requirements for consistency with current practices in the blood industry. This proposed rule's information collection provisions are for recordkeeping and reporting.

Proposed § 606.100(b)—Current § 606.100(b) requires collecting establishments to establish and maintain written SOPs for all steps in the collection, processing, compatibility testing, storage, and distribution of blood and blood components for transfusion and for further manufacturing use. We are proposing to revise § 606.100(b) by adding that the collecting establishment would not only establish and maintain the SOPs, but also would follow the SOPs. We are proposing to require establishments to establish, maintain, and follow SOPs for investigating product deviations (§ 606.171), and for recordkeeping related to CGMP (part 606) and biological product standards (part 610), which would include all recordkeeping requirements not listed in § 606.100(b)(1) through (b)(20).

Proposed § 606.160(e)—We are proposing to revise current § 606.160(e). Paragraph (e) would require collecting establishments to maintain a list identifying ineligible donors (otherwise known as a deferral list or donor deferral registry) and to provide this list to appropriate personnel to prevent the collection of blood and blood components from such individuals.

Proposed § 630.10(b)—We are proposing to require that collecting establishments provide to the donor educational material containing useful and current information concerning the relevant transfusion-transmitted infections so that the donor may self-defer from donation if necessary.

Proposed § 630.10(c)—Proposed § 630.10(c) would permit the collecting establishment to determine a donor's eligibility and collect a sample for testing one day before collection, when the donor is donating blood components that cannot be stored more than 24 hours. We would require the collecting establishment to identify such blood components in an SOP.

Proposed § 630.10(i)(2)—In proposed § 630.10(i)(2), we would require the collecting establishment to provide the donor with information concerning the donation procedure, and to permit the donor to ask questions and at any time to withdraw consent to donate.

Proposed § 630.15(b)(6)(iii)—We would redesignate current § 640.63(e)(3) as proposed § 630.15(b)(6)(iii). Consistent with the current regulation, we would require plasma collecting establishments to document the special characteristics of the donor's antibody and the need for plasmapheresis, i.e., there is no alternative source.

Proposed § 630.20(c)(3)—Under proposed § 630.20(c)(3), we would require the collecting establishment to document the recipient's medical need, which necessitates the collection of blood or blood components from a donor who is determined to be ineligible to donate.

Proposed § 640.72(a)(2)(i), (a)(3), and (a)(4)—We are proposing to revise

current § 640.72(a)(2), (a)(3), and (a)(4). Proposed § 640.72(a)(2)(i) would require the collecting establishment to maintain for each donor records of initial and periodic examinations, tests, laboratory data, and interviews as required in proposed §§ 630.10, 630.15, and current §§ 640.65, 640.66, and 640.67. Proposed § 640.72(a)(3) and (a)(4) would require the collecting establishment to maintain a record of the donor's written statement of understanding and documentation of the donor's good health, respectively.

Proposed § 640.73—Under proposed § 640.73, we would require establishments collecting Source Plasma to report adverse reactions experienced by donors. Proposed § 640.73(a) would require the reporting of fatal donor reactions associated with plasmapheresis, and proposed § 640.73(b) would require the reporting of adverse experiences related to the administration of an immunizing agent. Proposed § 640.73(c) would require the submission to FDA of a written followup report within 7 days of learning of the fatality or the serious or life threatening donor adverse experience related to immunization of the donor.

Description of respondents: Establishments that collect blood and blood components, including Source Plasma and Source Leukocytes

According to our registration database, there are currently about 1,709 establishments affected by this rule: (1) Approximately 81 licensed plasma establishments with multiple locations that collect Source Plasma and (2) approximately 1,628 registered blood establishments that collect blood and blood components. Based on estimates provided by HHS and GAO, these establishments collect annually approximately 15 million units of Whole Blood, and approximately 13 million donations of Source Plasma. FDA estimates the information collection burden as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
606.100(b) (Maintenance of SOPs)	1,709	1	1,709	24	41,016
606.160(e)	1,628	52	84,656	8	677,248
630.15(b)(6)(iii)	81	1	81	0.17	13.8
640.72(a)(2)(i), (a)(3), and (a)(4)	81	18,518.5	1,500,000	0.08	120,000
Total					838,277.8

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ONE-TIME RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
606.100(b) (Creation of SOPs)	1,139	1	1,139	40	45,560
606.100(b) (Creation of SOPs)	570	1	570	56	31,920
630.10(c)	1,628	1	1,628	16	26,048
Total					103,528

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 3.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Responses	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
630.10(i)(2)	81	18,518.5	1,500,000	0.17	255,000
640.73(a) and (c)	81	.037	3	20	60
640.73(b)	81	.037	3	1	3
Total					255,063

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Recordkeeping

As shown in table 1 of this document, for each of the 1,709 collecting establishments, we estimate that it will take approximately 24 hours annually to maintain the SOPs. As discussed in section V.C of this document, we estimate in table 2 of this document that two-thirds of 1,709 collecting establishments (1,139) will each expend, as a one-time burden, an average of 40 hours to reconcile their SOPs with the requirements, and the remaining one-third of the collecting establishments (570) would expend as a one-time burden an average of 56 hours to reconcile their SOPs with the requirements.

Also, as part of a one-time burden in table 2 of this document, 1,628 blood collecting establishments would create a

new SOP under proposed § 630.10(c), which we estimate will take 16 hours to create.

In table 1 of this document, under proposed § 606.160(e), Source Plasma collecting establishments are already providing to personnel a list identifying unsuitable donors as usual and customary business practice. Under proposed § 606.160(e), we estimate that it would take each blood-collecting establishment an average of 8 hours per week to update and provide their list (1,628 x 52 x 8 = 677,248). This estimated burden of 8 hours per week may appear to be lower or higher than the burden experienced by individual establishments. Since there is no available data, the burden is an estimated burden, taking into account the range of impact on each establishment. Some establishments may have the ability to generate the lists by computer; others may rely on manual preparation.

For proposed § 630.15(b)(6)(iii), Source Plasma collecting establishments would be permitted to collect plasma from a donor who is deferred due to red blood cell loss if the establishment documents the special characteristics of the antibody and the need for the plasmapheresis. Although we do not have data available, we believe that such a situation would occur infrequently. Consequently, we are estimating that each Source Plasma collecting establishment would have one occurrence per year and that it would take approximately 10 minutes (0.17 hours) to document the health of the donor and the special characteristics of the antibody and the need for the plasmapheresis.

Under proposed § 630.20(c)(3), donors who do not meet criteria under §§ 630.10, 630.15, or 610.41 would be permitted to donate under this proposed provision. Such donations, used solely by a specified recipient based on documented medical need, would occur rarely. Consequently, the burden to collecting establishments is negligible.

In proposed § 640.72(a)(2)(i), (a)(3), and (a)(4), we would require that Source Plasma collecting establishments maintain records for each donor of all examinations, tests, laboratory data, interviews, the donor's written statement of understanding and the donor's good health respectively. In table 1 of this document, we use GAO's estimate of approximately 1,500,000 donors that annually donate Source Plasma. We also estimate that the establishment would expend approximately 5 minutes (0.08 hours) for each donor.

Reporting

Proposed § 630.10(b), would require the collecting establishments to provide the donor with educational material. There is no calculated burden for this proposed requirement since establishments collecting blood and blood components perform this activity as a usual and customary business practice.

The burden for proposed § 630.10(i)(2) in table 3 of this document is only calculated for Source Plasma collecting establishments since the blood collecting establishments already provide the donor with a statement of understanding as a usual and customary business practice. We estimate that approximately 81 Source Plasma collecting establishments would take an estimated 10 minutes (0.17) to perform this activity. Based on the GAO estimate of approximately 1,500,000 donors that annually donate Source Plasma, the total annual burden would be 255,000 hours (1,500,000 x 0.17).

Proposed § 640.73(a) would require 81 Source Plasma collecting establishments to report fatalities associated with plasmapheresis. We estimate that approximately 3 fatalities would be reported annually. A written followup report would also be required under § 640.73(c). Approximately 20 hours is estimated for both the initial and followup report.

Proposed § 640.73(b) would require Source Plasma collecting establishments to report any serious or life threatening adverse reaction experienced by a donor after administration with an immunization agent. Although we do not have access to data regarding such reports, we estimate that approximately 3 serious or life-threatening adverse reactions would occur annually, and that the establishment would expend approximately 1 hour to complete the initial and followup reports.

In this rulemaking, we are redesignating current § 630.6 as proposed § 630.40, which requires the collecting establishment to notify a donor when the donor is deferred from donation. Current § 630.6 is approved under OMB control number 0910–0116. This approval expires December 31, 2008.

We are not calculating information collection burden for § 640.120, because by permitting industry to use alternatives in complying with certain regulations for blood and blood components, we believe that this provision reduces burden on industry.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of this proposed rule to OMB for review. Interested persons are requested to send comments regarding information collection to OMB (see **DATES** and **ADDRESSES**).

VII. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

IX. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on this proposed rule. 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.

X. References

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

1. Yomtovian R., ''Bacterial Contamination of Blood: Lessons From the Past and Road Map For the Future,'' *Transfusion*, March 2004; 44:450–460.

2. Boulton F., ''Determination of Blood Pressure of Blood Donors at Blood Collection Sessions,'' presented at the 26th meeting of the Select Committee of Experts on Quality

Assurance in Blood Transfusion Services, February 2003.

3. Perloff D., et al., ''Human Blood Pressure Determination by Sphygmomanometry,'' *Circulation*, November 1993; 88(5 Pt 1):2460–70.

4. Wood, E.M., D.M. Kim, J.P. Miller, ''Accuracy of Predonation Hct Sampling Affects Donor Safety, Eligibility, and Deferral Rates,'' *Transfusion*, March 2001; 41:353–359.

5. HHS, ''The 2005 Nationwide Blood Collection and Utilization Survey Report,'' p.14, 2005, *http://www.aabb.org/apps/docs/05nbcusrpt.pdf*.

6. U.S. General Accounting Office, ''Blood Supply Generally Adequate Despite New Donor Restrictions,'' p. 5 note 7, July 2002, *http://www.gao.gov/new.items/d02754.pdf*.

7. U. S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' table 14, September 2006.

8. Lapane, K. L., et al., ''Hepatitis C Infection Risk Analysis: Who Should Be Screened? Comparison of Multiple Screening Strategies Based on the National Hepatitis Surveillance Program,'' *The American Journal of Gastroenterology*, April 1998; 93:591–596.

9. U.S. Centers for Disease Control and Prevention, ''Viral Hepatitis B Fact Sheet,'' July 27, 2007, *http://www.cdc.gov/ncidod/diseases/hepatitis/b/bfact.pdf*.

10. U.S. Centers for Disease Control and Prevention, ''Viral Hepatitis B Frequently Asked Questions,'' *http://www.cdc.gov/ncidod/diseases/hepatitis/b/faqb.htm#gen*.

11. Stramer, S.L. ''US NAT yield: Where Are We After 2 Years?'' *Transfusion Medicine*, August 2002; 12:243–53.

12. U.S. Centers for Disease Control and Prevention, ''Viral Hepatitis C Fact Sheet,'' May 24, 2005, *http://www.cdc.gov/ncidod/diseases/hepatitis/c/cfact.pdf*.

13. North American Industry Classification System (NAICS), available online at *http://www.naics.com/sba__sizestandards.htm*.

14. U.S. Small Business Administration, Office of Size Standards, ''Table of Small Business Size Standards,'' 2007, *http://www.sba.gov/size/sizetable2007.pdf*.

List of Subjects

21 CFR Part 606

Blood, Labeling, Laboratories, Reporting and recordkeeping requirements.

21 CFR Parts 610 and 660

Biologics, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 630

Blood, Reporting and recordkeeping requirements.

21 CFR Part 640

Blood, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 820

Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 1270

Communicable diseases, HIV/AIDS, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under the authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR Chapter I be amended as follows:

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

1. The authority citation for 21 CFR part 606 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 355, 360, 360j, 371, 374; 42 U.S.C. 216, 262, 263a, 264.

2. Section 606.3 is amended by revising paragraphs (a) and (c) to read as follows:

§ 606.3 Definitions.

* * * * *

(a) *Blood* means a product that is the fluid containing dissolved and suspended elements, which circulates in the vascular system of a human.

* * * * *

(c) *Blood component* means a product containing a part of human blood separated by physical or mechanical means.

* * * * *

3. Section 606.100 is amended by revising the introductory text in paragraph (b); by revising paragraph (b)(20); and by adding paragraph (b)(21) to read as follows:

§ 606.100 Standard operating procedures.

* * * * *

(b) Establishments must establish, maintain, and follow written standard operating procedures for all steps in the collection, processing, compatibility testing, storage, and distribution of blood and blood components for allogeneic transfusion, autologous transfusion, and further manufacturing purposes; for all steps in the investigation of product deviations related to § 606.171; and for all steps in recordkeeping related to current good manufacturing practice and biological product standards. Such procedures must be available to the personnel for use in the areas where the procedures are performed. The written standard operating procedures must include, but are not limited to, descriptions of the following, when applicable:

* * * * *

(20) Procedures for donor deferral as prescribed in § 610.41 of this chapter; and

(21) Procedures for donor notification and autologous donor referring physician notification, including procedures for the appropriate followup if the initial attempt at notification fails, as prescribed in § 630.40 of this chapter.

* * * * *

§ 606.110 [Amended]

4. Section 606.110(b) is amended by removing ''640.63'' and by adding in its place ''630.10, 630.15''.

5. Section 606.160 is amended by revising paragraphs (b)(1)(ix), (b)(1)(xi), and (e) to read as follows:

§ 606.160 Records.

* * * * *

(b) * * *

(1) * * *

(ix) Records of notification of donors deferred or determined not to be eligible for donation, including appropriate followup if the initial attempt at notification fails, performed under § 630.40 of this chapter.

* * * * *

(xi) Records of notification of the referring physician of a deferred autologous donor, including appropriate followup if the initial attempt at notification fails, performed under § 630.40 of this chapter.

* * * * *

(e)(1) Establishments must maintain a record of all ineligible donors so that blood and blood components are not collected from such individuals while they are ineligible or deferred; and

(2) Establishments must provide, to appropriate personnel at all locations operating under the same license or under common management, a collective list of ineligible donors with sufficient information to prevent the collection of blood and blood components from any donors currently identified at each location as not eligible to donate under § 630.10(f) and (g)(1) through (g)(6) of this chapter, or deferred based on test results under § 610.41 of this chapter.

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

6. The authority citation for 21 CFR part 610 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c, 360d, 360h, 360i, 371, 372, 374, 381; 42 U.S.C. 216, 262, 263, 263a, 264.

Subpart E [Amended]

7. Subpart E is amended by removing ''communicable disease agents'' and by adding in its place ''relevant transfusion-transmitted infections'' in

the subpart heading and everywhere it appears throughout the subpart.

8. Section 610.40 is amended by revising paragraph (a) and (e) introductory text to read as follows:

§ 610.40 Test requirements.

(a) *Human blood and blood components.* Except as specified in paragraphs (c) and (d) of this section, and except for syphilis, which must be tested under § 610.40(i), for each donation of blood and blood components intended for use in preparing a product, including donations intended as a component of, or used to prepare a medical device, you, an establishment that collects blood and blood components, must test:

(1) For evidence of infection due to the following relevant transfusion-transmitted infections described in § 630.3(g)(1)(i) through (g)(1)(iv) of this chapter:

(i) Human immunodeficiency virus, types 1 and 2;

(ii) Hepatitis B virus;

(iii) Hepatitis C virus; and

(iv) Human T-lymphotropic virus, types I and II;

(2) In addition, for evidence of infection due to relevant transfusion-transmitted infections described in § 630.3(g)(1)(vi) through (g)(1)(viii) and 630.3(g)(2) of this chapter, provided that testing for the disease agent or disease is available and necessary to reduce the risk of transmission of the relevant transfusion-transmitted infection by the blood or blood component.

* * * * *

(e) *Further testing.* You must further test each donation, including autologous donations, found to be reactive by a screening test performed under paragraphs (a) and (b) of this section using one or more FDA-approved supplemental (additional, more specific) test(s), or other appropriate, additional tests. You must perform such further testing as necessary and appropriate to determine the deferred donor's infection status for the purpose of donor notification required under § 630.40 of this chapter, except:

* * * * *

PART 630—REQUIREMENTS FOR HUMAN BLOOD AND BLOOD COMPONENTS INTENDED FOR TRANSFUSION OR FOR FURTHER MANUFACTURING USE

9. The authority citation for part 630 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 355, 360, 371; 42 U.S.C. 216, 262, 264.

10. Revise the heading for part 630 to read as set forth above.

11. Add a heading for new subpart C to read as follows:

Subpart C—Donor Notification

12. Redesignate § 630.6 as § 630.40, and transfer newly designated § 630.40 to subpart C.

13. Amend § 630.40 as follows:

a. Revise the section heading.

b. Remove ''suitable'' wherever it appears and add ''eligible'' in its place; and remove ''suitability'' wherever it appears and add ''eligibility'' in its place.

c. Revise the first sentence in paragraph (a).

The revisions read as follows:

§ 630.40 Requirements for notifying deferred donors.

(a) *Notification of donors.* You must make reasonable attempts to notify any donor, including an autologous donor, who has been deferred based on the results of tests for evidence of infection with a relevant transfusion-transmitted infection(s) as required by § 610.41 of this chapter; who has been determined not to be eligible as a donor based on eligibility criteria under §§ 630.10 and 630.15 of this chapter; or whose platelet component has tested positive for an endogenous bacterial contamination. * * *

* * * * *

14. Add subparts A and B to part 630 to read as follows:

Subpart A—General Provisions

Sec.
630.1 Purpose and scope.
630.3 Definitions.

Subpart B—Donor Eligibility Requirements

Sec.
630.5 Medical supervision.
630.10 General donor eligibility requirements.
630.15 Donor eligibility requirements specific to Whole Blood and to Plasma collected by plasmapheresis.
630.20 General exceptions from donor eligibility requirements.
630.25 Exceptions from certain donor eligibility requirements for infrequent plasmapheresis.
630.30 Donation suitability requirements.
630.35 Requalification of previously deferred donors.

Subpart A—General Provisions

§ 630.1 Purpose and scope.

(a) *Purpose. What is the purpose of subparts A, B, and C of this part?* The purpose of these subparts, together with §§ 610.40 and 610.41 of this chapter, is to provide certain minimum criteria for each donation of blood and blood components, for:

(1) Determining the eligibility of a donor of blood and blood components;

(2) Determining the suitability of the donation of blood and blood components; and

(3) Notifying a donor who is deferred from donation.

(b) *Scope. Who must comply with subparts A, B, and C of this part?* You, as defined in § 630.3(l), must comply with subparts A, B, and C of this part.

§ 630.3 Definitions.

As used in this part and 21 CFR part 640 of this chapter:

(a) *Blood* means a product that is the fluid containing dissolved and suspended elements, which circulates in the vascular system of a human.

(b) *Blood component* means a product containing a part of blood separated by physical or mechanical means.

(c) *Donor* means a person who:

(1) Donates blood or blood components for transfusion or for further manufacturing use or

(2) Presents as a potential candidate for such donation.

(d) *Eligibility of a donor* means the determination that the donor is qualified to donate blood and blood components.

(e) *Intimate contact* means an activity that could result in an exchange of body fluids, including blood or saliva, with another individual.

(f) *Physician substitute* means a trained and qualified person(s) who is:

(1) A graduate of an education program for health care workers that includes clinical training;

(2) Currently licensed or certified as a health care worker in the jurisdiction where the collecting establishment is located;

(3) Currently certified in cardiopulmonary resuscitation; and

(4) Trained and authorized to perform specified functions under the direction of the responsible physician.

(g) *Relevant transfusion-transmitted infection* means:

(1) Any of the following transfusion-transmitted infections:

(i) Human immunodeficiency virus, types 1 and 2 (HIV);

(ii) Hepatitis B virus (HBV);

(iii) Hepatitis C virus (HCV);

(iv) Human T-lymphotropic virus, types I and II (HTLV);

(v) *Treponema pallidum* (syphilis);

(vi) Creutzfeldt-Jakob disease (CJD);

(vii) Variant Creutzfeldt-Jakob disease (vCJD); and

(viii) *Plasmodium sp.* (malaria).

(2) Other transfusion-transmitted infections not listed in paragraph (g)(1) of this section:

(i) For which appropriate screening measures are developed and/or an appropriate screening test for donor

specimens is licensed, approved, or cleared for such use by FDA and is available; and

(ii) That:

(A) May have sufficient incidence and/or prevalence to affect the potential donor population or

(B) May have been released accidentally or intentionally in a manner that could place donors at risk of infection.

(h) *Responsible physician* means an individual who is:

(1) Licensed to practice medicine in the jurisdiction where the collecting establishment is located;

(2) Adequately trained and qualified to direct and control personnel and relevant procedures concerning the determination of donor eligibility; collection of blood and blood components; the immunization of a donor; and the return of red blood cells or other blood components to the donor during collection of blood component(s) by apheresis; and

(3) Designated by the collecting establishment to direct and control personnel, and to approve relevant procedures specifying decision-making criteria for determining donor eligibility, the collection of blood or blood components, the immunization of a donor, and the return of red blood cells or other blood components to a donor during collection of blood component(s) by apheresis.

(i) *Suitability of the donation* means a determination of whether the donation is acceptable for transfusion or for further manufacturing use.

(j) *Trained personnel* means authorized individuals, including physician substitutes, who are adequately instructed and qualified to perform specified functions under the direction of the responsible physician.

(k) *Transfusion-transmitted infection* means a disease or disease agent:

(1) That could be fatal or life-threatening, could result in permanent impairment of a body function or permanent damage to body structure, or could necessitate medical or surgical intervention to preclude permanent impairment of body function or permanent damage to a body structure; and

(2) For which there may be a risk of transmission by the blood and blood components collected, or by a blood derivative product manufactured from the collected blood or blood components, because the disease agent or disease is potentially transmissible by that blood, blood component, or blood derivative product.

(l) *You* means an establishment that collects blood and blood components as described in paragraphs (a) and (b) of this section.

Subpart B—Donor Eligibility Requirements

§ 630.5 Medical supervision.

(a) *Who must determine the eligibility of a donor?* The responsible physician authorized by you, as described in § 630.3(l), must determine the eligibility of a donor of blood or blood components in accordance with this part.

(b) *Must the responsible physician be present at the collecting establishment at all times?* Except as provided in paragraphs (c) and (d) of this section and § 630.15(b)(1) and (b)(4), you must assure that the responsible physician is in attendance when any of the following activities are performed at the collecting establishment:

(1) Determining the eligibility of a donor;

(2) Collecting blood or blood components;

(3) Collecting Source Plasma in an approved collection program from donors who are otherwise determined to be unsuitable;

(4) Returning red blood cells to the donor during plasmapheresis; or

(5) Immunizing a donor in an approved hyperimmunization program.

(c) *What specified functions of the responsible physician in the collection of Source Plasma may be performed by a physician substitute?* You may authorize a physician substitute to perform any specified function listed in paragraph (b) of this section in the collection of Source Plasma except for red blood cell immunizations performed under paragraph (b)(5) of this section.

(d) *What specified functions of the responsible physician in the collection of blood and blood components may be performed by a physician substitute or trained personnel?* In the absence of the responsible physician, you may authorize a physician substitute or trained personnel to determine donor eligibility and collect blood and blood components.

(e) *Must emergency medical services be available?* Yes, you must establish, maintain, and follow standard operating procedures for providing within 15 minutes emergency medical services for donors when medically necessary.

§ 630.10 General donor eligibility requirements.

(a) *What factors determine the eligibility of a donor?* You must not collect blood and blood components before you determine that the donor is eligible to donate. A donor is not eligible if the donor is not in good health or if you identify factors that may adversely affect:

(1) The health of the donor or

(2) The safety, purity, or potency of the blood or blood components collected from the donor.

(b) *What educational material must you provide to the donor before determining eligibility?* Before determining eligibility, you must provide the donor with educational material containing useful and current information concerning the relevant transfusion-transmitted infections defined in § 630.3(g). The educational material must include an explanation of the signs and symptoms of and the readily identifiable risk factors closely associated with exposure to the relevant transfusion-transmitted infections. You must present educational material in an appropriate form, e.g., in oral, written or multimedia, and in a manner designed to be understood by the donor. The educational material must state that the donor may not donate blood and blood components when such signs and symptoms or risk factors are present.

(c) *When must you determine the eligibility of a donor?* You must determine donor eligibility on the day of donation, and before collection. When a donor is donating blood components that cannot be stored for more than 24 hours, you may determine the donor's eligibility and collect a sample for testing required under § 610.40 and § 640.5 of this chapter, 1 day before the donation. You must have standard operating procedures in place for identifying such components.

(d) *How must you determine the eligibility of a donor?* Before collection, you must determine the donor's eligibility by the following procedures:

(1) Assessing the donor's deferral status by checking the collective list of ineligible donors required under § 606.160(e)(2) of this chapter;

(2) Assuring that the interval since the donor's last donation is appropriate, taking into account the donor's participation, if any, in other blood or blood component collection programs;

(3) Assessing the donor's medical history; and

(4) Performing a physical assessment of the donor.

(e) *How do you assess the donor's medical history?* Before collection, you must take a medical history designed to determine if the donor is in good health and if health care practitioners have ever advised the donor not to donate; to identify risk factors closely associated with exposure to, or clinical evidence of, infection due to a relevant transfusion-transmitted infection; and to

determine if there are other conditions that may adversely affect the donor or the safety, purity, or potency of the blood or blood components or any product produced from the blood or blood components.

(f) *What factors make the donor ineligible because of an increased risk for, or evidence of, a relevant transfusion-transmitted infection?* The donor is ineligible to donate when information provided by the donor or other reliable evidence indicates possible exposure to a relevant transfusion-transmitted infection. Information that a donor has participated in any of the following renders the donor ineligible if that risk of exposure is still applicable at the time of donation:

(1) Social behaviors associated with relevant transfusion-transmitted infections;

(2) Medical treatments and procedures associated with exposure to relevant transfusion-transmitted infections;

(3) Signs and symptoms of relevant transfusion-transmitted infections;

(4) Institutionalization in a correctional institution;

(5) Intimate contact with an individual who is at an increased risk for exposure to, or is known to be infected with, a relevant transfusion-transmitted infection that is spread by such type of intimate contact; and

(6) Nonsterile percutaneous inoculation.

(g) *What other factors make the donor ineligible to donate because of risk to the health of the donor, or to the safety, purity, or potency of the blood or blood component?* You must assess the donor for each of the following factors to determine whether donating could adversely affect the health of the donor, or whether the safety, purity, or potency of the blood or blood component could be affected, and if so, you must determine the donor to be ineligible:

(1) Medical or dental treatment, or symptoms of a recent or current illness;

(2) Medication;

(3) Major surgical procedure;

(4) Travel to, or residence in, an area endemic for a transfusion-transmitted infection;

(5) Xenotransplantation product recipient or intimate contact of a xenotransplantation product recipient;

(6) Exposure or possible exposure to a released disease agent or disease relating to a transfusion-transmitted infection, if you know or suspect that such a release has occurred;

(7) Pregnancy at the time of, or 6 weeks before, donation; and

(8) Unreliable answers to medical history questions due to the apparent influence of drugs or alcohol, or due to another reason affecting the reliability of the donor's answers.

(h) *How do you perform a physical assessment of the donor?* You must determine that the donor is in good health based on the following, at a minimum:

(1) *Temperature.* The donor's oral body temperature must not exceed 37.5 °C (99.5 °F), or the equivalent if measured at another body site;

(2) *Blood pressure.* The donor's systolic blood pressure must not measure above 180 millimeters of mercury or below 90 millimeters of mercury, and the diastolic blood pressure must not measure above 100 millimeters of mercury or below 50 millimeters of mercury. A donor with measurements outside these limits may be permitted to donate only when the responsible physician has examined the donor and determined that the health of the donor would not be adversely affected by donating.

(3) *Hemoglobin or hematocrit determination for allogeneic donation.* (i) You must determine the donor's hemoglobin level or hematocrit value by using a sample of blood obtained by fingerstick, venipuncture, or by a method that provides equivalent results. Blood obtained from the earlobe is not acceptable; and

(ii) An allogeneic donor must have a hemoglobin level no less than 12.5 grams per deciliter of blood, or a hematocrit value no less than 38 percent. An autologous donor must have a hemoglobin level no less than 11.0 grams per deciliter of blood, or a hematocrit value no less than 33 percent.

(4) *Pulse.* The donor's pulse rate must be regular and between 50 and 100 beats per minute. A donor with an irregular pulse rate or measurements outside these limits may be permitted to donate only when the responsible physician has examined the donor and determines that the health of the donor would not be adversely affected.

(5) *Weight.* The donor must weigh a minimum of 50 kilograms (110 pounds) and must not have had an unexplained loss of greater than 10 percent of body weight within the past 6 months; and

(6) *Skin examination.* (i) The donor's phlebotomy site must be free of infection, inflammation, lesions, and pitted skin; and

(ii) The donor's arms and forearms must be free of punctures and scars indicative of injected drugs of abuse.

(i) *What additional requirements must you complete before determining the eligibility of the donor?* Immediately before donation, you must obtain the following:

(1) *Proof of identity and mailing address.* You must obtain proof of identity of the donor and an address where the donor may be contacted for 8 weeks after donation; and

(2) *Donor's written statement of understanding.* You must provide a written statement of understanding to be read and signed by the donor. You must establish procedures in accordance with § 606.100 of this chapter to provide assistance to those unable to read the written statement of understanding. You must design those procedures to assure that the donor understands fully the material in the donor's written statement of understanding, and provide for a signature or acceptable substitute for a signature to indicate that understanding. The written statement of understanding must not include any exculpatory language through which the donor is made to waive or appear to waive any of the donor's legal rights. The statement must clearly state the following:

(i) The donor has reviewed the provided educational material required by § 630.10(b) regarding relevant transfusion-transmitted infections, including the fact that relevant transfusion-transmitted infections present potential risks to the safety, purity, or potency of the blood supply;

(ii) The donor agrees not to donate if the donation could result in a potential risk to the safety, purity, or potency of the blood supply as described in the educational material;

(iii) A sample of the donor's blood will be tested for specified relevant transfusion-transmitted infections required in § 610.40(a) of this chapter and for syphilis.

(iv) If any of the tests required in § 610.40(a) of this chapter are reactive, the sample of blood will be tested further, as required in § 610.40(e) of this chapter;

(v) If the donation is determined to be not suitable under § 630.30(a) or if the donor is deferred from donation under § 610.41 of this chapter, the donor's record must identify the donor as ineligible to donate and the donor must be notified under § 630.40 of the basis for the deferral and the period of deferral;

(vi) The hazards and risks of the donation procedure or of hyperimmunization, if applicable; and

(vii) the donor has the opportunity to ask questions and withdraw consent at any time.

§ 630.15 Donor eligibility requirements specific to Whole Blood and to Plasma collected by plasmapheresis.

(a) *What additional donor eligibility requirements are specific to Whole Blood?*—(1) *Donation frequency*. Whole Blood must not be collected from a donor more than once in 8 weeks if the donor participates in a single unit collection program; or more than once in 16 weeks if the donor participates in a double unit collection program, unless the donor is examined and certified to be in good health by a responsible physician at the time of donation and one of the following three conditions exist:

(i) An individual presents a physician's prescription for therapeutic phlebotomy for medical reasons; or

(ii) The donation is for autologous use; or

(iii) The donation is a dedicated donation based on the intended recipient's documented medical need.

(2) *Therapeutic phlebotomy*. When a donor who is determined to be eligible under § 630.10(d) undergoes a therapeutic phlebotomy to promote the health of the donor, the container label must conspicuously state the disease of the donor that necessitated phlebotomy. However, no disease labeling is required under this section for a donation collected from a donor who meets all eligibility criteria and undergoes a therapeutic phlebotomy as ordered by a physician treating the donor for Hereditary Hemochromatosis, provided that you perform without charge therapeutic phlebotomies for all individuals with Hereditary Hemochromatosis.

(b) *What additional donor eligibility requirements are specific to Plasma collected by plasmapheresis?*—(1) *Physical examination and informed consent*. (i) In addition to the physical assessment required in § 630.10(d), the responsible physician must examine the donor for medical conditions that would place the donor at risk during plasmapheresis. If the donor is determined to be at risk, you must defer the donor from donating. In a program of repeat plasmapheresis, i.e., collections occur more than once every 28 days, the donor must be examined on the day of the first donation or no more than 1 week before the first donation and at subsequent intervals of no more than 1 year.

(ii) When conducting the physical examination, the responsible physician must explain the hazards of the procedure to the donor. The explanation must include the risks of a hemolytic transfusion reaction if the donor is given the cells of another donor, and the hazards involved if the donor is hyperimmunized. The explanation must be made in such a manner that the donor may give informed consent and has a clear opportunity to refuse the procedure as required under § 630.10(i)(2).

(2) *Weight*. You must weigh a donor at each donation.

(3) *Total protein level*. Before each plasmapheresis procedure, a donor must have a total plasma protein level of no less than 6.0 grams per deciliter and no more than 9.0 grams per deciliter of plasma sample or the comparable level for a serum sample.

(4) *Examination before immunization*. (i) In addition to the determination of donor eligibility required in § 630.10(d), the responsible physician must perform the physical examination no more than 1 week before the first immunization injection for the production of high-titer plasma. It is not necessary to repeat the physical examination requirement in paragraph (b)(1) of this section, if the immunized donor's plasma is collected within 3 weeks of the first immunization injection; and

(ii) A donor determined to be eligible under § 630.10(d) and currently participating in a plasmapheresis program, does not need to be re-examined before immunization for the production of high-titer antibody plasma.

(5) *Deferral due to red blood cell loss*. You must defer a donor from donating plasma for a period of 8 weeks after any of the following events:

(i) The donor experienced a red blood cell loss of equal to or greater than 200 milliliters of red blood cells during a single automated plasmapheresis procedure; or

(ii) The donor experienced an unexpected red blood cell loss of any volume in an automated apheresis procedure on two occasions within the last 8-week period; or

(iii) The donor experienced a red blood cell loss equivalent to or greater than 200 milliliters of red blood cells as a result of failure to return red blood cells during a manual plasmapheresis procedure; or

(iv) The donor donated a unit of Whole Blood.

(6) *Exceptions to deferral due to red blood cell loss*. You are not required to defer a donor from participation in a plasmapheresis program due to red blood cell loss if the following occurs:

(i) The donor is examined at the time of the current donation and certified by the responsible physician to be in good health under § 630.10(h) and the donor's health permits the plasmapheresis; and

(ii) The donor possesses an antibody that is transitory, of a highly unusual or infrequent specificity, or of an unusually high titer, and

(iii) The special characteristics of the antibody and the need for plasmapheresis of the donor under § 630.20(c)(2) are documented at your establishment.

(7) *Malaria*. Freedom from risk of malaria is not required for a donor of Source Plasma.

§ 630.20 General exceptions from donor eligibility requirements.

You may collect blood and blood components from a donor who is determined to be not eligible to donate under §§ 630.10(d) and 630.15, or deferred under § 610.41 of this chapter only if:

(a) The responsible physician examines the donor and certifies in writing that the donor's health permits the collection procedure;

(b) The collection is performed under the supervision of the responsible physician who is aware of the donor's health status; and

(c) At least one of the following is met:

(1) The donation is for autologous use as prescribed by the donor's physician, and is not for allogeneic transfusion or for further manufacturing use;

(2) The donor is participating in a plasmapheresis program that collects plasma for further manufacturing use into products for which there are no alternative sources, and the collection program has received prior approval from the Director, Center for Biologics Evaluation and Research; or

(3) The donation is restricted for use solely by a specific recipient based on documented medical need and the responsible physician determines that the donation presents no undue medical risk to the recipient.

§ 630.25 Exceptions from certain donor eligibility requirements for infrequent plasmapheresis.

You are not required to perform a physical examination of the donor for medical conditions under § 630.15(b)(1), to perform a test for total protein under § 630.15(b)(3), to determine the immunoglobulin composition of the serum or plasma under § 640.65(b)(1)(i) of this chapter, or to review the laboratory data as required in § 640.65(b)(2)(i) of this chapter, if:

(a) The donor has not donated Whole Blood in the preceding 8 weeks, Plasma by plasmapheresis in the preceding 4 weeks, or participated in a double Red Blood Cells unit collection program within the preceding 16 weeks;

(b) The donor has not donated more than 12.0 liters of plasma (14.4 liters of plasma for donors weighing more than 175 lbs.) in the past year;

(c) The donor is determined by the responsible physician to be in good health under § 630.10(d); and

(d) The donor is not participating in an immunization program for the production of high-titer plasma.

§ 630.30 Donation suitability requirements.

(a) *When is a donation suitable?* A donation is suitable when:

(1) The donor is not currently deferred from donation;

(2) The results in accordance with §§ 630.10 through 630.25 indicate that the donor is in good health and that the donation would not adversely affect the health of the donor;

(3) The donor is free from risk factors for, or evidence of transfusion-transmitted infections under § 630.10(f) and (g);

(4) The donor's blood is tested in accordance with § 610.40 of this chapter, and is negative or nonreactive, unless an exception applies under § 610.40(h) of this chapter;

(5) For platelet components, you have taken adequate steps to assure that the donation is tested for bacterial contamination and found negative; and

(6) The donation meets other requirements in this subchapter.

(b) *What must you do when the donation is not suitable?* (1) When the donation does not meet the criteria in paragraphs (a)(1) through (a)(3) and (a)(5) of this section, the donation is not suitable and you must defer the donor from donation;

(2) When the donation does not meet the criteria in paragraph (a)(4) of this section, defer the donor from donation in accordance with § 610.41(a) of this chapter;

(3) Identify a donor not eligible under § 630.10(f)(1) through (f)(6) and § 630.10(g)(1) through (g)(6) as not eligible to donate under § 606.160(e) of this chapter; and

(4) Notify a donor found not eligible to donate under § 610.41 of this chapter, and §§ 630.10 through 630.25, or 630.30(a)(5) of the deferral, the deferral period, and the reason for the deferral, in accordance with the notification requirements in § 630.40.

§ 630.35 Requalification of previously deferred donors.

(a) A deferred donor identified under § 630.30(b)(1) may be determined eligible as a donor of blood and blood components if, at the time of the current collection, except for the record of previous deferral, the donor meets the eligibility criteria in this part; and the criteria, which were the basis for the previous deferral, are determined to be no longer applicable.

(b) A deferred donor identified under § 630.30(b)(2) may be determined eligible as a donor of blood and blood components if, at the time of the current collection except for the record of the previous deferral, the donor meets the eligibility criteria in this part; and the criteria which were the basis for the previous deferral are determined to be no longer applicable under § 610.41(b) of this chapter.

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

15. The authority citation for 21 CFR part 640 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

§ 640.3 [Removed]

16. Section 640.3 is removed.

§ 640.4 [Amended]

17. Section 640.4 is amended by removing paragraph (a) and by redesignating paragraphs (b) through (h) as paragraphs (a) through (g).

18. Section 640.12 is revised to read as follows:

§ 640.12 Eligibility of donor.

Collecting establishments must determine the eligibility of donors of the source blood for Red Blood Cells in accordance with §§ 630.10 and 630.15 of this chapter.

19. Section 640.21 is revised to read as follows.

§ 640.21 Eligibility of donors.

(a)(1) Collecting establishments must determine the eligibility of Whole Blood donors and plateletpheresis donors in accordance with §§ 630.10 and 630.15 of this chapter, except as expressly modified in paragraph (e) of this section.

(2) Under § 630.10(i)(2)(vi) of this chapter, the statement of understanding must include a statement that the long-term effects of frequent apheresis are unknown.

(b) A donor must not serve as a source of platelets for transfusion if the donor has recently ingested drugs that adversely affect platelet function.

(c) A plateletpheresis donor may donate at intervals shorter than 8 weeks provided:

(1) The establishment performs a platelet count before starting the initial plateletpheresis procedure and before each subsequent procedure;

(2) The platelet count required in paragraph (c)(1) of this section is greater than 150,000/μL;

(3) The donor's post-donation platelet count is no less than 100,000 platelets/μL; and

(4) The donor donates the following:

(i) No more than a total of 24 plateletpheresis collections during a 12-month period;

(ii) For single component collection procedures, no more than 2 plateletpheresis procedures within a 7 calendar day period with a minimum of 2 calendar days between procedures;

(iii) For a double or triple component collection procedure, no more than one procedure within a 7 calendar day period.

(d) For a period not to exceed 30 days, a donor may serve as a dedicated plateletpheresis donor for a single recipient, in accordance with § 610.40(c)(1) of this chapter, as often as is medically necessary, provided that the donor is in good health, as determined by a physician, and the donor's platelet count is greater than 150,000/μL, measured at the conclusion of the previous donation or before initiating apheresis for the current donation.

(e) Except as provided in paragraphs (e)(1) and (e)(2) of this section, a plateletpheresis donor must be deferred for a period of 8 weeks after donating a unit of Whole Blood or after losing a volume of whole blood equal to or greater than 450 mL, or red blood cells equal to or greater than 200 mL, cumulatively over an 8 week period; or be deferred for a period of 16 weeks after donating a double Red Blood Cells unit collection. In exception, the plateletpheresis donor may donate if all of the following criteria are met:

(1) The donor waits 2 calendar days after donating Whole Blood or after experiencing the blood loss; and

(2) The extracorporeal red blood cell volume during the apheresis procedure is equal to or less than 100 mL.

§ 640.22 [Amended]

20. Section 640.22(b) is amended by removing ''640.62'' and by adding in its place ''630.5''.

21. Section 640.31 is revised to read as follows:

§ 640.31 Eligibility of donors.

(a) Whole Blood donors must meet the criteria for donor eligibility prescribed in §§ 630.10 and 630.15 of this chapter.

(b) Collecting establishments must determine the eligibility of plasmapheresis donors in accordance with §§ 630.10 and 630.15 of this chapter.

§ 640.32 [Amended]

22. Section 640.32(b) is amended by removing ''640.62'' and by adding in its place ''630.5''.

23. Section 640.51 is revised to read as follows:

§ 640.51 Eligibility of donors.

(a) Whole blood donors must meet the criteria for eligibility prescribed in §§ 630.10 and 630.15 of this chapter.

(b) Collecting establishments must determine the eligibility of plasmapheresis donors in accordance with §§ 630.10 and 630.15 of this chapter.

§ 640.52 [Amended]

24. Section 640.52(b) is amended by removing ''640.62'' and by adding in its place ''630.5''.

§ 640.61 [Removed]

25. Section 640.61 is removed.

§ 640.62 [Removed]

26. Section 640.62 is removed.

§ 640.63 [Removed]

27. Section 640.63 is removed.

28. Section 640.65 is amended by revising paragraphs (b)(1)(i) and (b)(2)(i) to read as follows:

§ 640.65 Plasmapheresis.

* * * * *

(b) * * *

(1)(i) Except as provided under § 630.25 of this chapter, a sample of blood must be drawn from each donor on the day of the initial physical examination or plasmapheresis, whichever comes first, and at least every 4 months thereafter. A serological test for syphilis, a total plasma or serum protein determination, and electrophoresis or quantitative immuno-diffusion test or an equivalent test to determine immunoglobulin composition of the plasma or serum, must be performed on the sample.

* * * * *

(2)(i) Except as provided under § 630.25 of this chapter, the accumulated laboratory data, including tracings of the plasma or serum protein electrophoresis pattern, if any, the calculated values of each component, and the collection records must be reviewed by the responsible physician as required in § 630.5 of this chapter within 14 calendar days after the sample is drawn to determine whether or not the donor should be deferred from further donation. If a determination is not made within 14 calendar days, the donor must be deferred pending such a determination. The responsible physician must sign the review. If the protein composition is not within normal limits established by the testing laboratory, or if the total protein is less than 6.0 grams per deciliter of plasma sample or more than 9.0 grams per deciliter of plasma sample, or the comparable level for a serum sample, the donor must be deferred from donation until the protein composition returns to acceptable levels. Reinstatement of the donor into the plasmapheresis program when the donor's values have returned to acceptable levels must first be approved by the responsible physician.

* * * * *

29. Section 640.69 is amended by adding paragraphs (e) and (f) to read as follows:

§ 640.69 General requirements.

* * * * *

(e) *Restrictions on distribution.* Establishments must ensure that Source Plasma donated by paid donors not be used for further manufacturing into injectable products until the donor has a record of two suitable donations within the last 6 months.

(f) *Hold.* Source Plasma donated by paid donors determined to be suitable for further manufacturing into injectable products must be held in quarantine for a minimum of 60 days before it is released for further manufacturing.

30. Section 640.72 is amended by revising paragraphs (a)(2), (a)(3), and (a)(4) to read as follows:

§ 640.72 Records.

(a) * * *

(2)(i) For each donor, a separate and complete record of initial and periodic examinations, tests, laboratory data, and interviews as required in §§ 630.10 and 630.15 of this chapter and §§ 640.65, 640.66, and 640.67, except as provided in paragraph (a)(2)(ii) of this section.

(ii) Negative results for testing for evidence of infection due to relevant transfusion-transmitted infections required in § 610.40 of this chapter, and the volume or weight of plasma withdrawn from a donor need not be recorded on the individual donor record if such information is maintained on the premises of the plasmapheresis center where the donor's plasma has been collected.

(3) The original or a clear copy of the donor's written statement of understanding for participation in the plasmapheresis program or for immunization.

(4) Documentation by the responsible physician that the donor is in good health under §§ 630.10 and 630.15 of this chapter on the day of examination; such documentation must address the eligibility of the donor as a plasmapheresis donor and, when applicable, an immunized donor.

* * * * *

31. Section 640.73 is revised to read as follows:

§ 640.73 Reporting of donor reactions.

(a) If a donor has a fatal reaction which, in any way, may be associated with plasmapheresis, you must notify the Director of the Center for Biologics Evaluation and Research by telephone as soon as possible.

(b) If a donor enrolled in an immunization program for the collection of Source Plasma under this subpart has an adverse experience related to your administration of the immunizing agent, you must report the event to FDA:

(1) By telephone, facsimile, express mail, or electronic mail as soon as possible, if the adverse experience is a serious or life threatening adverse experience, as described in § 600.80(a) of this chapter; or

(2) In an annual report, if the adverse experience is neither serious nor life threatening. Such a report is due to FDA on the anniversary of FDA's approval of your immunization program.

(c) You must follow up the initial report required under paragraphs (a) and (b)(1) of this section by submitting a written report of the investigation to the Director, Office of Compliance and Biologics Quality, Center for Biologics Evaluation and Research, within 7 days of your first learning of the donor's reaction. (See § 600.2 of this chapter.)

32. Section 640.120 is revised to read as follows:

§ 640.120 Alternative procedures.

(a) The Director, Center for Biologics Evaluation and Research, may approve an exception or alternative to any requirement in subchapters C and F of chapter I of title 21 of the Code of Federal Regulations regarding blood, blood components, or blood products. If the Director issues such approval orally, the Director will follow up that oral approval by issuing a written approval. If approval is appropriate, the Director may issue such an approval in response to:

(1) A written request from an establishment. Licensed establishments must submit such requests in accordance with § 601.12 of this chapter;

(2) An oral request from an establishment, if there are difficult circumstances and submission of a written request is not feasible. Establishments must follow up such oral request by submitting written

requests under paragraph (a)(1) of this section within 5 working days.

(b) In a public health emergency, the Director may issue an exception or alternative to any requirement in subchapters C and F of chapter I of title 21 of the Code of Federal Regulations regarding blood, blood components, or blood products, if a variance under this section is necessary to assure that blood, blood components, or blood products will be available in a specified location to respond to an unanticipated immediate need for blood, blood components, or blood products.

(c) Periodically, FDA will provide a list of approved alternative procedures and exceptions at *www.fda.gov/cber*.

PART 660—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

33. The authority citation for 21 CFR part 660 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c, 360d, 360h, 360i, 371, 372; 42 U.S.C. 216, 262, 263, 263a, 264.

34. Section 660.31 is revised to read as follows:

§ 660.31 Eligibility of donor.

Donors of peripheral blood for Reagent Red Blood Cells must meet all the criteria for donor eligibility under §§ 630.10 and 630.15 of this chapter.

PART 820—QUALITY SYSTEM REGULATION

35. The authority citation for 21 CFR part 820 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360, 360c, 360d, 360e, 360h, 360i, 360j, 360l, 371, 374, 381, 383; 42 U.S.C. 216, 262, 263a, 264.

36. Section 820.1(a)(1) is amended by revising the last sentence to read as follows:

§ 820.1 Scope.

(a) *Applicability.* (1) * * * Manufacturers of blood and blood components used for transfusion or for further manufacturing are not subject to this part, but are subject to subchapter F of this chapter.

* * * * *

PART 1270—HUMAN TISSUE INTENDED FOR TRANSPLANTATION

37. The authority citation for 21 CFR part 1270 continues to read as follows:

Authority: 42 U.S.C. 216, 243, 264, 271.

38. Section 1270.3 is amended by revising paragraph (b) to read as follows:

§ 1270.3 Definitions.

* * * * *

(b) *Blood component* means a product containing a part of human blood separated by physical or mechanical means.

* * * * *

Dated: October 25, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–21565 Filed 11–7–07; 8:45 am]

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