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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2006–0080]

Imported Fire Ant; Addition of Counties in Arkansas and Tennessee to the List of Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the imported fire ant regulations by designating as quarantined areas all of 2 counties in Arkansas and all or portions of 21 counties in Tennessee. As a result of that action, the interstate movement of regulated articles from those areas is restricted. The interim rule was necessary to prevent the artificial spread of imported fire ant to noninfested areas of the United States.

DATES: Effective on October 18, 2006, we are adopting as a final rule the interim rule that was published at 71 FR 42246–42249 on July 26, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Brown, Imported Fire Ant Quarantine Program Manager, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737–1236; (301) 734–4838.

SUPPLEMENTARY INFORMATION:

Background

The imported fire ant regulations (contained in 7 CFR 301.81 through 301.81–10 and referred to below as the regulations) quarantine infested States or infested areas within States and restrict the interstate movement of regulated articles to prevent the artificial spread of the imported fire ant.

The regulations in § 301.81–3 provide that the Administrator of the Animal and Plant Health Inspection Service will list as a quarantined area each State, or each portion of a State, that is infested with the imported fire ant. The Administrator will designate less than an entire State as a quarantined area only under the following conditions: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles listed in § 301.81–2 that are equivalent to the interstate movement restrictions imposed by the regulations; and (2) designating less than the entire State will prevent the spread of the imported fire ant. The Administrator may include uninfested acreage within a quarantined area due to its proximity to an infestation or its inseparability from an infested locality for quarantine purposes.

In an interim rule [1] effective and published in the **Federal Register** on July 26, 2006 (71 FR 42246–42249, Docket No. APHIS–2006–0080), we amended the regulations by adding Perry County and the remainder of Polk County to the list of quarantined areas in Arkansas, and by adding portions of Anderson, Davidson, Gibson, Knox, Rutherford, Tipton, Van Buren, and Williamson Counties to the list of quarantined areas in Tennessee and expanding the quarantined areas in Bedford, Benton, Blount, Carroll, Cumberland, Grundy, Haywood, Hickman, Humphreys, Loudon, Maury, Roane, and Sequatchie Counties, TN.

Comments on the interim rule were required to be received on or before September 25, 2006. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

[1] To view the interim rule, go to *http://www.regulations.gov*, click on the ''Advanced Search'' tab, and select ''Docket Search.'' In the Docket ID field, enter APHIS–2006–0080, then click ''Submit.'' Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 71 FR 42246–42249 on July 26, 2006.

Done in Washington, DC, this 12th day of October 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–17336 Filed 10–17–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 03–022–7]

RIN 0579–AB81

Mexican Hass Avocado Import Program; Technical Amendment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: In a final rule published in the **Federal Register** on November 30, 2004, we amended the fruits and vegetables regulations to expand the number of States in which fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, may be distributed and to allow the distribution of the avocados during all months of the year. The final rule contained an error in the rule portion. This document corrects that error.

EFFECTIVE DATE: November 17, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Lamb, Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River

Road, Unit 133, Riverdale, MD 20737–1236; (301) 734–8758.

SUPPLEMENTARY INFORMATION: In a proposed rule published in the **Federal Register** on May 24, 2004 (69 FR 29466–29477, Docket No. 03–022–3), we proposed to amend the regulations in 7 CFR 319.56–2ff to expand, from 31 to 50, the number of States (plus the District of Columbia) in which fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, may be distributed. In a rule published in the **Federal Register** on November 30, 2004 (69 FR 69747–69774, Docket No. 03–022–5), and effective on January 31, 2005, we adopted our proposed rule as a final rule, with changes made in response to public comments we received on the proposed rule. Those changes included the adoption of temporary restrictions on the distribution of avocados (contained in § 319.56–2ff(c)(3)(vii) of the regulations) which provided that between January 31, 2005, and January 31, 2007, avocados may be imported into and distributed in all States except California, Florida, Hawaii, and that the boxes or crates in which avocados are shipped must be clearly marked with the statement ''Not for importation or distribution in CA, FL, and HI.''

Prior to the effective date of our November 2004 final rule, the regulations had required that the boxes or crates be marked ''Not for distribution in AL, AK, AZ, AR, CA, FL, GA, HI, LA, MS, NV, NM, NC, OK, OR, SC, TN, TX, WA, Puerto Rico, and all other U.S. Territories.'' When we amended the regulations to expand, from 31 to 50, the number of States (plus the District of Columbia) in which fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, may be distributed, we should not have removed that portion of the box marking requirement that pertained to Puerto Rico and U.S. Territories. The proposed and final rules only discussed importations into the 50 States and the District of Columbia, and the pest risk analysis that supported the proposed and final rules only evaluated the risks associated with the movement of the avocados into the 50 States and the District of Columbia.

Therefore, in this document we are amending § 319.56–2ff(a)(2), which describes the shipping restrictions that apply to the avocados, and § 319.56–2ff(c)(3), which describes the box marking requirements, in order to correct the November 2004 final rule's removal of the distribution limitations that apply to Puerto Rico and U.S. Territories.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

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

■ 2. In § 319.56–2ff, paragraphs (a)(2) and (c)(3)(vii) are revised to read as follows:

§ 319.56–2ff Administrative instructions governing movement of Hass avocados from Michoacan, Mexico.

* * * * *

(a) * * *

(2) Between January 31, 2005, and January 31, 2007, the avocados may be imported into and distributed in all States except California, Florida, Hawaii, Puerto Rico, and U.S. Territories. After January 31, 2007, the avocados may be imported into and distributed in all States, but not Puerto Rico or any U.S. Territory.

* * * * *

(c) * * *

(3) * * *

(vii) The avocados must be packed in clean, new boxes, or clean plastic reusable crates. The boxes or crates must be clearly marked with the identity of the grower, packinghouse, and exporter. Between January 31, 2005, and January 31, 2007, the boxes or crates must be clearly marked with the statement ''Not for importation or distribution in CA, FL, HI, Puerto Rico, or U.S. Territories.'' After January 31, 2007, the boxes or crates must be clearly marked with the statement ''Not for importation or distribution in Puerto Rico or U.S. Territories.''

* * * * *

Done in Washington, DC, this 12th day of October 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–17335 Filed 10–17–06; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064—AD08

One-Time Assessment Credit

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its assessments regulations to implement the one-time assessment credit required by the Federal Deposit Insurance Act (FDI Act), as amended by the Federal Deposit Insurance Reform Act of 2005 (Reform Act). The final rule covers: The aggregate amount of the one-time credit; the institutions that are eligible to receive credits; and how to determine the amount of each eligible institution's credit, which for some institutions may be largely dependent on how the FDIC defines ''successor'' for these purposes. The final rule also establishes the qualifications and procedures governing the application of assessment credits, and provides a reasonable opportunity for an institution to challenge administratively the amount of the credit.

EFFECTIVE DATE: The final rule is effective on November 17, 2006.

FOR FURTHER INFORMATION CONTACT: Munsell W. St. Clair, Senior Policy Analyst, Division of Insurance and Research, (202) 898–8967; Donna M. Saulnier, Senior Assessment Policy Specialist, Division of Finance, (703) 562–6167; or Joseph A. DiNuzzo, Counsel, Legal Division, (202) 898–7349.

SUPPLEMENTARY INFORMATION: This supplementary information section contains a discussion of the statutory basis for this rulemaking and the proposed rule published in May 2006, a summary of the comments received on the proposed rule, and the final rule, which responds to the comments.

I. Background

The Reform Act made numerous revisions to the deposit insurance assessment provisions of the FDI Act.[1] Specifically, the Reform Act amended Section 7(e)(3) of the Federal Deposit Insurance Act to require that the FDIC's Board of Directors (Board) provide by regulation an initial, one-time assessment credit to each ''eligible'' insured depository institution (or its

[1] The Reform Act was included as Title II, Subtitle B, of the Deficit Reduction Act of 2005, Public Law 109–171, 120 Stat. 9, which was signed into law by the President on February 8, 2006.

successor) based on the assessment base of the institution as of December 31, 1996, as compared to the combined aggregate assessment base of all eligible institutions as of that date (the 1996 assessment base ratio), taking into account such other factors as the Board may determine to be appropriate. The aggregate amount of one-time credits is to equal the amount that the FDIC could have collected if it had imposed an assessment of 10.5 basis points on the combined assessment base of the Bank Insurance Fund (BIF) and Savings Association Insurance Fund (SAIF) as of December 31, 2001. 12 U.S.C. 1817(e)(3).

An ''eligible'' insured depository institution is one that: was in existence on December 31, 1996, and paid a Federal deposit insurance assessment prior to that date; [2] or is a ''successor'' to any such insured depository institution. The FDI Act requires the Board to define ''successor'' for these purposes and provides that the Board ''may consider any factors as the Board may deem appropriate.'' The amount of a credit to any eligible insured depository institution must be applied by the FDIC to the deposit insurance assessments imposed on such institution that become due for assessment periods beginning after the effective date of the one-time credit regulations required to be issued within 270 days after enactment.[3] 12 U.S.C. 1817(e)(3)(D)(i).

There are three statutory restrictions on the use of credits. First, as a general rule, for assessments that become due for assessment periods beginning in fiscal years 2008, 2009, and 2010, credits may not be applied to more than 90 percent of an institution's assessment.[4] 12 U.S.C. 1817(e)(3)(D)(ii). (This 90 percent limit does not apply to 2007 assessments.) Second, for an institution that exhibits financial, operational or compliance weaknesses ranging from moderately severe to unsatisfactory, or is not at least adequately capitalized (as defined pursuant to section 38 of the FDI Act) at the beginning of an assessment period, the amount of any credit that may be applied against the institution's assessment for the period may not exceed the amount the institution would have been assessed had it been assessed at the average rate for all institutions for the period. 12 U.S.C. 1817(e)(3)(E). And, third, if the FDIC is operating under a restoration plan to recapitalize the Deposit Insurance Fund (DIF) pursuant to section 7(b)(3)(E) of the FDI Act, as amended by the Reform Act, the FDIC may elect to restrict credit use; however, an institution must still be allowed to apply credits up to three basis points of its assessment base or its actual assessment, whichever is less. 12 U.S.C. 1817(b)(3)(E)(iii).

The one-time credit regulations must include the qualifications and procedures governing the application of assessment credits. These regulations also must include provisions allowing a bank or thrift a reasonable opportunity to challenge administratively the amount of credits it is awarded.[5] Any determination of the amount of an institution's credit by the FDIC pursuant to these administrative procedures is final and not subject to judicial review. 12 U.S.C. 1817(e)(4).

II. The Proposed Rule

As part of this rulemaking, the FDIC was required, among other things, to: Determine the aggregate amount of the one-time credit; determine the institutions that are eligible to receive credits; and determine the amount of each eligible institution's credit, which for some institutions may be largely dependent on how the FDIC defines ''successor'' for these purposes. The FDIC also must establish the qualifications and procedures governing the application of assessment credits, and provide a reasonable opportunity for an institution to challenge administratively the amount of the credit. The FDIC's determination after such challenge will be final and not subject to judicial review.

As set out more fully in the proposed rule,[6] the FDIC proposed to: (1) Rely on the 1996 assessment base figures contained in the Assessment Information Management System (AIMS) [7]; (2) define ''successor'' as the resulting institution in a merger or consolidation, while seeking comment on alternative definitions; (3) automatically apply each institution's credit against future assessments to the maximum extent allowed consistent with the limitations in the FDI Act; and (4) provide an appeals process for administrative challenges to the amounts of credits that culminates in review by the FDIC's Assessment Appeals Committee.

Shortly after publication of the proposed rule, the FDIC made available a searchable database with the FDIC's calculation of every institution's 1996 assessment base (if any) to give institutions the opportunity to review and verify both their 1996 assessment base and preliminary, estimated credit amount, as well as information related to mergers or consolidations to which it was a party.

The comment period for the proposed rule was extended to August 16, 2006, to allow all interested parties to consider the proposed rule while proposed rules on the designated reserve ratio and risk-based assessments were pending.

A. Aggregate Amount of One-Time Assessment Credit

The aggregate amount of the one-time assessment credit is $4,707,580,238.19, which was calculated by applying an assessment rate of 10.5 basis points to the combined assessment base of BIF and SAIF as of December 31, 2001. The FDIC proposed to rely on the assessment base numbers available from each institution's certified statement (or amended certified statement), filed quarterly and preserved in AIMS, which records the assessment base for each insured depository institution as of that

[2] Prior to 1997, the assessments that SAIF member institutions paid the SAIF were diverted to the Financing Corporation (FICO), which had a statutory priority to those funds. Beginning with enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA, Public Law 101–73, 103 Stat. 183) and ending with the Deposit Insurance Funds Act of 1996 (DIFA, Public Law 104–208, 110 Stat. 3009, 3009–479), FICO had authority, with the approval of the Board of Directors of the FDIC, to assess against SAIF members to cover anticipated interest payments, issuance costs, and custodial fees on FICO bonds. The FICO assessment could not exceed the amount authorized to be assessed against SAIF members pursuant to section 7 of the FDI Act, and FICO had first priority against the assessment. 12 U.S.C. 1441(f), as amended by FIRREA. Beginning in 1997, the FICO assessments were no longer drawn from SAIF. Rather, the FDIC began collecting a separate FICO assessment. 12 U.S.C. 1441(f), as amended by DIFA. Payments to SAIF prior to December 31, 1996, even if diverted to FICO, are considered deposit insurance assessments for purposes of the one-time assessment credit. The new law does not change the existing process through which the FDIC collects FICO assessments.

[3] Section 2109 of the Reform Act also requires the FDIC to prescribe, within 270 days, rules on the designated reserve ratio, changes to deposit insurance coverage, the dividend requirements, and assessments. The final rule on deposit insurance coverage was published on September 12, 2006, 71 FR 53547. The final rule on the dividend requirements is being published on the same day as this final rule. Final rules on the other matters are expected to be published in the near future.

[4] As proposed, the FDIC is interpreting a ''fiscal year'' as a calendar year.

[5] Similarly, for dividends under the FDI Act, as amended by the Reform Act, the regulations must include provisions allowing a bank or thrift a reasonable opportunity to challenge administratively the amount of dividends it is awarded. 12 U.S.C. 1817(e)(4).

[6] 71 FR 28808 (May 18, 2006).

[7] The current Assessment Information Management Systems (AIMS) contains records from quarterly reports of condition data from institutions with bank and thrift charters. The FFIEC Central Data Repository (FFIEC–CDR) for banks and the Thrift Financial Report for thrifts provide AIMS with the values of the deposit line items that are used in the calculation of an institution's assessment base.

date. AIMS is the FDIC's official system of records for determination of assessment bases and assessments due.

B. Determination of Eligible Insured Depository Institutions and Each Institution's 1996 Assessment Base Ratio

The FDIC must determine the assessment base of each eligible institution as of December 31, 1996, and any successor institutions, to determine the eligible institution's 1996 assessment base ratio. In making these determinations, the Board has the authority to take into account such factors as the Board may determine to be appropriate. 12 U.S.C. 1817(e)(3)(A).

As described in the proposed rule, the denominator of the 1996 assessment base ratio is the combined aggregate assessment base of all eligible insured depository institutions and their successors. The numerator of each eligible institution's 1996 assessment base ratio is its assessment base as of December 31, 1996, combined with the assessment base on December 31, 1996, of each institution (if any) to which it is a successor. An eligible insured depository institution is one in existence as of December 31, 1996, that paid a deposit insurance assessment prior to that date (or a successor to such institution).

1. Determination of Eligible Institutions

Similar to the determination of the aggregate amount of the credit, the FDIC proposed to use the December 31, 1996 assessment base for each institution, as it appears on the institution's certified statement or as subsequently amended and as recorded in AIMS, to identify eligible institutions. Those numbers reflect the bases on which institutions that existed on December 31, 1996, paid assessments. As of June 30, 2006, there were approximately 7,300 active insured depository institutions that may be eligible for the one-time assessment credit—that is, they were in existence on December 31, 1996, and had paid an assessment prior to that date or are a successor to such an institution.

a. Effect of Voluntary Termination or Failure

The FDIC identified institutions that voluntarily terminated their insurance or failed since December 31, 1996, which otherwise would have been considered eligible insured depository institutions for purposes of the one-time credit. Whether an institution that voluntarily terminated would have a successor would depend on the specific circumstances surrounding its termination. The FDIC proposed that an insured depository institution that has failed would not have a successor.

b. *De Novo* Institutions

The FDIC also identified institutions newly in existence as of December 31, 1996 (*de novo* institutions) that did not pay deposit insurance premiums prior to December 31, 1996. Under the statute, those institutions could not be eligible insured depository institutions for purposes of the one-time assessment credit. However, the FDIC proposed that certain *de novo* institutions, which did not directly pay assessments prior to December 31, 1996, but which acquired by merger or consolidation before that date another insured depository institution that had paid assessments, would be considered eligible insured depository institutions. The FDIC viewed those *de novo* institutions as having stepped into the shoes of the existing institution for purposes of determining eligibility for the one-time assessment credit, consistent with the proposed successor definition.

2. Definition of ''Successor''

Many institutions that existed at the end of 1996 no longer exist. Some have disappeared through merger or consolidation. In fact, it appears that approximately 4,000 institutions that were in existence on December 31, 1996, have since combined with other institutions. In addition, 38 institutions have failed and no longer exist, while the FDIC has to date identified approximately 100 institutions that voluntarily relinquished Federal deposit insurance coverage or had their coverage terminated. The FDIC does not maintain complete records on sales of branches or blocks of deposits, but various sources suggest that at least 1,400 and possibly over 1,800 branch or deposit transactions have occurred since 1996.

Section 7(e)(3)(F) of the FDI Act expressly charges the FDIC with defining ''successor'' by regulation for purposes of the one-time credit, and it provides the FDIC with broad discretion to do so. The Board may consider any factors it deems appropriate. The FDIC's proposed definition of ''successor'' reflected its consideration of what would be most consistent with the purpose of the one-time credit and what would be operationally viable. While a number of definitions of ''successor'' are possible in light of the discretion accorded the FDIC in defining the term, on balance, the FDIC concluded that the definition that focused on the institution and relied on traditional principles of corporate law was both more consistent with the purpose of the credit and more operationally viable.

For a number of reasons (discussed more fully in the proposed rule), the FDIC proposed to define ''successor'' for purposes of the one-time credit as the resulting institution in a merger or consolidation occurring after December 31, 1996. As proposed, the definition would not include a purchase and assumption transaction, even if substantially all of the assets and liabilities of an institution were acquired by the assuming institution. However, the FDIC requested comment on whether to include in this definition a regulatory definition of a *de facto* merger to recognize that the results of some transactions, which are not technically or legally mergers or consolidations, may largely mirror the results of a merger or consolidation. The FDIC also requested comment on a definition that would link credits to deposits, sometimes referred to as a ''follow-the-deposits'' approach.

If there is no successor to an institution that would have been eligible for the one-time assessment credit *before* the effective date of the final rule, because an otherwise eligible institution ceased to be an insured depository institution before that date, then the FDIC proposed that that portion of the aggregate one-time credit amount be redistributed among the eligible institutions. On the other hand, if there is no successor to an eligible insured depository institution that ceases to exist after the Board issues the final rule and allocates the one-time assessment credit among eligible insured depository institutions, it is proposed that that institution's credits expire unused.

C. Notification of 1996 Assessment Base Ratio and Credit Amount

Along with the publication of the proposed rule, the FDIC made available a searchable database provided through the FDIC's public Web site (*http://www.fdic.gov*) that shows each currently existing institution and its predecessors by merger or consolidation from January 1, 1997, onward, based on information contained in certified statements, AIMS, and the FDIC's Structure Information Management System (''SIMS'').[8] The database included corresponding December 31, 1996 assessment base

[8] SIMS maintains current and historical non-financial data for all institutions that is retrieved by AIMS to identify the current assessable universe for each quarterly assessment invoice cycle. SIMS offers institution-specific demographic data, including a complete set of information on merger or consolidation transactions. SIMS, however, does not contain complete information about deposit or branch sales.

amounts for each institution and its predecessors and preliminary estimates of the amount of one-time credit that the existing institution would receive based on the proposed definition of successor.

The database could be searched by institution name or insurance certificate number to ascertain which current institution (if any) would be considered a successor to an institution that no longer exists. Institutions had the opportunity to review this information, but were advised that this preliminary estimate could change, for example, because of a change in the definition of ''successor'' adopted in the final rule or because of a change to the information available to the FDIC for determining successorship.

As soon as practicable after the Board approves the final rule, the FDIC proposed to notify each insured depository institution of its 1996 assessment base ratio and share of the one-time assessment credit. The notice would take the form of a Statement of One-Time Credit (or Statement): Informing every institution of its current, preliminary 1996 assessment base ratio; itemizing the 1996 assessment bases to which the institution may now have claims pursuant to the successor rule based on existing successor information in the database; providing the preliminary amount of the institution's one-time credit based on that 1996 assessment base ratio as applied to the aggregate amount of the credit; and providing the explanation as to how ratios and resulting amounts were calculated generally. The FDIC proposed to provide the Statement of One-Time Credit through FDIC*connect* and by mail in accordance with existing practices for assessment invoices.

D. Requests for Review of Credit Amounts

As noted above, the statute requires the FDIC's credit regulations to include provisions allowing an institution a reasonable opportunity to challenge administratively the amount of its one-time credit. The FDIC's determination of the amount following any such challenge is to be final and not subject to judicial review.

The proposed rule largely paralleled the procedures for requesting revision of computation of a quarterly assessment payment as shown on the quarterly invoice with requests for review being considered by the Director of the Division of Finance and appeals of those decisions made to the FDIC's Assessment Appeals Committee (''AAC''). As with the notice of proposed rulemaking on assessment dividends,[9] the FDIC proposed shorter timeframes in the credit process so that requests for review could be resolved to allow application of credits against upcoming assessments to the extent possible. The FDIC further proposed to freeze temporarily the allocation of the credit amount in dispute for institutions involved in a challenge until the challenge is resolved. After determination of the request for review or appeal, if filed, appropriate adjustments would be reflected in the next quarterly invoice.

E. Using Credits

The FDIC proposed to track each institution's one-time credit amount and automatically apply an institution's credits to its assessment to the maximum extent allowed by law. For 2007 assessment periods, all credits available to an institution may be used to offset the institution's insurance assessment, subject to certain statutory limitations described below. For assessments that become due for assessment periods beginning in fiscal years 2008, 2009, and 2010, the FDI Act provides that credits may not be applied to more than 90 percent of an institution's assessment.

For an institution that exhibits financial, operational or compliance weaknesses ranging from moderately severe to unsatisfactory, or is not adequately capitalized at the beginning of an assessment period, the amount of any credit that may be applied against the institution's assessment for the period may not exceed the amount the institution would have been assessed had it been assessed at the average assessment rate for all institutions for the period. The FDIC proposed to interpret the phrase ''average assessment rate'' to mean the aggregate assessment charged all institutions in a period divided by the aggregate assessment base for that period.

As described above, the FDIC further has the discretion to limit the application of the one-time credit when the FDIC establishes a restoration plan to restore the reserve ratio of the DIF to the range established for it.[10]

As the proposed rule recognized, credit amounts may not be used to pay FICO assessments pursuant to section 21(f) of the Federal Home Loan Bank Act, 12 U.S.C. 1441(f). The Reform Act does not affect the authority of FICO to impose and collect, with the approval of the FDIC's Board, assessments for anticipated interest payments, issuance costs, and custodial fees on obligations issued by FICO.

F. Transferring Credits

In addition to the transfer of credits to successors, the FDIC proposed to allow transfer of credits and adjustments to 1996 assessment base ratios by express agreement between insured depository institutions prior to the FDIC's final determination of an eligible insured depository institution's 1996 assessment base ratio and one-time credit amount pursuant to these regulations. Under the proposal, the FDIC would require the institutions to submit a written agreement signed by legal representatives of the involved institutions. Upon the FDIC's receipt of the agreement, appropriate adjustments would be made to the institutions' affected one-time credit amounts and 1996 assessment base ratios.

Similarly, after an institution's credit share has been finally determined and no request for review is pending with respect to that credit amount, the FDIC proposed to recognize an agreement between insured depository institutions to transfer any portion of the one-time credit from the eligible institution to another institution. With respect to these transactions occurring after the final determination of each eligible institution's 1996 assessment base ratio and share of the one-time credit, the FDIC proposed not to adjust the transferring institution's 1996 assessment base ratio.

III. Comments on the Proposed Rule

We received twenty-six comments on the proposed rule. Most of the comments focused to some extent on the definition of ''successor.''

Five institutions and one trade association supported the proposed definition of successor, which relies on traditional principles of corporate law. Five institutions appeared to support including a *de facto* merger rule to recognize purchase and assumption transactions that may be viewed by some as the functional equivalent of a merger or consolidation. One institution emphasized that such a rule would have to be narrowly crafted. Four industry trade associations supported adding a *de facto* merger rule. Six institutions and a trade association commented in favor of a definition that would link credits to deposits, arguing that assessments are paid on deposits and rights and responsibilities associated

[9] 71 *FR* 22804 (May 18, 2006).

[10] Section 2105 of the Reform Act, amending section 7(b)(3) of the FDI Act to establish a range for the reserve ratio of the DIF, will take effect on the date that final regulations implementing the legislation with respect to the designated reserve ratio become effective. Those regulations are required to be prescribed within 270 days of enactment. Reform Act Section 2109(a)(1).

with those deposits transfer when they are sold. One institution raised the question of so-called stripped charters, where one institution might acquire the assets and liabilities of another, while a third institution would merely merge with the charter of the acquired institution.

Two United States Senators filed a joint comment letter asking the FDIC to reexamine its definition of successor, expressing their concern that the proposed rule ''provides absolutely no opportunity for a bank that purchased deposits to receive credits for those deposits, whether deposits are easily traceable, or whether awarding credits to the selling bank would create a windfall for that selling bank and create a new free rider on the Fund.'' One institution requested that the FDIC reconsider the definitions of ''eligible insured depository institution'' and ''successor,'' as well as the redistribution of credits where no successor exists, to recognize the actual assessments paid before December 31, 1996, by institutions that no longer had the deposits on which those assessments were paid on December 31, 1996, the date established by the statute. A trade association commented that the time-frames for the request for review process should be extended to parallel those applicable to requests for review of assessments.

Six letters suggested that the FDIC phase in the one-time credit and some suggested three approaches for phasing in the application of credits—allowing institutions to use fifty percent of credits against assessments; allowing institutions to use a certain number of basis points of credit to offset assessments in any one year; or implementing a graduated credit schedule to offset assessments. These commenters argued that the proposal to apply credits to quarterly assessments to the maximum extent allowed by law would disproportionately adversely affect institutions chartered since 1996. One trade association supported the proposed rule, under which the FDIC would automatically offset quarterly assessments with the maximum amount of credits available and allowed by law. Another trade association suggested that the FDIC allow institutions to elect to restrict the application of their credits to budget for future expected expenses.

One institution took the position that credits should not expire unused if an institution terminated after the effective date of the final rule; rather, that institution recommended that any remaining credit from that institution be redistributed among all eligible institutions.

One institution opposed allowing the transfer of credits except to successors. Two trade associations supported the transferability described in the proposed rule. A trade association also opined that it was critical that the accounting treatment of these credits be determined before the effective date of the final rule and further offered its opinion that credits should not be considered assets or income.

All of the comment letters have been considered and are available on the FDIC's Web site, *http://www.fdic.gov/regulations/laws/federal/propose.html.*

IV. The Final Rule

Upon considering the comments on the proposed rule, the FDIC is adopting the final rule. Under the final rule, the FDIC will rely on the 1996 assessment base figures as contained in AIMS in determining the aggregate amount of the one-time assessment credit and each institution's share of that aggregate amount; define ''successor'' as the resulting institution in a merger or consolidation, as well as the acquiring institution under a *de facto* rule; automatically apply each institution's credit against future assessments to the maximum extent allowed by the statute; and provide an appeals process for administrative challenges to individual institution's credit amounts that culminates in review by the AAC.

A. Eligible Insured Depository Institutions and Their Successors

To be eligible to receive a share of the one-time assessment credit, an insured depository institution must have been in existence on December 31, 1996, and paid a deposit insurance assessment prior to that date or be a successor to such an institution. The statute, in essence, takes a snapshot of the industry as of year-end 1996, and uses that as a proxy to recognize the assessments that had been paid by some institutions to recapitalize the deposit insurance funds at that time. Because it is a proxy, there may not be perfect alignment between institutions that paid significant assessments over years and their credit amounts.

As the comments reflect, the principal issue in this rulemaking has been the definition of ''successor.'' In the proposed rule, the FDIC proposed to define successor for purposes of the one-time credit as the resulting institution in a merger or consolidation occurring after December 31, 1996. We requested specific comment on whether to include in the definition of ''successor'' a regulatory definition of a *de facto* merger to recognize that the results of some transactions, which are not technically or legally mergers or consolidations, may largely mirror the results of a merger or consolidation. A number of approaches were possible, and the FDIC carefully considered the alternatives presented in the proposed rule and the comments on them. The final rule defines successor as (1) the resulting institution in a merger or consolidation or (2) as an insured depository institution that acquired part of another insured depository institution's 1996 assessment base ratio under a *de facto* rule, as described below.

The FDIC believes this definition is consistent with the purpose of the one-time credit—that is, to recognize the contributions that certain institutions made to capitalize the Bank Insurance Fund and Savings Association Insurance Fund, now merged into the Deposit Insurance Fund. Thus, a resulting institution in a merger occurring after December 31, 1996, will be considered a successor to an eligible insured depository institution. This definition also is consistent with traditional principles of corporate law. 15 William Meade Fletcher *et al.*, Fletcher Cyclopedia of the Law of Private Corporations §§ 7041–7100 (perm. ed., rev. vol. 1999).

Under the statute, Congress has provided the FDIC with broad discretion to define ''successor'' considering any factors that the Board deems appropriate. Several commenters noted, and the Board recognizes, the consolidation of the industry, the numerous transactions that have occurred since 1996, and that parties would not have taken into account future credits when structuring transactions. Accordingly, under the final rule, ''successor'' is defined as the acquiring, assuming or resulting institution in a merger [11] or the acquiring institution under a *de facto* rule. The *de facto* rule applies to any transaction in which an insured depository institution assumes substantially all of the deposit liabilities and acquires substantially all of the assets of any other insured depository institution.

For these purposes, the FDIC considers an assumption and acquisition of at least 90 percent of the transferring institution's deposit liabilities and assets at the time of

[11] The definition of merger in the final rule specifically excludes transactions in which an insured depository institution either directly or indirectly acquires the assets of, or assumes liability to pay any deposits made in, any other insured depository institution where there is not a legal merger or consolidation of the two insured depository institutions.

transfer as substantially all of that institution's assets and deposit liabilities. Any successor institution qualifying under that threshold would be entitled to a pro rata share, based on the deposit liabilities assumed, of the transferring institution's remaining 1996 assessment base ratio at the time of the transfer.

The FDIC recognizes that including a *de facto* rule in the definition of successor departs, to a certain extent, from the clear, bright line that a strictly applied merger definition would provide. However, in keeping with the comments we received in favor of defining mergers to include *de facto* mergers, the FDIC believes this approach is fairer than excluding *de facto* transactions from the definition of successor. It is also consistent with Congressional intent in giving the FDIC broad discretion to define successor institutions for purposes of the one-time assessment credit. As some commenters point out, the insurance fund benefited from certain of these transactions by avoiding failure of an insured depository institution and associated losses.

The FDIC believes that the merger and consolidation approach for successor is the most consistent with the purpose of the one-time assessment credit; however, a strict merger definition would exclude certain transactions that are also consistent with the purpose of the one-time credit. A *de facto* rule recognizes that a transfer of at least 90 percent of an institution's assets and deposit liabilities indicates a substantial divestiture of the transferring institution's business. We recognize some institutions that assumed deposit liabilities would not qualify, but a lower threshold would be less consistent with the purpose of the one-time credit in recognizing past contributions by institutions.

Although the FDIC does not have records evidencing all transactions that would qualify under the *de facto* rule, we expect these situations to be limited and, as some commenters noted, the acquiring institutions in such transactions should be able to provide supporting documents to the FDIC. We note, however, that institutions will have thirty days from the effective date of the final rule to advise the FDIC if they disagree with the computation of the credit amount, or their claim will be barred. It is important to have a final determination regarding any *de facto* rule credit claims in order to determine the amounts institutions will be entitled to under the one-time assessment credit.

Some commenters suggested a more expansive definition of successor up to and including the very inclusive ''follow the deposits.'' Ultimately, the FDIC believes, for the reasons stated below, that if the term ''successor'' were expanded to include deposit acquisitions other than through merger or under the *de facto* rule, it would become very difficult to distinguish on a principled basis who should be included and who should be excluded, and that a ''follow-the-deposits'' approach which brings with it a potentially large administrative complication is incompatible with the need to timely and efficiently administer the credit.

As noted above, the FDIC has significant discretion under the statute to define ''successor'' for these purposes, and a single, clear, easily administered Federal standard is essential to allow the FDIC to implement and administer the one-time credit requirement in a timely and efficient manner. As one trade association wrote, institutions on ''opposite sides of deposit sales transactions * * * have strong and legitimate arguments for why they would be the successor.'' In contrast, if a ''follow-the-deposits'' approach were adopted, because the aggregate one-time assessment credit is a finite pool, disputes over credits resulting from deposit/branch purchases would have to be identified and to some extent resolved before the universe of eligible insured depository institutions could even be identified, which is essential to determining each institution's share based on its 1996 assessment base as adjusted for successorship. Under that scenario, until the 1996 assessment base for all eligible institutions was finalized, use of credits could be delayed and administration would be complicated. Record deposit growth could further complicate these determinations because, in addition to tracing deposits sometimes through numerous transactions, the FDIC might need to account for deposit growth over time attributable to the transferring deposits. One of the trade groups that supports the ''follow the deposits'' approach acknowledged that '' 'following the deposits' significantly complicates the FDIC's job of allocating the credit * * *.''

Some commenters suggest that the merger rule ''discriminates'' and ''arbitrarily places institutions which acquired deposits through asset acquisition at a competitive disadvantage based merely on the method by which they acquired deposits.'' The FDIC disagrees with that characterization. The adopted definition recognizes past payments made by depository institutions to build the insurance funds. By providing the credit to depository institutions that actually paid the assessments or the institution resulting from their merger or consolidation into another insured institution, the final rule ensures that credits are awarded to the entity that bore the financial burden of recapitalizing the funds, either by directly paying into the funds or acquiring the institutions that did. Similarly, a successor under the *de facto* rule may be viewed as acquiring substantially all of the business of the transferring institution.

Some commenters that would benefit from a ''follow the deposits'' approach argue that the adopted definition of ''successor'' is not consistent with congressional intent. Contrary to the contention of some commenters, Congress's broad delegation of authority to the FDIC to define ''successor'' does not evidence Congressional intent either to expand or contract the group of qualified institutions. Rather, the broad delegation ensured that the FDIC could consider the full range of facts and circumstances in developing a definition of successor—which we have done.

The adopted definition is well within the broad discretion Congress gave the FDIC to implement the statute and with our understanding of the intent. The statute uses the term ''eligible insured depository institution'' and defines it to include those that paid assessments prior to December 31, 1996. The legislative history is replete with statements indicating that credits were intended to recognize those institutions that recapitalized the funds. In testimony before Congress, then-Chairman Powell stated, ''Institutions that never paid premiums would receive no assessment credit.'' Testimony of Chairman Powell before the Senate Committee on Banking, Housing and Urban Affairs (April 23, 2002); see also Testimony of Chairman Powell before the House Financial Services Committee (October 17, 2001) (indicating that an acquiring institution would get credit for past assessments paid by the acquired institution). In a statement before the House, one of the co-sponsors of the legislation stated, ''We have reforms in this bill that compensate banks for the adverse effect of these so-called free riders. We give transition assessment credits, recognizing the contribution of those banks to the insurance reserves that they made during the early and mid-1990s, and those credits will offset future premiums for all but the newest and the most recent new institutions and also

those fast-growing institutions.'' Statement of Rep. Spencer Bachus, 148 Cong. Rec. H 2799 (daily ed. May 21, 2002). Also in a statement before the House, another co-sponsor of the legislation stated, ''The bill includes a mechanism for determining credits for past contributions to the insurance funds * * *. This is a very, very important provision as a matter of fairness to institutions that recapitalized the funds.'' Statement of Rep. Carolyn Maloney, 151 Cong. Rec. 2019, at 8–9 (2005).

The successor definition adopted in this rule responds to comments supportive of a *de facto* merger rule by providing an opportunity for an acquirer of all or substantially all deposits to share in the credit for those deposits, absent a merger or consolidation.

As indicated in the proposed rule, if there is no successor to an institution that would have been eligible for the one-time assessment credit before the effective date of the final rule, because an otherwise eligible institution ceased to be an insured depository institution before that date, then that portion of the aggregate one-time credit amount will be redistributed among the eligible institutions. On the other hand, if there is no successor to an eligible insured depository institution that ceases to exist after the effective date of the final rule, that institution's credits will expire unused.

B. Notice of Credit Amount

As soon as practicable after the publication date of the final rule, the FDIC will notify each insured depository institution of its 1996 assessment base ratio and preliminary determination of its share of the one-time assessment credit, based on the information derived from its official system of records (AIMS). The Statement of One-Time Credit: Will inform each institution of its current, preliminary 1996 assessment base ratio; itemize the 1996 assessment bases to which the institution is believed to have claims pursuant to the definition of successor; provide the preliminary amount of the institution's one-time credit based on the institution's 1996 assessment base ratio as applied to the aggregate amount of the credit; and explain how the ratios and resulting amounts were calculated generally. The FDIC will provide the Statement through FDIC*connect* and by mail in accordance with existing practices for assessment invoices.

After the initial notification by the Statement described above, periodic updated notices will be provided to reflect the adjustments that may be made up or down as a result of requests for review of credit amounts, as well as subsequent adjustments reflecting the application of credits to assessments and any appropriate adjustment to an institution's 1996 assessment base ratio due to a subsequent merger or consolidation. If the FDIC's responses to individual institutions' requests for review of their initial credit amount are not finalized prior to the invoices for collection of assessments for the first calendar quarter of 2007, the FDIC will freeze the credit amounts in dispute while making any credits not in dispute available for use. From that point on, an individual institution's credit share might increase, but it should not generally decrease except when its credits are used or transferred.

Adjustments to credits would be included with each quarterly assessment invoice until an institution's credits have been exhausted. The initial Statement and any subsequent updates notices or assessment invoices advising of an adjustment to the assessment base ratio would also advise institutions of their right to challenge the calculation and the procedures to follow.

C. Requests for Review Involving Credits

Within 30 days from the effective date of the final rule (or an adjusted invoice), an institution may request review if—

(1) It disagrees with the FDIC's determination of eligibility or ineligibility for the credit;

(2) It disagrees with the computation of the credit amount on the initial Statement or any subsequent invoice; or

(3) It believes that the Statement, an updated notice, or a subsequently updated invoice does not fully or accurately reflect appropriate adjustments to the institution's 1996 assessment base ratio.

One commenter requested that this time frame be extended to parallel the assessment appeals process. Because institutions have had access to the online search tool since May, the FDIC does not believe the 30-day deadline for requests for review will be overly burdensome. In addition, compressing the schedule for reviews is necessary to resolve as many requests as possible before the collection of assessments for the first calendar quarter of 2007, thereby allowing most institutions to offset those assessments with available credits.

The request for review must be filed with the Division of Finance and be accompanied by any documentation supporting the institution's claim. If an institution does not submit a timely request for review, the institution is barred from subsequently requesting review of its one-time assessment credit amount.

In addition, the requesting institution must identify all other institutions of which it knew or had reason to believe would be directly and materially affected by granting the request for review and provide those institutions with copies of the request for review and supporting documentation, as well as the FDIC's procedures for these requests for review. In addition, the FDIC will also make reasonable efforts, based on its official systems of records, to determine that such institutions have been identified and notified. These institutions then have 30 days to submit a response and any supporting documentation to the FDIC's Division of Finance, copying the institution making the original request for review. If an institution identified and notified through this process does not submit a timely response, that institution would be: (1) Foreclosed from subsequently disputing the information submitted by any other institution on the transaction(s) at issue in the review process; and (2) foreclosed from any appeal of the decision by the Director of the Division of Finance (discussed below).

Upon receipt of a request for review or a response from a potentially affected institution, the FDIC also may request additional information as part of its review and require the institution to supply that information within 21 days of the date of the FDIC's request for additional information. The FDIC will freeze temporarily the amount of the proposed credit in controversy for the institutions involved in the request for review until the request is resolved.

The final rule requires a written response from the FDIC's Director of the Division of Finance (Director), or his or her designee, which notifies the requesting institution and any materially affected institutions of the determination of the Director as to whether the requested change is warranted, whenever feasible: (1) Within 60 days of receipt by the FDIC of the request for revision; (2) if additional institutions have been notified by the FDIC, within 60 days of the last response; or (3) if additional information has been requested by the FDIC, within 60 days of receipt of any additional information due to such request, whichever is later.

The requesting institution, or an institution materially affected by the Director's decision, that disagrees with that decision may appeal its credit determination to the AAC. The final rule extends the time for filing an appeal; an appeal to the AAC must be

filed within 30 calendar days from the date of the Director's written determination. Notice of the procedures applicable to appeals will be included with that written determination. The AAC's determination will be final and not subject to judicial review.

As noted in the proposed rule, the FDIC believes that a number of challenges may arise in connection with the distribution of the one-time assessment credit, in large part because many transactions occurred after 1996 and before the Reform Act provided for a one-time credit, and because this will be the first time that an institution's 1996 assessment base ratio is calculated. Once those challenges are resolved, and each institution's 1996 assessment base ratio for purposes of its one-time credit share is established, unforeseen circumstances or issues may lead to other challenges of credit share, and administrative procedures will remain in place to address those challenges.

Once the Director or the AAC, as appropriate, has made the final determination, the FDIC will make appropriate adjustments to credit amounts or shares consistent with that determination and correspondingly update each affected institution's next invoice. Adjustments to credit amounts will not be applied retroactively to reduce or increase prior period assessments.

D. Application or Use of Credits

The one-time assessment credits offset the collection of deposit insurance assessments beginning with the collection of assessments for the first assessment period of 2007. Under the final rule, the FDIC will track each institution's one-time credits and automatically apply them to that institution's assessment to the maximum extent allowed by law. For 2007 assessment periods, all credits available to an institution may be used to offset the institution's insurance assessment, subject to certain statutory limitations described below. For the following three years (2008, 2009, and 2010), the final rule, consistent with the statute, provides that credits may not be applied to more than 90 percent of an institution's assessment. Assuming that an institution has sufficient credits, those credits will automatically apply to 90 percent of that institution's assessment, subject to the two other statutory limitations on usage.[12]

By statute, for an institution that exhibits financial, operational, or compliance weaknesses ranging from moderately severe to unsatisfactory, or is not adequately capitalized at the beginning of an assessment period, the amount of any credit that may be applied against that institution's assessment for the period may not exceed the amount the institution would have been assessed had it been assessed at the average assessment rate for all institutions for the period. The final rule interprets ''average assessment rate'' to mean the aggregate assessment charged all institutions in a period divided by the aggregate assessment base for that period.

The final statutory limit on the use of credits may be imposed by the FDIC in a restoration plan when the reserve ratio falls below 1.15 percent of estimated insured deposits. The FDIC's discretion to limit the use of credits during that period is, however, circumscribed by the statute. During the time that a restoration plan is in effect, the FDIC may elect to limit the use of credits, but an institution with credits could apply them against any assessment imposed on an institution for any assessment period in an amount equal to the lesser of (1) the amount of the assessment, or (2) the amount equal to three basis points of the institution's assessment base.

Five letters on behalf of *de novo* institutions suggest that the FDIC should phase in the use of credits or allow credits to offset assessments only on a graduated scale—that is, the FDIC should, in some manner, further limit the use of credits over the next few years. These commenters argue that, if the credit regulation is implemented as proposed, ''it would have an immediate negative impact on rates paid on consumer savings accounts by new growth institutions because they will be required to bear the burden on the cost of deposit insurance not just for their own institution, but also for utilizing assessment credits.'' In the FDIC's view, any such impact would be short-term. Moreover, the purpose of the credits, as previously discussed, is to recognize past payments by depository institutions to build the fund, so, by definition, institutions that did not pay assessments will be treated differently. As these commenters acknowledge, the proposal to apply credits against assessments to the maximum extent allowed by law is easily understood and simple to administer. In addition, the better reading of the statute indicates that there was no congressional intent to allow the FDIC to restrict further the use of credits, except in specifically enumerated circumstances. The FDI Act, as amended by the Reform Act, requires the FDIC to apply credit amounts to future assessments, mandates certain limits on the use of credits at specific times or in specific circumstances, and expressly provides the FDIC with the discretion to restrict the use of credits only during a restoration plan and only to a limited extent. This reading of the statute is more consistent with the intent of the one-time credit (also referred to as a ''transitional credit'' in the Conference Report on the legislation[13]), which, as noted above, was to recognize the contributions of certain institutions to capitalize the DIF.

One commenter recommended that institutions be allowed to adjust their use of credits to budget for future expected expenses, so that if assessments climb significantly higher than the proposed base rates, institutions could choose to pay smaller assessments over time rather than large assessments all at once as credits are completely exhausted. The Board believes this flexibility in using credits would be undesirable because of its potential operational complexities for the FDIC. More importantly, the one-time credit is not interest bearing; therefore, application of the credit against an institution's future assessments other than to the maximum extent allowed consistent with the limitations in the FDI Act will reduce the economic benefit of the credit to the institution.

In response to the comment on the characterization of credits for accounting purposes, the FDIC concurs that the determination and allocation of the one-time assessment credit to eligible insured depository institutions does not result in the recognition of an asset or income by these institutions, for accounting purposes. The FDIC does not believe that the one-time credit meets the characteristics of an asset described in Statement of Financial Accounting Concepts No. 6, *Elements of Financial Statements*. In this regard, the reduction in an institution's future insurance assessment payments from the application of the one-time credit does not represent a cash inflow to the institution, but rather represents contingent future relief from future cash outflows. The timing and ultimate recoverability of the one-time credit is not completely within the control of an eligible institution and no transaction or other event will have occurred at the date when the FDIC notifies the institution of the amount of its credit

[12] However, this rule will not affect or apply to deposit insurance assessment adjustments for assessment periods beginning before 2007 when these adjustments are made prior to the assessments imposed prior to the effective date of this rule.

[13] *See* H.R. Rep. No. 109–362, at 197 (2005).

that gives rise to the institution's right to or control of the benefit. The benefit is contingent on a future event, the payment of future insurance assessments. Moreover, the amount of benefit to an institution is dependent on the assessment rates charged by the FDIC and the applicability of the statutory restrictions on the use of the one-time credit, which is not interest-bearing.

Credit amounts may not be used to pay FICO assessments.[14] The Reform Act does not affect the authority of FICO to impose and collect, with the approval of the FDIC's Board, assessments for anticipated interest payments, issuance costs, and custodial fees on obligations issued by FICO.

E. Transfer of Credits

In addition to the transfer of credits to successors, the final rule allows transfers of credits and adjustments to 1996 assessment base ratios by express agreement between insured depository institutions prior to the FDIC's final determination of an eligible insured depository institution's 1996 assessment base ratio and one-time credit amount pursuant to this final rule. While the statute does not expressly address transferability, the final rule recognizes that it is possible that such agreements might already be part of deposit transfer contracts drafted in anticipation of deposit insurance reform legislation, which was pending in Congress over several years. Alternatively, institutions involved in a dispute over successorship, their 1996 assessment base ratio, and their shares of the one-time credit might reach a settlement over the disposition of the one-time credit. Given the FDIC's role in administering credits, it is most efficient to allow the FDIC to recognize these contractual provisions or settlements. In either case, for the FDIC to recognize the transfer, the final rule requires the institutions to notify the FDIC and submit a written agreement signed by legal representatives of the involved institutions. The agreement must include documentation that each representative has the legal authority to bind the institution. Upon the FDIC's receipt of the agreement, appropriate adjustments will be made to the institutions' affected one-time credit amounts and 1996 assessment base ratios. These adjustments will be reflected with the next quarterly assessment invoice, so long as the institutions submit the written agreement at least 10 days prior to the FDIC's issuance of the next invoices.

Similarly, after an institution's credit share has been finally determined and no request for review is pending with respect to that credit amount, the FDIC will recognize an agreement between insured depository institutions to transfer any portion of the one-time credit from an eligible institution to another institution. Nothing in the statute suggests that such transfers are precluded. In addition, no compelling reasons to prevent such transfers have been raised by the commenters. Because credits do not earn interest, there may be some interest among eligible insured depository institutions to sell credits that could not otherwise be used promptly. The same rules for notification to the FDIC and adjustments to invoices would apply as under the prior discussion, except that the FDIC will not adjust institutions' 1996 assessment base ratios. Except as provided in the preceding paragraph, adjustments to 1996 ratios will be made only to reflect mergers or consolidations occurring after the effective date of these regulations.

V. Regulatory Analysis and Procedure

Plain Language

Section 722 of the Gramm-Leach-Bliley Act (GLBA), 15 U.S.C. 6801 *et seq.*, requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The proposed rule requested comments on how the rule might be changed to reflect the requirements of GLBA. No GLBA comments were received.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires that each Federal agency either certify that a proposed rule would not, if adopted in final form, have a significant impact on a substantial number of small entities or prepare an initial flexibility analysis of the proposal and publish the analysis for comment. *See* U.S.C. 603–605. Certain types of rules, such as rules of particular applicability relating to rates or corporate or financial structures, or practices relating to such rates or structures, are expressly excluded from the definition of ''rule'' for purposes of the RFA. 5 U.S.C. 601. The one-time assessment credit rule relates directly to the rates imposed on insured depository institutions for deposit insurance, as they will offset future deposit insurance assessments. Nonetheless, the FDIC has voluntarily undertaken an initial and final regulatory flexibility analysis of the final rule.

Pursuant to 5 U.S.C. 605(b), the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small businesses within the meaning of the RFA. No comments on this issue were received. The final rule affects all ''eligible'' insured depository institutions. Of the approximately 8,790 insured depository institutions as of June 30, 2006, approximately 5,269 institutions fell within the definition of ''small entity'' in the RFA—that is, having total assets of no more than $165 million. Approximately 4,280 small institutions appear to be eligible for the one-time credit under the FDI Act definition of ''eligible insured depository institution.'' These institutions would have approximately $239 million in one-time credits out of a total of approximately $4.7 billion in one-time credits, given the FDI Act definition of ''eligible insured depository institution'' and the definition of ''successor'' in this rulemaking.[15] These one-time credits represent approximately 9.5 basis points of the combined assessment base of eligible small institutions as of June 30, 2006. Assuming, for purposes of illustration, that small institutions were charged an average annual assessment rate of 2 basis points, these one-time credits would last, on average, approximately 4.75 years. Clearly, if small institutions are charged a higher average annual assessment rate, given the final rule's requirement that credits be applied to assessment payments to the maximum extent allowed by law, the one-time credits would not last as long. Not all small institutions will benefit from one-time credits. New institutions, in particular, will not have credits unless they are a successor to an eligible institution or have purchased them. Most small, eligible institutions, however, would benefit to some extent from the final rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FDIC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The information collection

[14] *See* section 21(f) of the Federal Home Loan Bank Act, 12 U.S.C. 1441(f).

[15] The present value of these one-time credits depends upon when they are used, which in turn depends on the assessment rates charged. The one-time credits do not earn interest; therefore, the higher the assessment rate charged—and the faster credits are used—the greater their present value. These one-time assessment credits are transferable, which could increase their present value.

occurs when an institution participates in a transaction that results in the transfer of one-time credits or an institution's 1996 assessment base, as permitted under the final rule, and seeks the FDIC's recognition of that transfer. Institutions are required to notify the FDIC of these transactions so that the FDIC can accurately track the transfer of credits, apply available credits appropriately against institutions' deposit insurance assessments, and determine an institution's 1996 assessment base if the transaction involved both the base and the credit amount. The need for credit transfer information will expire when the credit pool has been exhausted. Moreover, it is expected that most transactions will occur during the first year.

The FDIC solicited public comment on this information collection in accordance with 44 U.S.C. 3506(c)(2)(B). No comments were received on this information collection. The FDIC also submitted the information collection to OMB for review in accordance with 44 U.S.C. 3507(d). The OMB has approved the information collection under control number 3065–0151.

Respondents: Insured depository institutions.

Frequency of response: Occasional.

Annual burden estimate:

Number of responses: 200–500 during the first year with fewer than 10 per year thereafter.

Average number of hours to prepare a response: 2 hours.

Total annual burden: 400–1,000 hours the first year, and fewer than 100 hours thereafter.

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

The FDIC has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the final rule is not a ''major rule'' within the meaning of the relevant sections of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 801 *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the Government Accountability Office so that the final rule may be reviewed.

List of Subjects in 12 CFR Part 327

Bank deposit insurance, Banks, Banking, Savings associations.

Authority and Issuance

■ For the reasons set forth in the preamble, the FDIC is amending chapter III of title 12 of the Code of Federal Regulations as follows:

■ 1. Revise subpart B, consisting of §§ 327.30 through 327.36, to read as follows:

PART 327—ASSESSMENTS

Subpart B—Implementation of One-Time Assessment Credit

Sec.

Subpart B—Implementation of One-Time Assessment Credit

Authority: 12 U.S.C. 1817(e)(3).

§ 327.30 Purpose and scope.

(a) *Scope.* This subpart B of part 327 implements the one-time assessment credit required by section 7(e)(3) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(e)(3) and applies to insured depository institutions.

(b) *Purpose.* This subpart B of part 327 sets forth the rules for:

(1) Determination of the aggregate amount of the one-time credit;

(2) Identification of eligible insured depository institutions;

(3) Determination of the amount of each eligible institution's December 31, 1996 assessment base ratio and one-time credit;

(4) Transferability of credit amounts among insured depository institutions;

(5) Application of such credit amounts against assessments; and

(6) An institution's request for review of the FDIC's determination of a credit amount.

§ 327.31 Definitions.

For purposes of this subpart and subpart C:

(a) The *average assessment rate* for any assessment period means the aggregate assessment charged all insured depository institutions for that period divided by the aggregate assessment base for that period.

(b) *Board* means the Board of Directors of the FDIC.

(c) *De facto rule* means any transaction in which an insured depository institution assumes substantially all of the deposit liabilities and acquires substantially all of the assets of any other insured depository institution at the time of the transaction.

(d) An *eligible insured depository institution:*

(1) Means an insured depository institution that:

(i) Was in existence on December 31, 1996, and paid a deposit insurance assessment before December 31, 1996; or

(ii) Is a successor to an insured depository institution referred to in paragraph (d)(1)(i) of this section; and

(2) does not include an institution if its insured status has terminated as of or after the effective date of this regulation.

(e) *Merger* means any transaction in which an insured depository institution merges or consolidates with any other insured depository institution. Notwithstanding part 303, subpart D, for purposes of this subpart B and subpart C of this part, *merger* does not include transactions in which an insured depository institution either directly or indirectly acquires the assets of, or assumes liability to pay any deposits made in, any other insured depository institution, but there is not a legal merger or consolidation of the two insured depository institutions.

(f) *Resulting institution* refers to the acquiring, assuming, or resulting institution in a merger.

(g) *Successor* means a resulting institution or an insured depository institution that acquired part of another insured depository institution's 1996 assessment base ratio under paragraph 327.33(c) of this subpart under the *de facto* rule.

§ 327.32 Determination of aggregate credit amount.

The aggregate amount of the one-time credit shall equal $4,707,580,238.19.

§ 327.33 Determination of eligible institution's credit amount.

(a) Subject to paragraph (c) of this section, allocation of the one-time credit shall be based on each eligible insured depository institution's 1996 assessment base ratio.

(b) Subject to paragraph (c) of this section, an eligible insured depository institution's 1996 assessment base ratio shall consist of:

(1) Its assessment base as of December 31, 1996 (adjusted as appropriate to reflect the assessment base of December 31, 1996, of all institutions for which it is the successor), as the numerator; and

(2) The combined aggregate assessment bases of all eligible insured depository institutions, including any successor institutions, as of December 31, 1996, as the denominator.

(c) If an insured depository institution is a successor to an eligible insured depository institution under the *de facto* rule, as defined in paragraph 327.31(c) of this subpart, the successor and the eligible insured depository institution will divide the eligible insured depository institution's 1996 assessment base ratio pro rata, based on the deposit liabilities assumed in the transaction. In any subsequent transaction involving an insured depository institution that previously engaged in a transaction to which the *de facto* rule applied, the insured depository institution may not be deemed to have transferred more than its remaining 1996 assessment base ratio. If the transferring institution is no longer an insured depository institution after the transfer, the last successor will acquire the transferring institution's remaining 1996 assessment base ratio.

§ 327.34 Transferability of credits.

(a) Any remaining amount of the one-time assessment credit and the associated 1996 assessment base ratio shall transfer to a successor of an eligible insured depository institution.

(b) Prior to the final determination of its 1996 assessment base and one-time assessment credit amount by the FDIC, an eligible insured depository institution may enter into an agreement to transfer any portion of such institution's one-time credit amount and 1996 assessment base ratio to another insured depository institution. The parties to the agreement shall notify the FDIC's Division of Finance and submit a written agreement, signed by legal representatives of both institutions. The parties must include documentation stating that each representative has the legal authority to bind the institution. The adjustment to credit amount and the associated 1996 assessment base ratio shall be made in the next assessment invoice that is sent at least 10 days after the FDIC's receipt of the written agreement.

(c) An eligible insured depository institution may enter into an agreement after the final determination of its 1996 assessment base ratio and one-time credit amount by the FDIC to transfer any portion of such institution's one-time credit amount to another insured depository institution. The parties to the agreement shall notify the FDIC's Division of Finance and submit a written agreement, signed by legal representatives of both institutions. The parties must include documentation stating that each representative has the legal authority to bind the institution. The adjustment to the credit amount shall be made in the next assessment invoice that is sent at least 10 days after the FDIC's receipt of the written agreement.

§ 327.35 Application of credits.

(a) Subject to the limitations in paragraph (b) of this section, the amount of an eligible insured depository institution's one-time credit shall be applied to the maximum extent allowable by law against that institution's quarterly assessment payment under subpart A of this part, until the institution's credit is exhausted.

(b) The following limitations shall apply to the application of the credit against assessment payments.

(1) For assessments that become due for assessment periods beginning in calendar years 2008, 2009, and 2010, the credit may not be applied to more than 90 percent of the quarterly assessment.

(2) For an insured depository institution that exhibits financial, operational, or compliance weaknesses ranging from moderately severe to unsatisfactory, or is not at least adequately capitalized (as defined pursuant to section 38 of the Federal Deposit Insurance Act) at the beginning of an assessment period, the amount of the credit that may be applied against the institution's quarterly assessment for that period shall not exceed the amount that the institution would have been assessed if it had been assessed at the average assessment rate for all insured institutions for that period. The FDIC shall determine the average assessment rate for an assessment period based upon its best estimate of the average rate for the period. The estimate shall be made using the best information available, but shall be made no earlier than 30 days and no later than 20 days prior to the payment due date for the period.

(3) If the FDIC has established a restoration plan pursuant to section 7(b)(3)(E) of the Federal Deposit Insurance Act, the FDIC may elect to restrict the application of credit amounts, in any assessment period, up to the lesser of:

(i) The amount of an insured depository institution's assessment for that period; or

(ii) The amount equal to 3 basis points of the institution's assessment base.

§ 327.36 Requests for review of credit amount.

(a)(1) As soon as practicable after the publication date of this rule, the FDIC shall notify each insured depository institution by FDIC*connect* or mail of its 1996 assessment base ratio and credit amount in a Statement of One-Time Credit (''Statement''), if any. An insured depository institution may submit a request for review of the FDIC's determination of the institution's 1996 assessment base ratio or credit amount as shown on the Statement within 30 days after the effective date of this rule. Such review may be requested if:

(i) The institution disagrees with a determination as to eligibility for the credit that relates to that institution's credit amount;

(ii) The institution disagrees with the calculation of the credit as stated on the Statement; or

(iii) The institution believes that the 1996 assessment base ratio attributed to the institution on the Statement does not fully or accurately reflect its own 1996 assessment base or appropriate adjustments for successors.

(2) If an institution does not submit a timely request for review, that institution is barred from subsequently requesting review of its credit amount, subject to paragraph (e) of this section.

(b)(1) An insured depository institution may submit a request for review of the FDIC's adjustment to the credit amount in a quarterly invoice within 30 days of the date on which the FDIC provides the invoice. Such review may be requested if:

(i) The institution disagrees with the calculation of the credit as stated on the invoice; or

(ii) The institution believes that the 1996 assessment base ratio attributed to the institution due to the adjustment to the invoice does not fully or accurately reflect appropriate adjustments for successors since the last quarterly invoice.

(2) If an institution does not submit a timely request for review, that institution is barred from subsequently requesting review of its credit amount, subject to paragraph (e) of this section.

(c) The request for review shall be submitted to the Division of Finance and shall provide documentation sufficient to support the change sought by the institution. At the time of filing with the FDIC, the requesting institution shall notify, to the extent practicable, any other insured depository institution that would be directly and materially affected by granting the request for review and provide such institution with copies of the request for review, the supporting documentation, and the FDIC's procedures for requests under this subpart. In addition, the FDIC also shall make reasonable efforts, based on its official systems of records, to

determine that such institutions have been identified and notified.

(d) During the FDIC's consideration of the request for review, the amount of credit in dispute shall not be available for use by any institution.

(e) Within 30 days of being notified of the filing of the request for review, those institutions identified as potentially affected by the request for review may submit a response to such request, along with any supporting documentation, to the Division of Finance, and shall provide copies to the requesting institution. If an institution that was notified under paragraph (c) does not submit a response to the request for review, that institution may not:

(1) Subsequently dispute the information submitted by other institutions on the transaction(s) at issue in the review process; or

(2) Appeal the decision by the Director of the Division of Finance.

(f) If additional information is requested of the requesting or affected institutions by the FDIC, such information shall be provided by the institution within 21 days of the date of the FDIC's request for additional information.

(g) Any institution submitting a timely request for review will receive a written response from the FDIC's Director of the Division of Finance, (or his or her designee), notifying the requesting and affected institutions of the determination of the Director as to whether the requested change is warranted. Notice of the procedures applicable to appeals under paragraph (h) of this section will be included with the Director's written determination. Whenever feasible, the FDIC will provide the institution with the aforesaid written response the later of:

(1) Within 60 days of receipt by the FDIC of the request for revision;

(2) If additional institutions have been notified by the requesting institution or the FDIC, within 60 days of the date of the last response to the notification; or

(3) If additional information has been requested by the FDIC, within 60 days of receipt of the additional information.

(h) Subject to paragraph (e) of this section, the insured depository institution that requested review under this section, or an insured depository institution materially affected by the Director's determination, that disagrees with that determination may appeal to the FDIC's Assessment Appeals Committee on the same grounds as set forth under paragraph (a) of this section. Any such appeal must be submitted within 30 calendar days from the date of the Director's written determination. Notice of the procedures applicable to appeals under this section will be included with the Director's written determination. The decision of the Assessment Appeals Committee shall be the final determination of the FDIC.

(i) Any adjustment to an institution's credits resulting from a determination by the Director of the FDIC's Assessment Appeals Committee shall be reflected in the institution's next assessment invoice. The adjustment to credits shall affect future assessments only and shall not result in a retroactive adjustment of assessment amounts owed for prior periods.

Dated at Washington, DC, this 10th day of October, 2006.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E6–17305 Filed 10–17–06; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AD07

Assessment Dividends

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is adopting a final rule to implement the dividend requirements of the Federal Deposit Insurance Reform Act of 2005 (Reform Act) and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (Amendments Act) for an initial two-year period. The final rule will take effect on January 1, 2007, and sunset on December 31, 2008. During this period the FDIC expects to initiate a second, more comprehensive notice-and-comment rulemaking on dividends beginning with an advanced notice of proposed rulemaking to explore alternative methods for distributing future dividends after this initial two-year period.

EFFECTIVE DATE: January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Munsell W. St.Clair, Senior Policy Analyst, Division of Insurance and Research, (202) 898–8967; Donna M. Saulnier, Senior Assessment Policy Specialist, Division of Finance, (703) 562–6167; or Joseph A. DiNuzzo, Counsel, Legal Division, (202) 898–7349.

SUPPLEMENTARY INFORMATION:

I. Background

In May of this year, the FDIC published a proposed rule (the proposed rule) to implement the dividend requirements of the Reform Act. 71 FR 28804 (May 18, 2006). The Reform Act requires the FDIC to prescribe final regulations, within 270 days of enactment, to implement the assessment dividend requirements, including regulations governing the method for the calculation, declaration, and payment of dividends and administrative appeals of individual dividend amounts. See sections 2107(a) and 2109(a)(3) of the Reform Act.[1]

Section 7(e)(2) of the Federal Deposit Insurance Act (FDI Act), as amended by the Reform Act, requires that the FDIC, under most circumstances, declare dividends from the Deposit Insurance Fund (DIF or fund) when the reserve ratio at the end of a calendar year exceeds 1.35 percent, but is no greater than 1.5 percent. In that event, the FDIC must generally declare one-half of the amount in the DIF in excess of the amount required to maintain the reserve ratio at 1.35 percent as dividends to be paid to insured depository institutions. However, the FDIC's Board of Directors (Board) may suspend or limit dividends to be paid, if the Board determines in writing, after taking a number of statutory factors into account, that:

1. The DIF faces a significant risk of losses over the next year; and

2. It is likely that such losses will be sufficiently high as to justify a finding by the Board that the reserve ratio should temporarily be allowed to grow without requiring dividends when the reserve ratio is between 1.35 and 1.5 percent or exceeds 1.5 percent.[2]

In addition, the statute requires that the FDIC, absent certain limited circumstances (discussed in footnote 2), declare a dividend from the DIF when the reserve ratio at the end of a calendar

[1] The Reform Act was included as Title II, Subtitle B, of the Deficit Reduction Act of 2005, Public Law 109–171, 120 Stat. 9, which was signed into law by the President on February 8, 2006. Section 2109 of the Reform Act also requires the FDIC to prescribe, within 270 days, rules on the designated reserve ratio, changes to deposit insurance coverage, the one-time assessment credit, and assessments. The final rule on deposit insurance coverage was published on September 12, 2006, 71 FR 53547. The final rule on the one-time assessment credit is being published on the same day as this final rule. Final rules on the remaining matters are expected to be published in the near future.

[2] This provision would allow the FDIC's Board to suspend or limit dividends in circumstances where the reserve ratio has exceeded 1.5 percent, if the Board made a determination to continue a suspension or limitation that it had imposed initially when the reserve ratio was between 1.35 and 1.5 percent.

year exceeds 1.5 percent. In that event, the FDIC must declare the amount in the DIF in excess of the amount required to maintain the reserve ratio at 1.5 percent as dividends to be paid to insured depository institutions.

If the Board decides to suspend or limit dividends, it must submit, within 270 days of making the determination, a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and to the Committee on Financial Services of the House of Representatives. The report must include a detailed explanation for the determination and a discussion of the factors required to be considered.[3]

The FDI Act directs the FDIC to consider each insured depository institution's relative contribution to the DIF (or any predecessor deposit insurance fund) when calculating such institution's share of any dividend. More specifically, when allocating dividends, the Board must consider:

1. The ratio of the assessment base of an insured depository institution (including any predecessor) on December 31, 1996, to the assessment base of all eligible insured depository institutions on that date;

2. The total amount of assessments paid on or after January 1, 1997, by an insured depository institution (including any predecessor) to the DIF (and any predecessor fund);[4]

3. That portion of assessments paid by an insured depository institution (including any predecessor) that reflects higher levels of risk assumed by the institution; and

4. Such other factors as the Board deems appropriate.

The statute does not define the term ''predecessor'' for purposes of the distribution of dividends to insured depository institutions. Predecessor deposit insurance funds are the BIF and the SAIF, as those were the deposit insurance funds in existence after 1996 and prior to enactment of the Reform Act, and which merged into the DIF. That merger was effective on March 31, 2006.

The statute expressly requires the FDIC to prescribe by regulation the method for calculating, declaring, and paying dividends. As with the one-time assessment credit, the dividend regulation must include provisions allowing a bank or thrift a reasonable opportunity to challenge administratively the amount of dividends it is awarded. Any review by the FDIC pursuant to these administrative procedures is final and not subject to judicial review.

II. The Proposed Rule

In May, the FDIC proposed a temporary rule for dividends that would sunset after two years, which would allow the FDIC to undertake a more comprehensive rulemaking that would not be subject to the 270-day deadline. The proposed rule: Described a process for the Board's annual determination of whether a declaration of a dividend is required and consideration, to the extent appropriate, of whether circumstances indicate that a dividend should be limited or suspended; set forth the procedures for calculating the aggregate amount of any dividend, allocating that aggregate amount among insured depository institutions considering the statutory factors provided, and paying such dividends to individual insured depository institutions; and provided insured depository institutions with a reasonable opportunity to challenge the amount of their dividends.

The FDIC proposed that the Board announce its determination regarding dividends by May 15th of each year, which would allow for the Board's consideration of the dividend determination using complete data for the reserve ratio for the preceding December 31st. Absent a Board determination that dividends should be limited or foregone, the aggregate amount of a dividend would be calculated as set forth in the statute.[5]

With respect to allocation of the aggregate dividend amount, the FDIC proposed adopting initially a simple system that would remain in place for two years with a definite sunset date (December 31, 2008). During the two-year lifespan of the initial dividend regulations, the FDIC plans to undertake another rulemaking, beginning with the issuance of an advance notice of proposed rulemaking, seeking industry comment on more comprehensive alternatives for allocating future dividends.

Specifically, after considering and weighing all the statutory factors, including other factors the Board deemed appropriate, the FDIC proposed that, during the life of this rule, any dividends be awarded simply in proportion to an institution's 1996 assessment base ratio (including any predecessors' 1996 ratios). This factor essentially parallels the basis for distribution of the one-time assessment credit, and institutions' 1996 assessment base ratios will have been determined under the final rule for the one-time assessment credit. The ratio will continue in effect for dividend purposes, subject to subsequent adjustments for transactions that result in the combination of insured depository institutions, thereby recognizing ''predecessor'' institutions as time goes by.

As noted above, the statute also requires that the FDIC consider other factors in allocating dividends—the total amount of assessments paid after 1996; the portion of those assessments paid that reflects higher levels of risk; and other factors that the Board may deem appropriate. Because no institution while in the lowest risk category (sometimes referred to as ''the 1A category'') has paid any deposit insurance assessments since the end of 1996, all assessments paid since then have reflected higher levels of risk. Moreover, within the proposed initial two-year period, any assessments that institutions pay that do not reflect higher levels of risk are likely to be small in comparison to the assessments that institutions paid over time to capitalize the deposit insurance funds, for which the 1996 assessment base is intended to act as a proxy. As a result, the FDIC proposed that payments since 1996 should not be included in the proposed temporary allocation method.[6]

In the FDIC's view, other factors supported an initially simple allocation based upon institutions' 1996 ratio. As a practical matter, it appears quite unlikely that the reserve ratio of the DIF

[3] See section 5 of the Amendments Act. Public Law 109–173, 119 Stat. 3601, which was signed into law by the President on February 15, 2006.

[4] This factor is limited to deposit insurance assessments paid to the DIF (or previously to the Bank Insurance Fund (BIF) or the Savings Association Insurance Fund (SAIF)) and does not include assessments paid to the Financing Corporation (FICO) used to pay interest on outstanding FICO bonds, although the FDIC collects those assessments on behalf of FICO. Beginning in 1997, the FDIC collected separate FICO assessments from both SAIF and BIF members.

[5] In most circumstances, if the reserve ratio exceeds 1.5 percent, the FDIC would declare a dividend of the amount in excess of the amount required to maintain the reserve ratio at 1.5 percent, as determined by the FDIC. At the same time, the FDIC would generally expect to declare a dividend of one-half of the amount necessary to maintain the reserve ratio at 1.35 percent, unless the Board makes a determination that suspension or limitation of that dividend is justified under section 7(e)(2)(E) of the FDI Act. That might happen, for example, if based on its consideration of the various statutory factors, the Board determines that it is appropriate, in light of foreseen risks cited in the statute, for the reserve ratio to rise to 1.5 percent and set assessments to maintain the reserve ratio at that level. Sections 2104(a) and 2105(a) of the Reform Act (to be codified at 12 U.S.C. 1817(b)(2) and (3), respectively).

[6] It is in large part because post-2006 payments may become material over time that the FDIC proposed adoption of a transitional rule, with the expectation that in 2007 the process of developing a more comprehensive long-term rule will begin.

will equal or exceed 1.35 percent in the near future.

The FDI Act does not define the term ''predecessor'' for purposes of the distribution of dividends to individual insured depository institutions. In addition, unlike the term ''successor'' used in the context of the one-time assessment credit, the FDI Act does not expressly charge the FDIC with defining ''predecessor.'' Nonetheless, in order to implement the dividend requirements, the FDIC must define ''predecessor'' for these purposes when it is used in connection with an insured depository institution and the distribution of dividends.

The FDIC proposed a definition of ''predecessor'' that is consistent with general principles of corporate law and the proposed definition of ''successor'' in the one-time assessment credit proposed rulemaking. Therefore, a ''predecessor'' would be defined as an institution that combined with another institution through merger or consolidation and did not survive as an entity.

The FDIC proposed that the FDIC advise each institution of its dividend amount as soon as practicable after the Board's declaration of a dividend on or before May 15th. Depending on circumstances, notification would take place through a special notice of dividend or, at the latest, with the institution's next assessment invoice. To allow time for requests for review of dividend amounts, the FDIC proposed that the individual dividend amounts be paid to insured depository institutions at the time of the assessment collection for the second calendar quarter beginning after the declaration of the dividend and offset each institution's assessment amount. Under the proposed rule, the settlement would be handled through the Automated Clearing House consistent with existing procedures for underpayment or overpayment of assessments. Thus, in the event that the institution owes assessments in excess of the dividend amount, there would be a net debit (resulting in payment to the FDIC). Conversely, if the FDIC owes an additional dividend amount in excess of the assessment to the institution, there would be a net credit (resulting in payment from the FDIC).

As it does for the regulations governing the one-time assessment credit, the FDI Act requires the FDIC to include in its dividend regulations provisions allowing an insured depository institution a reasonable opportunity to challenge administratively the amount of its dividend. The FDIC's determination under such procedures is to be final and not subject to judicial review.

The proposed rule largely paralleled the procedures for requesting revision of computation of a quarterly assessment payment as shown on the quarterly invoice. Requests for review of dividend amounts would be considered by the Director of the Division of Finance, and appeals of those decisions would be made to the FDIC's Assessment Appeals Committee. As with the one-time credit notice of proposed rulemaking, the FDIC proposed shorter timeframes in the dividend appeals process so that requests for review could be resolved by the time payment of dividends is due, to the extent possible. The FDIC further proposed to freeze temporarily the distribution of the dividend amount in dispute for the institutions involved in a request for review or appeal until the request for review or appeal is resolved. If an institution prevails on its request for review or appeal, then any additional amount of dividend would be remitted to the institution, with interest for the period of time between the payment of dividends that were not in dispute and the resolution of the dispute.

The comment period for this proposed rule was extended to August 16, 2006, to allow all interested parties to consider the proposed rule while proposed rules on the designated reserve ratio and risk-based assessments were pending.

III. Comments on the Proposed Rule

We received ten comment letters, six from insured depository institutions, one from a coalition of seven institutions, and three from banking industry trade associations. Commenters focused on the proposed temporary allocation method, the definition of ''predecessor,'' and the timing for dividend declaration and payment. Three institutions and three trade groups supported the proposed temporary allocation method for dividends during the life of the rule; whereas, four letters from institutions opposed it, instead supporting an allocation method that immediately takes into account payments made under the new assessments system. One trade association recommended that, if a dividend becomes likely in the next two years, the FDIC accelerate the adoption of the planned, more comprehensive rule.

Three institutions and one trade association supported the proposed definition of predecessor, which relied on whether the resulting institution acquired another institution through merger or consolidation. One trade association favored a ''follow-the-deposits'' approach to the definition. A number of commenters indicated that the definition of ''predecessor'' essentially should parallel the definition of ''successor'' for purposes of the one-time assessment credit rule.

One institution suggested that the declaration of dividends could be moved earlier to March 31st. A trade association commented that the FDIC should provide for the payment of dividends prior to the time of the assessment collection for the second calendar quarter beginning after the declaration of the dividend. It further commented that requests for review should not delay the payment of dividends.

All of the comment letters have been considered and are available on the FDIC's Web site, *http://www.fdic.gov/regulations/laws/federal/propose.html.*

IV. The Final Rule

Upon considering the comments, the FDIC has adopted a final rule similar to the proposed rule with changes to the provisions for the payment of dividends, the definition of *predecessor* and the time period for appealing an FDIC decision on a request to review a dividend determination, as well as minor technical changes. Consistent with the proposal, this rule is temporary; it will take effect on January 1, 2007, and will sunset on December 31, 2008.

As proposed, the FDIC will determine annually whether the reserve ratio at the end of the prior year equals or exceeds 1.35 percent of estimated insured deposits or exceeds 1.5 percent, thereby triggering a dividend requirement. At the same time, if a dividend is triggered, the FDIC will determine whether it should limit or suspend the payment of dividends based on the statutory factors. Any determination to limit or suspend dividends would be reviewed annually and would have to be justified to renew or make a new determination to limit or suspend dividends. Each decision to limit or suspend dividends must be reported to Congress. Any declaration with respect to dividends will be made on or before May 15th for the preceding calendar year. This timing allows for the Board's consideration of final data for the end of the preceding year regarding the reserve ratio of the DIF, as well as analysis of what amount is necessary to maintain the fund at the required level and whether circumstances warrant limiting or suspending the payment of dividends.

If the FDIC does not limit or suspend the payment of dividends or does not renew such a determination, then the

aggregate amount of the dividend will be determined as provided by the statute. When the reserve ratio equals or exceeds 1.35 percent, then the FDIC generally is required to declare the amount that is equal to one-half the amount in excess of the amount required to maintain the reserve ratio at 1.35 as the aggregate amount of dividends to be paid to the insured depository institutions. When the reserve ratio exceeds 1.5 percent, the FDIC generally is required to declare the amount in the DIF in excess of the amount required to maintain the reserve ratio at 1.5 percent as dividends to be paid to institutions.

Consistent with the proposal, the FDIC is adopting a simple system for allocating any dividends that might be declared during this two-year period. Any dividends awarded before January 1, 2009, will be distributed simply in proportion to an institution's 1996 assessment base ratio, as determined pursuant to the one-time assessment credit rule. (See 12 CFR part 327, subpart B.) By cross referencing the determination under the credit rule, the FDIC will be able to recognize subsequent changes to an institutions 1996 ratio due to acquisitions by merger or consolidation with another eligible insured depository institution or transfers.

Four commenters suggest that this approach does not consider all the statutory factors. The FDIC disagrees. As reflected in the proposed rule, the FDIC considered all the statutory factors for distribution, including payments made since year-end 1996. Because of statutory constraints, deposit insurance assessment payments since that date reflect higher levels of risk. In addition, payments to be made under the new risk-based assessments system during the limited life of this rule are likely to be small when compared to the payments made by the industry before 1997. Also, the FDIC does not believe that it is likely that the reserve ratio of the DIF will trigger a dividend over the next two years. However, the FDIC expects to consider again all payments made, including payments under the new system from its inception, as part of the more comprehensive rulemaking to be undertaken next year.

As indicated by the comments, another significant issue for this rulemaking was the definition of ''predecessor.'' The FDIC is adopting a definition of ''predecessor'' that simply cross references the definition of ''successor'' for purposes of the one-time assessment credit rule. In effect, a predecessor is the mirror image of successor. As noted above, a number of commenters agreed that the definitions of ''predecessor'' and ''successor'' raise the same issues and should be parallel. The FDIC is simultaneously issuing a final rule on one-time credits. An analysis of the ''successor'' issue is contained in that final rule. Notably, the definition of successor in the one-time credit final rule expressly includes a de facto rule, defined as any transaction in which an insured depository institution assumes substantially all of the deposit liabilities and acquires substantially all of the assets of any other insured depository institution.

As proposed, the FDIC would advise each institution of its dividend amount as soon as practicable after the Board's declaration of a dividend on or before May 15th. That is the earliest practical time for the declaration of dividends given the data availability and the statutory analysis required. We agree, however, that earlier payment of dividends than in the proposed rule should be workable. To allow time for requests for review of dividend amounts, the FDIC had proposed that the individual dividend amounts be paid to institutions at the time of the assessment collection for the second calendar quarter beginning after the declaration of the dividend. In contrast, under the final rule, the individual dividend amounts generally will be paid to institutions no later than 45 days after the issuance of the special notice, which will allow the FDIC to freeze payment of an individual institution's dividend amount, if that amount is in dispute.

Depending on the timing of the Board's declaration, which could occur prior to May 15th, and the expiration of the 30-day period for requesting review, it is possible that dividends could be paid at the same time as the collection of the quarterly assessment and would offset those payments. Dividends will be paid through the Automated Clearing House (ACH). Although it is expected in most instances that dividends will be paid after the first quarter assessment payment, if they are paid at the time of assessment payments, offsets will be made. If the institution owes assessments in excess of the dividend amount, there will be a net debit (resulting in payment to the FDIC). Conversely, if the FDIC owes an additional dividend amount in excess of the assessment to the institution, there will be a net credit (resulting in payment from the FDIC). The FDIC will notify institutions whether dividends will offset the next assessment payments with the next invoice.

Under the final rule, the FDIC shall freeze the payment of the disputed portion of dividend amounts involved in requests for review. In the absence of such action, institutions will receive the amount indicated on the notice. Any adjustment to an individual institution's dividend amount resulting from its request for review will be handled through ACH in the same manner as existing procedures for underpayment or overpayment of assessments.

As set forth in the proposed rule, an institution may request review of its dividend amount by submitting documentation sufficient to support the change sought to the Division of Finance within 30 days from the date of the notice or invoice advising each institution of its dividend amount. Review may be requested if (1) an institution disagrees with the computation of the dividend as stated on the invoice, or (2) it believes that the notice or invoice does not fully or accurately reflect appropriate adjustments to the institution's 1996 assessment base ratio, such as for the acquisition of another institution through merger. If an institution does not submit a timely request for review, it will be barred from subsequently requesting review of that dividend amount.

At the time of the request for review, the requesting institution also must notify all other institutions of which it knew or had reason to believe would be directly and materially affected by granting the request for review and provide those institutions with copies of the request for review, supporting documentation, and the FDIC's procedures for these requests for review.

In addition, the FDIC will make reasonable efforts, based on its official systems of records, to determine that such institutions have been identified and notified. These institutions will then have 30 days to submit a response and any supporting documentation to the FDIC's Division of Finance, copying the institution making the original request for review. If an institution was identified and notified through this process and does not submit a timely response, that institution will be foreclosed from subsequently disputing the information submitted by any other institution on the transaction(s) at issue in the review process.

The FDIC may request additional information as part of its review, and the institution from which such information is requested will be required to supply that information within 21 days of the date of the FDIC's request.

The final rule requires a written response from the FDIC's Director of the Division of Finance (Director), or his or her designee, which notifies the

requesting institution and any materially affected institutions of the determination of the Director as to whether the requested change is warranted, whenever feasible: (1) Within 60 days of receipt by the FDIC of the request for revision; (2) if additional institutions are notified by the requesting institution or the FDIC, within 60 days of the date of the last response to the notification; or (3) if the FDIC has requested additional information, within 60 days of its receipt of the additional information, whichever is latest.

If a requesting institution disagrees with the determination of the Director, that institution may appeal its dividend determination to the FDIC's Assessments Appeals Committee (AAC). The final rule extends the time for filing an appeal; an appeal to the AAC must be filed within 30 calendar days of the date of the Director's written determination. Notice of the procedures applicable to appeals of the Director's determination to the AAC will be included with the written response. The AAC's determination is final and not subject to judicial review.

V. Regulatory Analysis and Procedure

Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small entities, within the meaning of those terms as used in the RFA. The final rule implementing the dividend requirements of the Reform Act relies on information already collected and maintained by the FDIC in the regular course of business. The rule imposes no new reporting, recordkeeping, or other compliance requirements. For the two-year duration of this rule, it also appears unlikely that a dividend would be required. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis are not applicable. No comments on the RFA were received.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR 1320 Appendix A.1), the FDIC reviewed the final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. No commenters suggested that the proposed rule was unclear, and the final rule is substantively similar to the proposed rule.

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

The FDIC has determined that the final rule will not affect family wellbeing within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the final rule is not a ''major rule'' within the meaning of the relevant sections of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 801 *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the Government Accountability Office so that the final rule may be reviewed.

List of Subjects in 12 CFR Part 327

Bank deposit insurance, Banks, Banking, Savings associations.

12 CFR Chapter III

Authority and Issuance

■ For the reasons set forth in the preamble, chapter III of title 12 of the Code of Federal Regulations is amended as follows:

PART 327—ASSESSMENTS

■ 1. Add subpart C, consisting of §§ 327.50 through 327.55, to read as follows:

Subpart C—Implementation of Dividend Requirements

Sec.

Authority: 12 U.S.C. 1817(e)(2), (4).

§ 327.50 Purpose and scope.

(a) *Scope.* This subpart C of part 327 implements the dividend provisions of section 7(e)(2) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(e)(2), and applies to insured depository institutions.

(b) *Purpose.* This subpart C of part 327 sets forth the rules for:

(1) The FDIC's annual determination of whether to declare a dividend and the aggregate amount of any dividend;

(2) The FDIC's determination of the amount of each insured depository institution's share of any declared dividend;

(3) The time and manner for the FDIC's payments of dividends; and

(4) An institution's appeal of the FDIC's determination of its dividend amount.

§ 327.51 Definitions.

For purposes of this subpart:

(a) *Board* has the same meaning as under subpart B of this part.

(b) *DIF* means the Deposit Insurance Fund.

(c) An *insured depository institution's 1996 assessment base ratio* means an institution's 1996 assessment base ratio as determined pursuant to § 327.33 of subpart B of this part, adjusted as necessary after the effective date of subpart B of this part to reflect subsequent transactions in which the institution succeeds to another institution's assessment base ratio, or a transfer of the assessment base ratio pursuant to § 327.34.

(d) *Predecessor,* when used in the context of insured depository institutions, refers to the institution merged with or into a resulting institution, consistent with the definition of ''successor'' in § 327.31.

§ 327.52 Annual dividend determination.

(a) On or before May 15th of each calendar year, beginning in 2007, the Board shall determine whether to declare a dividend based upon the reserve ratio of the DIF as of December 31st of the preceding year, and the amount of the dividend, if any.

(b) Except as provided in paragraph (d) of this section, if the reserve ratio of the DIF equals or exceeds 1.35 percent of estimated insured deposits and does not exceed 1.5 percent, the Board shall declare the amount that is equal to one-half of the amount in excess of the amount required to maintain the reserve ratio at 1.35 percent as the aggregate dividend to be paid to insured depository institutions.

(c) If the reserve ratio of the DIF exceeds 1.5 percent of estimated insured deposits, except as provided in paragraph (d) of this section, the Board shall declare the amount in excess of the amount required to maintain the reserve

ratio at 1.5 percent as the aggregate dividend to be paid to insured depository institutions and shall declare a dividend under paragraph (b) of this section.

(d)(1) The Board may suspend or limit a dividend otherwise required to be paid if the Board determines that:

(i) A significant risk of losses to the DIF exists over the next one-year period; and

(ii) It is likely that such losses will be sufficiently high as to justify the Board concluding that the reserve ratio should be allowed:

(A) To grow temporarily without requiring dividends when the reserve ratio is between 1.35 and 1.5 percent; or

(B) To exceed 1.5 percent.

(2) In making a determination under this paragraph, the Board shall consider:

(i) National and regional conditions and their impact on insured depository institutions;

(ii) Potential problems affecting insured depository institutions or a specific group or type of depository institution;

(iii) The degree to which the contingent liability of the FDIC for anticipated failures of insured institutions adequately addresses concerns over funding levels in the DIF; and

(iv) Any other factors that the Board may deem appropriate.

(3) Within 270 days of making a determination under this paragraph, the Board shall submit a report to the Committee on Financial Services and the Committee on Banking, Housing, and Urban Affairs, providing a detailed explanation of its determination, including a discussion of the factors considered.

(e) The Board shall annually review any determination to suspend or limit dividend payments and must either:

(1) Make a new finding justifying the renewal of the suspension or limitation under paragraph (d) of this section, and submit a report as required under paragraph (d)(3) of this section; or

(2) Reinstate the payment of dividends as required by paragraph (b) or (c) of this section.

§ 327.53 Allocation and payment of dividends.

(a) For any dividend declared before January 1, 2009, allocation of such dividend among insured depository institutions shall be based solely on an insured depository institution's 1996 assessment base ratio, as determined pursuant to paragraph 327.51(c) of this subpart, as of December 31st of the year for which dividends are declared.

(b) The FDIC shall notify each insured depository institution of the amount of such institution's dividend payment based on its share as determined pursuant to paragraph (a) of this section. Notice shall be given as soon as practicable after the Board's declaration of a dividend through a special notice of dividend.

(c) The FDIC shall pay individual dividend amounts, which are not subject to request for review under section 327.54 of this subpart, to insured depository institutions no later than 45 days after the issuance of the special notices of dividend. The FDIC shall notify institutions whether dividends will offset the next collection of assessments at the time of the invoice. An institution's dividend amount may be remitted with that institution's assessment or paid separately. If remitted with the institution's assessment, any excess dividend amount will be a net credit to the institution and will be deposited into the deposit account designated by the institution for assessment payment purposes pursuant to subpart A of this part. If remitted with the institution's assessment and the dividend amount is less than the amount of assessment due, then the institution's account will be directly debited to the FDIC to reflect the net amount owed to the FDIC as an assessment.

(d) If an insured depository institution's dividend amount is subject to review under § 327.54, and that request is not finally resolved prior to the dividend payment date, the FDIC may credit the institution with the dividend amount provided on the invoice or freeze the amount in dispute. Adjustments to an individual institution's dividend amount based on the final determination of a request for review will be handled in the same manner as assessment underpayments and overpayments.

§ 327.54 Requests for review of dividend amount.

(a) An insured depository institution may submit a request for review of the FDIC's determination of the institution's dividend amount as shown on the special notice of dividend or assessment invoice, as appropriate. Such review may be requested if:

(1) The institution disagrees with the calculation of the dividend as stated on the special notice of dividend or invoice; or

(2) The institution believes that the 1996 assessment base ratio attributed to the institution has not been adjusted to include the 1996 assessment base ratio of an institution acquired by merger or transfer pursuant to §§ 327.33 and 327.34 of subpart B and the institution has not had an opportunity (whether or not that opportunity was utilized) to appeal that same determination under subpart B.

(b) Any such request for review must be submitted within 30 days of the date of the special notice of dividend or invoice for which a change is requested. The request for review shall be submitted to the Division of Finance and shall provide documentation sufficient to support the change sought by the institution. If an institution does not submit a timely request for review, that institution may not subsequently request review of its dividend amount, subject to paragraph (d) of this section. At the time of filing with the FDIC, the requesting institution shall notify, to the extent practicable, any other insured depository institution that would be directly and materially affected by granting the request for review and provide such institution with copies of the request for review, the supporting documentation, and the FDIC's procedures for requests under this subpart. The FDIC shall make reasonable efforts, based on its official systems of records, to determine that such institutions have been identified and notified.

(c) During the FDIC's consideration of the request for review, the amount of dividend in dispute may not be available for use by any institution.

(d) Within 30 days of receiving notice of the request for review, those institutions identified as potentially affected by the request for review may submit a response to such request, along with any supporting documentation, to the Division of Finance, and shall provide copies to the requesting institution. If an institution that was notified under paragraph (b) of this section does not submit a response to the request for review, that institution may not subsequently:

(1) Dispute the information submitted by any other institution on the transaction(s) at issue in that review process; or

(2) Appeal the decision by the Director of the Division of Finance.

(e) If additional information is requested of the requesting or affected institutions by the FDIC, such information shall be provided by the institution within 21 days of the date of the FDIC's request for additional information.

(f) Any institution submitting a timely request for review will receive a written response from the FDIC's Director of the Division of Finance (''Director''), or his or her designee, notifying the affected institutions of the determination of the

Director as to whether the requested change is warranted, whenever feasible:

(1) Within 60 days of receipt by the FDIC of the request for revision;

(2) If additional institutions have been notified by the requesting institution or the FDIC, within 60 days of the date of the last response to the notification; or

(3) If additional information has been requested by the FDIC, within 60 days of receipt of the additional information, whichever is later. Notice of the procedures applicable to appeals under paragraph (g) of this section will be included with the Director's written determination.

(g) An insured depository institution may appeal the determination of the Director to the FDIC's Assessment Appeals Committee on the same grounds as set forth under paragraph (a) of this section. Any such appeal must be submitted within 30 calendar days from the date of the Director's written determination. The decision of the Assessment Appeals Committee shall be the final determination of the FDIC.

§ 327.55 Sunset date.

Subpart C shall cease to be effective on December 31, 2008.

Dated at Washington, DC, this 10th day of October, 2006.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E6–17304 Filed 10–17–06; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–360–AD; Amendment 39–14789; AD 2006–21–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400, 777–200, and 777–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–400, 777–200, and 777–300 series airplanes. This AD requires, for certain airplanes, replacing the cell stack of the flight deck humidifier with a supplier-tested cell stack, or replacing the cell stack with a blanking plate and subsequently deactivating the flight deck humidifier. For certain other airplanes, this AD requires an inspection of the flight deck humidifier to determine certain part numbers and replacing the cell stack if necessary. This AD also allows blanking plates to be replaced with cell stacks. The actions specified by this AD are intended to prevent an increased pressure drop across the humidifier and consequent reduced airflow to the flight deck, which could result in the inability to clear any smoke that might appear in the flight deck. This action is intended to address the identified unsafe condition.

DATES: Effective November 22, 2006.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 22, 2006.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Palmer, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6481; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–400, 777–200, and 777–300 series airplanes was published as a second supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on January 4, 2006 (71 FR 299). That action proposed to require, for certain airplanes, replacing the cell stack of the flight deck humidifier with a supplier-tested cell stack, or replacing the cell stack with a blanking plate and subsequently deactivating the flight deck humidifier. For certain other airplanes, that action proposed to require an inspection of the flight deck humidifier to determine certain part numbers and replacing the cell stack if necessary. That action also proposed to allow blanking plates to be replaced with cell stacks. That action also proposed to add airplanes to the applicability.

Actions Since Second Supplemental NPRM (SNPRM) Was Issued

Since we issued the second SNPRM, Boeing has issued Service Bulletin 747–21A2414, Revision 3, dated May 12, 2006; and Service Bulletin 777–21A0048, Revision 3, dated May 12, 2006. Boeing Alert Service Bulletin 747–21A2414, Revision 2, dated July 7, 2005; and Boeing Alert Service Bulletin 777–21A0048, Revision 2, dated July 14, 2005, were referenced as the appropriate sources of service information for doing certain actions proposed in the second SNPRM. Both service bulletins, Revision 3, contain essentially the same procedures as the corresponding service bulletins, Revision 2. We have revised this final rule to refer to Revision 3 of these service bulletins.

We have also added Boeing Alert Service Bulletin 747–21A2414, Revision 2, to paragraphs (b) and (g) of this final rule and added Boeing Alert Service Bulletin 777–21A0048, Revision 2, to paragraphs (e) and (h) of this final rule to allow credit for actions done in accordance with Revision 2 of the service bulletins.

Operators should note that Boeing Service Bulletin 747–21A2414, Revision 3, dated May 12, 2006, specifies Group 1 as ''all 747–400 airplanes with Hamilton Sundstrand flight deck humidifier 821486–01.'' However, the correct part number for the humidifier is 821486–1. We have added Note 1 to this final rule to indicate that Group 1 is identified as all 747–400 airplanes with Hamilton Sundstrand flight deck humidifier 821486–1.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Second SNPRM

Boeing, the manufacturer, concurs with the content of the second SNPRM.

Request To Remove Airplanes From the Second SNPRM

United Airlines (UAL) does not agree with the contents of the second SNPRM for the Model 747–400 series airplanes and feels that regulatory action is not necessary to ensure the intent of the second SNPRM for these airplanes. UAL states that it took immediate steps to comply with Boeing and Hamilton Sundstrand service bulletins specified in the second SNPRM. UAL notes that because the reliability of the humidifier was extremely poor at the time that the cell stack concern was identified, the humidifier cell stacks have been

replaced many times since the year 2000. UAL states that the removed cell stacks were sent to Hamilton Sundstrand for repair and modification and that Hamilton Sundstrand is the sole source for repair and modification. Therefore, UAL concludes that the intent of the second SNPRM for the 747–400 airplanes can be satisfied by examining Hamilton Sundstrand's maintenance records for the cell stack.

We disagree. Regulatory action is necessary to ensure that Model 747–400 series airplanes do the actions in this final rule. A review by the airplane manufacturer of the Hamilton Sundstrand records shows that about 10 defective humidifier cell stacks are in circulation among the Model 747–400 fleet. This final rule will prevent any of those humidifiers, having cell stack part number (P/N) 821482–1, from being installed as replacements on any airplanes unless ''DEV 13433'' is marked next to the cell stack P/N. We have not changed the final rule in this regard.

UAL also does not agree with the contents of the second SNPRM for the Model 777–200 series airplanes and feels that regulatory action is not necessary to ensure the intent of the second SNPRM for these airplanes. UAL states that the airplanes identified as Group 6 in Boeing Service Bulletin 777–21A0048, Revision 3, dated May 12, 2006, were added to the service bulletin because the airplanes were scheduled to have the humidifiers retrofitted as part of the crew rest project; however, the installation was canceled and no airplanes were retrofitted with the humidifiers.

We disagree. Regulatory action is necessary to ensure that Model 777–200 series airplanes do the actions in this final rule. A review by the airplane manufacturer of the Hamilton Sundstrand records shows that about 14 defective humidifier cell stacks are in circulation among the Model 777 fleet. This final rule will prevent any of those humidifiers, having cell stack P/N 822976–2, from being installed as replacements on any airplanes unless ''DEV 13433'' is marked next to the cell stack P/N. We have not changed the final rule in this regard.

Request To Allow Compliance With Maintenance Records

UAL also requests that if Model 747–400 series airplanes are not allowed to be removed from the requirements of the second SNPRM as requested above, then the only regulatory actions imposed on operators should be limited to demonstrating compliance through their own maintenance records.

We partially agree with the commenter. In paragraph (c) of this final rule we do allow a review of airplane maintenance records to determine the P/N of the flight deck humidifier instead of doing the inspection. We have determined that a review of the maintenance records is also acceptable if it can be determined that the flight deck humidifier is not installed. We have revised paragraph (c) to state that ''instead of inspecting the flight deck humidifier, a review of airplane maintenance records along with any other applicable data is acceptable if the P/N of the flight deck humidifier can be positively determined from that review or if it can be positively determined that the flight deck humidifier is not installed on the airplane.''

Request To Allow Equivalent Blanking Plate Installation

UAL also requests that we consider the blanking plate installation and humidifier system deactivation done in accordance with Boeing Service Bulletin 777–21–0087, dated June 17, 2004; and Hamilton Sundstrand Service Bulletin 816086–21–01, dated March 15, 2000; as equivalent to the blanking plate installation done in accordance with Boeing Alert Service Bulletin 777–21A0048, Revision 2, dated July 14, 2005 (specified in paragraph (f) of the second SNPRM).

The commenter states that it has deactivated the humidifiers and replaced the cell stacks with blanking plates on all Group 7 airplanes identified in Boeing Alert Service Bulletin 777–21–0048, registration numbers 09UA and 16UA–29UA, by doing the actions in Boeing Service Bulletin 777–21–0087 and Hamilton Sundstrand Service Bulletin 816086–21–01. The commenter also notes that the airplane having registration number 09UA, was delivered with a deactivated humidifier and only needed modification by doing the blanking plate installation per Hamilton Sundstrand Service Bulletin 816086–21–01.

We agree with the commenter. We have revised paragraph (f)(2)(ii) of this final rule to give credit for airplanes on which the replacement and deactivation are done in accordance with Boeing Service Bulletin 777–21–0087 and Hamilton Sundstrand Service Bulletin 816086–21–01 for those Group 7 airplanes listed in Boeing Service Bulletin 777–21–0087, dated June 17, 2004.

We have also determined that a review of the maintenance records is acceptable instead of the inspection specified in paragraph (f) of this final rule if it can be determined that the flight deck humidifier is not installed. We have revised paragraph (f) to state that ''instead of inspecting the flight deck humidifier, a review of airplane maintenance records along with any other applicable data is acceptable if the P/N of the flight deck humidifier can be positively determined from that review or if it can be positively determined that the flight deck humidifier is not installed on the airplane.''

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 176 airplanes of the affected design in the worldwide fleet. The FAA estimates that this AD affects 29 airplanes of U.S. registry. The cost per airplane ranges between $390 and $6,248 per airplane, depending on the actions chosen by the operator. The fleet cost estimate does not exceed $181,192.

ESTIMATED COSTS

Model/series	Action	Work hours	Hourly rate	Parts cost	Cost per airplane
747–400, 777–200, 777–300	Inspect flight deck humidifier for P/N and inspect flight deck humidifier cell stack for P/N.	1	$65	$0	$65
747–400	Replace cell stack with new or supplier-tested cell stack	3	65	5,100	5,295
747–400	Replace cell stack with blanking plate and deactivate humidifier.	5	65	0	325
777–200, 777–300	Replace cell stack with blanking plate	3	65	0	195

ESTIMATED COSTS—Continued

Model/series	Action	Work hours	Hourly rate	Parts cost	Cost per airplane
777–200, 777–300	Replace cell stack with new or supplier-tested cell stack	3	65	6,053	6,248
777–200, 777–300	Replace blanking plate with supplier-tested cell stack	1	65	6,053	6,118

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Authority for This Rulemaking

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

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

Regulatory Impact

The regulations adopted herein 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (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. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2006–21–05 Boeing: Amendment 39–14789. Docket 2000–NM–360–AD.

Applicability: Model 747–400, 777–200, and 777–300 series airplanes, certificated in any category; as identified in Boeing Service Bulletin 747–21A2414, Revision 3, dated May 12, 2006; and Boeing Service Bulletin 777–21A0048, Revision 3, dated May 12, 2006.

Compliance: Required as indicated, unless accomplished previously.

To prevent an increased pressure drop across the humidifier and consequent reduced airflow to the flight deck, which could result in the inability to clear any smoke that might appear in the flight deck, accomplish the following:

Cell Stack Replacement: Model 747–400 Series Airplanes

(a) For Model 747–400 series airplanes identified as Group 1 in Boeing Service Bulletin 747–21A2414, Revision 3, dated May 12, 2006: Within 90 days after the effective date of this AD, do the replacement specified in paragraph (a)(1) or (a)(2) of this AD. For flight deck humidifiers with a blanking plate: If the blanking plate is removed and a new or supplier-tested cell stack is installed, the replacement must be done in accordance with the Accomplishment Instructions of Hamilton Sundstrand Service Bulletins 821486–21–01, dated March 15, 2000; and after the replacement, the flight deck humidifier may be activated in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–21–2405, Revision 4, dated July 29, 1999.

Note 1: Boeing Service Bulletin 747–21A2414, Revision 3, dated May 12, 2006, specifies Group 1 as ''all 747–400 airplanes with Hamilton Sundstrand flight deck humidifier 821486–01.'' The correct part number (P/N) for the humidifier is 821486–1.

(1) Replace the cell stack of the flight deck humidifier with a supplier-tested cell stack, in accordance with Part 1 of the Accomplishment Instructions of Boeing Service Bulletin 747–21A2414, Revision 3, dated May 12, 2006.

(2) Replace the cell stack of the flight deck humidifier with a blanking plate and, before further flight, deactivate the flight deck humidifier, in accordance with Part 2 of the Accomplishment Instructions of Boeing Service Bulletin 747–21A2414, Revision 3, dated May 12, 2006.

Note 2: Boeing Service Bulletin 747–21A2414, Revision 3, dated May 12, 2006, refers to Boeing Service Bulletin 747–21–2405, Revision 4, dated July 29, 1999, as an additional source of service information for deactivating the humidifier.

Note 3: Boeing Service Bulletin 747–21A2414, Revision 3, dated May 12, 2006, refers to Hamilton Sundstrand Service Bulletin 821486–21–01, dated March 15, 2000, as an additional source of service information for the cell stack replacements.

(b) Replacement of the cell stack before the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–21A2414, dated April 13, 2000; Revision 1, dated October 26, 2000; or Revision 2, dated July 7, 2005; is acceptable for compliance with the applicable requirements of paragraphs (a)(1) and (a)(2) of this AD.

Inspections/Records Review: Model 747–400 Series Airplanes

(c) For Model 747–400 series airplanes identified as Groups 2 and 3 in Boeing Service Bulletin 747–21A2414, Revision 3, dated May 12, 2006: Within 90 days after the effective date of this AD, inspect the flight deck humidifier to determine whether P/N 821486–1 is installed, in accordance with Part 3 of the Accomplishment Instructions of Boeing Service Bulletin 747–21A2414, Revision 3, dated May 12, 2006. Instead of inspecting the flight deck humidifier, a

review of airplane maintenance records along with any other applicable data is acceptable if the P/N of the flight deck humidifier can be positively determined from that review or if it can be positively determined that the flight deck humidifier is not installed on the airplane.

(1) If a P/N other than P/N 821486–1 is installed or if the flight deck humidifier is not installed, no further action is required by this paragraph.

(2) If P/N 821486–1 is installed, inspect the flight deck humidifier cell stack to determine whether P/N 821482–1 is installed and ''DEV 13433'' is not marked next to the cell stack P/N, in accordance with Part 3 of the Accomplishment Instructions of the service bulletin. Instead of inspecting the flight deck humidifier cell stack, a review of airplane maintenance records is acceptable if the P/N, including whether ''DEV 13433'' is marked next to the P/N, of the flight deck humidifier cell stack can be positively determined from that review.

(i) If the cell stack has P/N 821482–2 or 1003111–2, or if ''DEV 13433'' is marked next to P/N 821482–1, no further action is required by this paragraph.

(ii) If the cell stack has P/N 821482–1 and does not have ''DEV 13433'' marked next to the cell stack P/N: Before further flight, do the replacement specified in paragraph (a) of this AD.

Cell Stack Replacement: Model 777–200 and –300 Series Airplanes

(d) For Model 777–200 and 777–300 series airplanes identified as Groups 1 through 5 in Boeing Service Bulletin 777–21A0048, Revision 3, dated May 12, 2006: Within 90 days after the effective date of this AD, do the replacement specified in paragraph (d)(1) or (d)(2) of this AD. For flight deck humidifiers with a blanking plate: If a blanking plate is removed and a new or supplier-tested cell stack installed, the cell stack installation must be done in accordance with Part 3 of the Accomplishment Instructions of Boeing Service Bulletin 777–21A0048, Revision 3, dated May 12, 2006; and after the installation, the humidifier system may be activated in accordance with Accomplishment Instructions of Boeing Service Bulletin 777–21–0035, Revision 1, dated October 19, 2000.

(1) Replace the cell stack with a blanking plate, in accordance with Part 1 of the Accomplishment Instructions of Boeing Service Bulletin 777–21A0048, Revision 3, dated May 12, 2006; and, before further flight, deactivate the humidifier system in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, or in accordance with data meeting the certification basis of the airplane approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization who has been authorized by the Manager, Seattle ACO, to make those findings. For a deactivation method to be approved, the deactivation must meet the certification basis of the airplane, and the approval must specifically reference this AD.

(2) Replace the cell stack with a supplier-tested cell stack, in accordance with Part 2 of the Accomplishment Instructions of Boeing Service Bulletin 777–21A0048, Revision 3, dated May 12, 2006.

Note 4: Boeing Service Bulletin 777–21A0048, Revision 3, dated May 12, 2006, refers to Hamilton Sundstrand Service Bulletin 816086–21–01, dated March 15, 2000, as an additional source of service information for the cell stack replacement.

(e) Replacement of the cell stack before the effective date of this AD in accordance with Boeing Service Bulletin 777–21A0048, Revision 1, dated September 7, 2000; or Boeing Alert Service Bulletin 777–21A0048, Revision 2, dated July 14, 2005; is acceptable for compliance with the applicable requirements of paragraphs (d)(1) and (d)(2) of this AD.

Inspections/Records Review: Model 777–200 and –300 Series Airplanes

(f) For Model 777–200 and 777–300 series airplanes identified as Groups 6 and 7 in Boeing Service Bulletin 777–21A0048, Revision 3, dated May 12, 2006: Within 90 days after the effective date of this AD, inspect the flight deck humidifier to determine if it is P/N 816086–1, in accordance with Part 4 of the Accomplishment Instructions of Boeing Service Bulletin 777–21A0048, Revision 3, dated May 12, 2006. Instead of inspecting the flight deck humidifier, a review of airplane maintenance records along with any other applicable data is acceptable if the P/N of the flight deck humidifier can be positively determined from that review or if it can be positively determined that the flight deck humidifier is not installed on the airplane.

(1) If a P/N other than P/N 816086–1 is installed or if the flight deck humidifier is not installed, no further action is required by this paragraph.

(2) If P/N 816086–1 is installed, inspect the flight deck humidifier cell stack to determine whether P/N 822976–2 is installed and ''DEV 13433'' is not marked next to the cell stack P/N, in accordance with Part 4 of the Accomplishment Instructions of the service bulletin. Instead of inspecting the flight deck humidifier cell stack, a review of airplane maintenance records is acceptable if the P/N, including whether ''DEV 13433'' is marked next to the P/N, of the flight deck humidifier cell stack can be positively determined from that review.

(i) If the cell stack has P/N 822976–3 or 1003111–1, or if ''DEV 13433'' is marked next to P/N 822976–2, no further action is required by this paragraph.

(ii) If the cell stack has P/N 822976–2 and does not have ''DEV 13433'' marked next to the cell stack P/N, before further flight, do the replacement specified in paragraph (d) of this AD. Doing the replacement of the cell stack with a blanking plate, in accordance with paragraph 3.A. of the Accomplishment Instructions of Hamilton Sundstrand Service Bulletin 816086–21–01, dated March 15, 2000; and the deactivation of the humidifier system, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–21–0087, dated June 17, 2004; is acceptable for compliance with paragraph (d)(1) of this AD for those Group 7 airplanes listed in Boeing Service Bulletin 777–21–0087, dated June 17, 2004.

Actions Accomplished According to Previous Issue of Service Bulletin

(g) Inspections accomplished before the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–21A2414, Revision 2, dated July 7, 2005, are considered acceptable for compliance with the corresponding action specified in paragraph (c) of this AD.

(h) Inspections accomplished before the effective date of this AD in accordance with Boeing Alert Service Bulletin 777–21A0048, Revision 2, dated July 14, 2005, are considered acceptable for compliance with the corresponding action specified in paragraph (f) of this AD.

Parts Installation

(i) On Model 747–400 series airplanes: As of the effective date of this AD, no person may install a flight deck humidifier cell stack having P/N 821482–1, unless ''DEV 13433'' is also marked next to the cell stack P/N.

(j) On Model 777–200 and 777–300 series airplanes: As of the effective date of this AD, no person may install a flight deck humidifier cell stack having P/N 822976–2, unless ''DEV 13433'' is also marked next to the cell stack P/N.

Alternative Methods of Compliance

(k)(1) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, is authorized to approve alternative methods of compliance for this AD.

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

Incorporation by Reference

(l) Unless otherwise specified in this AD, the actions must be done in accordance with the applicable service bulletins listed in Table 1 of this AD. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of this service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. To inspect copies of this service information, go to the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

Service Bulletin	Revision level	Date
Boeing Service Bulletin 747–21A2414	3	May 12, 2006.
Boeing Service Bulletin 747–21–2405	4	July 29, 1999.
Boeing Service Bulletin 777–21A0048	3	May 12, 2006.
Boeing Service Bulletin 777–21–0035	1	October 19, 2000.
Boeing Service Bulletin 777–21–0087	Original	June 17, 2004.
Hamilton Sundstrand Service Bulletin 816086–21–01	Original	March 15, 2000.
Hamilton Sundstrand Service Bulletin 821486–21–01	Original	March 15, 2000.

Effective Date

(m) This amendment becomes effective on November 22, 2006.

Issued in Renton, Washington, on October 6, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–17187 Filed 10–17–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25809; Directorate Identifier 2001–NE–30–AD; Amendment 39–14791; AD 2006–17–07R1]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, –17AR, –209, –217, –217A, –217C, and –219 Turbofan Engines

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

ACTION: Final rule; correction.

SUMMARY: The FAA is revising an existing airworthiness directive (AD) for Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, –17AR, –209, –217, –217A, –217C, and –219 turbofan engines. That AD currently requires either replacing high pressure compressor (HPC) front hubs and HPC disks that have operated at any time with PWA 110–21 coating and that operated in certain engine models, or, visually inspecting and fluorescent penetrant inspecting (FMPI) for cracking of those parts and re-plating them if they pass inspection. This AD requires the same actions, but makes necessary corrections to inadvertent reference errors and omissions found in AD 2006–17–07, and relaxes some of the compliance times in Table 5. This AD results from our finding reference errors and omissions in AD 2006–17–07, from determining that the AD as drafted imposed an unnecessary burden on operators if they have to immediately remove engines, and from requests to clarify compliance paragraphs. We are issuing this AD to prevent a rupture of an HPC front hub or an HPC disk that could result in an uncontained engine failure and damage to the airplane.

DATES: This AD becomes effective November 2, 2006. The Director of the Federal Register previously approved the incorporation by reference of certain publications listed in the regulations as of October 4, 2006 (71 FR 51459, August 30, 2006).

ADDRESSES: You can get the service information identified in this AD from Pratt & Whitney, 400 Main St., East Hartford, CT 06108, telephone (860) 565–7700; fax (860) 565–1605.

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

FOR FURTHER INFORMATION CONTACT: Keith Lardie, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7189; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: On August 21, 2006, the FAA issued AD 2006–17–07, Amendment 39–14728 (71 FR 51459, August 30, 2006). That AD requires either replacing HPC front hubs and HPC disks that have operated at any time with PWA 110–21 coating and that operated in certain engine models, or, visually inspecting and FMPI for cracking of those parts and re-plating them if they pass inspection. That AD was the result of an investigation by PW, which concluded that any HPC front hub or HPC disk coated with PWA 110–21 that ever operated on JT8D–15, –15A, –17, –17A, –17R, –17AR, –209, –217, –217A, –217C, and –219 turbofan engines, could crack before reaching their published life limit. That condition, if not corrected, could result in an uncontained engine failure and damage to the airplane.

Examining the AD Docket

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

Actions Since AD 2006–17–07 Was Issued

After we issued AD 2006–17–07, we found reference errors and omissions. These errors and omissions could affect your ability to comply with the AD. The following errors and omissions were discovered. We made the associated corrections:

- In the third column of Table 1 of this AD, we omitted ''–17A'' in two places. We added the missing ''–17A'' from AD 2006–17–07 in both places.
- The third column of Table 4 and Table 5 reads ''Paragraph (h)(3) of this AD''. Paragraph (h)(3) does not exist. We corrected it to read ''Paragraph (j) of this AD.''

We also determined that based on the compliance times in Table 5 of AD 2006–17–07, some operators might have to immediately remove their engines from service. If so, we concluded that those immediate removals might impose an unanticipated undue burden. Table 5 of AD 2006–17–07, appears below.

TABLE 5 OF AD 2006–17–07—HPC FRONT HUB INSPECTION SCHEDULE—HUBS COATED WITH NICKEL-CADMIUM

HPC front hub CSN on the effective date of this AD	Inspect before additional CIS or CSN, whichever occurs first	Also inspect 7th stage HPC disks and 9th stage-through-12th stage HPC disks using:
(i) 19,000 or more	500 CIS or 20,000 CSN	Paragraph (h)(3) of this AD.
(ii) 17,000 or more, but fewer than 19,000	1,000 CIS or 19,500 CSN	Paragraph (h)(3) of this AD.
(iii) 9,000 or more, but fewer than 17,000, that have not been inspected.	18,000 CSN	Paragraph (h)(3) of this AD.
(iv) 9,000 or more, but fewer than 17,000, that were inspected before accumulating 9,000 CSN.	15,500 CSN	Paragraph (h)(3) of this AD.

Therefore, we changed Table 5 to reflect relaxed compliance requirements in item (iii), and we changed the compliance requirements in item (iv). With the addition of the ''–17A'' noted previously, and the changed compliance requirements that relax compliance time, Table 5 now reads as follows:

(CHANGED) TABLE 5.—HPC FRONT HUB INSPECTION SCHEDULE—HUBS COATED WITH NICKEL-CADMIUM

HPC front hub CSN on the effective date of this AD	Inspect before additional CIS or CSN, whichever occurs first	Also inspect 7th stage HPC disks and 9th stage-through-12th stage HPC disks using:
(i) 19,000 or more	500 CIS or 20,000 CSN	Paragraph (j) of this AD.
(ii) 17,000 or more, but fewer than 19,000	1,000 CIS or 19,500 CSN	Paragraph (j) of this AD.
(iii) 9,000 or more, but fewer than 17,000	18,000 CSN	Paragraph (j) of this AD.
(iv) Fewer than 9,000 that are accessible	If the parts have been inspected and are acceptable, parts may be reinstalled. Inspect again using the criteria in (iii) of this table.	Paragraph (j) of this AD.

As part of relaxing the requirements, we also clarified that paragraphs (f)(3) and (j) pertain to 7th stage HPC disks and 9th stage-through-12th stage HPC disks coated with PWA 110–21.

Finally, since AD 2006–17–07 was issued, we received multiple instances of operators requesting clarification of compliance paragraph (e) in AD 2006–17–07. Based on the frequency of requests, we decided to clarify the paragraph. AD 2006–17–07 paragraph (e) originally read as follows:

''(e) You must accomplish the actions required by this AD within the compliance times specified, unless the actions have already been done. Any engine with an HPC front hub that has been inspected using AD 2002–23–14, AD 2003–12–07, or AD 2003–16–05, is considered in compliance with this AD.''

We rewrote paragraph (e) to now read as follows:

''(e) You must accomplish the actions required by this AD within the compliance times specified, unless the actions have already been done. Any engine with an HPC front hub that has been inspected for fretting wear using AD 2002–23–14, AD 2003–12–07, or AD 2003–16–05, counts as an inspection toward compliance with this AD.''

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other Pratt & Whitney JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, –17AR, –209, –217, –217A, –217C, and –219 turbofan engines of the same type design. We are issuing this AD to prevent a rupture of an HPC front hub or an HPC disk that could result in an uncontained engine failure and damage to the airplane. This AD requires either replacing HPC front hubs and HPC disks that have operated at any time with PWA 110–21 coating and that operated in certain engine models, or, visually inspecting and FMPI for cracking of those parts and re-plating them if they pass inspection.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are unnecessary, and that good cause exists for making this amendment effective in less than 30 days.

Docket Number Change

We are transferring the docket for this AD to the Docket Management System as part of our on-going docket management consolidation efforts. The new Docket No. is FAA–2006–25809. The old Docket No. became the Directorate Identifier, which is 2001–NE–30–AD. This AD might get logged into the DMS docket, ahead of the previously collected documents from the old docket file, as we are in the process of sending those items to the DMS.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–14728 (71 FR 51459, August 30, 2006), and by adding a new airworthiness directive, Amendment 39–14791, to read as follows:

2006–17–07R1 Pratt & Whitney: Amendment 39–14791. Docket No. FAA–2006–25809; Directorate Identifier 2001–NE–30–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 2, 2006.

Affected ADs

(b) This AD revises AD 2006–17–07.

Applicability

(c) This AD applies to the following Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, –17AR, –209, –217, –217A, –217C, and –219 turbofan engines, with 8th stage high pressure compressor (HPC) front hubs:

TABLE 1.—AD APPLICABILITY

If the HPC front hub is coated with:	And if the stage 8–9 spacer is coated with:	And the HPC front hub:	Then this AD is:
(1) PWA 110–21 at any time	Any	Operated in a JT8D–15, –15A, –17, –17A, –17R, or –17AR engine.	Applicable. See paragraph (f) and Table 2 of this AD.
(2) PWA 110–21 at any time	Any	Operated in a JT8D–209, –217, –217A, –217C, or –219 engine.	Applicable. See paragraph (h) and Table 4 of this AD.
(3) Nickel-Cadmium	PWA 110–21 at any time	Operated in a JT8D–209, –217, –217A, –217C, or –219 engine.	Applicable. See paragraph (i) and Table 5 of this AD.
(4) Nickel-Cadmium	PWA 110–21 at any time	Operated in a JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, or –17AR engine.	Not applicable.
(5) PWA 110–21 at any time	Any	Operated in a JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, or –11, but never operated in a JT8D–15, –15A, –17, –17A, –17R, –17AR, –209, –217, –217A, –217C, or –219 engine.	Not applicable.
(6) Nickel-Cadmium	Any type but PWA 110–21	Any	Not applicable.

These engines are installed on, but not limited to, Boeing DC–9, MD–80 series, 727 series, and 737 series airplanes.

Unsafe Condition

(d) This AD results from inadvertent reference errors and omissions found in AD 2006–17–07, which could affect ability to comply with that AD. We are issuing this AD to prevent a rupture of an HPC front hub or an HPC disk that could result in an uncontained engine failure and damage to the airplane.

Compliance

(e) You must accomplish the actions required by this AD within the compliance times specified, unless the actions have already been done. Any engine with an HPC front hub that has been inspected for fretting wear using AD 2002–23–14, AD 2003–12–07, or AD 2003–16–05, counts as an inspection toward compliance with this AD.

JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR Turbofan Engines—Inspect or Replace HPC Front Hubs, HPC Disks, and Stage 8–9 Spacers

(f) For applicable JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines specified in Table 1 of this AD, do the following:

(1) Using the inspection schedule in Table 2 of this AD, strip the protective coating, visually inspect for fretting wear, fluorescent magnetic particle inspect (FMPI) for cracks, reidentify, replate HPC front hubs and stage 8–9 spacers, and replace if necessary.

(2) Use paragraphs 1. through 3.B.(7)(b) under ''For Rear Compressor Front Hubs that Have Operated With PWA 110–21 coating AT ANY TIME During Their Service Life in JT8D–15, –15A, –17, –17A, –17R, –17AR Engine Models.'' of PW Alert Service Bulletin (ASB) JT8D A6468, dated December 23, 2004.

TABLE 2.—HPC FRONT HUB INSPECTION SCHEDULE

HPC front hub cycles-since-new (CSN) on the effective date of this AD	Inspect before additional cycles-in-service (CIS) or CSN, whichever occurs first	Also inspect 7th stage HPC disks and 9th stage-through-12th stage HPC disks using:
(i) 19,000 or more	500 CIS or 20,000 CSN	Paragraph (f)(3) of this AD.
(ii) 15,500 or more, but fewer than 19,000	1,000 CIS or 19,500 CSN	Paragraph (f)(3) of this AD.
(iii) 5,000 or more, but fewer than 15,500	16,500 CSN	Paragraph (f)(3) of this AD.

TABLE 2.—HPC FRONT HUB INSPECTION SCHEDULE—Continued

HPC front hub cycles-since-new (CSN) on the effective date of this AD	Inspect before additional cycles-in-service (CIS) or CSN, whichever occurs first	Also inspect 7th stage HPC disks and 9th stage-through-12th stage HPC disks using:
(iv) Fewer than 5,000 that are accessible	If the parts have been inspected and are acceptable, parts may be reinstalled. Inspect again using the criteria in (iii) of this Table.	Paragraph (f)(3) of this AD.

(3) When the HPC front hub is inspected, visually inspect for fretting wear and FMPI for cracks on 7th stage HPC disks and 9th stage-through-12th stage HPC disks coated with PWA 110–21. Inspection information can be found in the applicable sections of JT8D Engine Manual Part Number (P/N) 481672, listed in the following Table 3:

TABLE 3.—SEVENTH STAGE HPC DISKS AND 9TH STAGE-THROUGH-12TH STAGE HPC DISKS INSPECTION INFORMATION

Stage	Chapter/ section	Visual inspection	Fretting inspection	FMPI
7	72–36–41	Inspection–01	Inspection–04	Inspection–03.
9	72–36–43	Inspection–01	Inspection–04	Inspection–03.
10	72–36–44	Inspection–01	Inspection–04	Inspection–03.
11	72–36–45	Inspection–01	Inspection–04	Inspection–03.
12	72–36–46	Inspection–01	Inspection–04	Inspection–03.

JT8D–15, –15A, –17, –17A, –17R, and –17AR Turbofan Engines—Cycle Adjustment for HPC Front Hubs That Entered Service With Nickel-Cadmium Plating and PWA 110–21 Coating

(g) For JT8D–15, –15A, –17, –17A, –17R, and –17AR turbofan engines with front hubs that entered service with Nickel-Cadmium plating, but have also operated during the life of the hub with PWA 110–21 coating:

(1) You are allowed to make a cycle adjustment if the hub was never operated with a PWA 110–21-coated stage 8–9 spacer.

(2) Use the information under ''Compliance'' of PW ASB JT8D A6468, dated December 23, 2004, to determine the adjustment.

JT8D–209, –217, –217A, –217C, and –219 Turbofan Engines—Inspect or Replace HPC Front Hubs and Stage 8–9 Spacers

(h) For applicable JT8D–209, –217, –217A, –217C, and –219 turbofan engines specified in Table 1, Row (2) of this AD, do the following:

(1) Using the inspection schedule in Table 4 of this AD, strip the protective coating, visually inspect for fretting wear, FMPI for cracking, reidentify, replate HPC front hubs and the stage 8–9 spacers, and replace if necessary.

(2) Use paragraphs 1. through 1.A. and paragraphs 2. through 2.C.(2)(g)2 of Accomplishment Instructions of PW ASB JT8D A6430, Revision 2, dated December 23, 2004.

TABLE 4.—HPC FRONT HUB INSPECTION SCHEDULE—HUBS COATED WITH PWA 110–21

HPC front hub CSN on the effective date of this AD	Inspect before additional CIS or CSN, whichever occurs first	Also inspect 7th stage HPC disks and 9th stage-through-12th stage HPC disks using:
(i) 19,000 or more	500 CIS or 20,000 CSN	Paragraph (j) of this AD.
(ii) 15,500 or more, but fewer than 19,000	1,000 CIS or 19,500 CSN	Paragraph (j) of this AD.
(iii) 5,000 or more, but fewer than 15,500	16,500 CSN	Paragraph (j) of this AD.
(iv) Fewer than 5,000 that are accessible.	If the parts have been inspected and are acceptable, parts may be reinstalled. Inspect again using the criteria in (iii) of this Table.	Paragraph (j) of this AD.

(i) For applicable JT8D–209, –217, –217A, –217C, and –219 turbofan engines specified in Table 1, Row (3) of this AD, do the following:

(1) Using the inspection schedule in Table 5 of this AD, strip the protective coating, visually inspect for fretting wear, FMPI for cracking, reidentify, replate HPC front hubs and the stage 8–9 spacers, and replace if necessary.

(2) Use paragraphs 1., 1.C, and 4. through 4.B.(2)(g)2 of Accomplishment Instructions of PW ASB JT8D A6430, Revision 2, dated December 23, 2004, for all applicable hubs with any type of coating.

TABLE 5.—HPC FRONT HUB INSPECTION SCHEDULE—HUBS COATED WITH NICKEL-CADMIUM

HPC front hub CSN on the effective date of this AD	Inspect before additional CIS or CSN, whichever occurs first	Also inspect 7th stage HPC disks and 9th stage-through-12th stage HPC disks using:
(i) 19,000 or more	500 CIS or 20,000 CSN	Paragraph (j) of this AD.
(ii) 17,000 or more, but fewer than 19,000	1,000 CIS or 19,500 CSN	Paragraph (j) of this AD.
(iii) 9,000 or more, but fewer than 17,000	18,000 CSN	Paragraph (j) of this AD.
(iv) Fewer than 9,000 that are accessible	If the parts have been inspected and are acceptable, parts may be reinstalled. Inspect again using the criteria in (iii) of this Table.	Paragraph (j) of this AD.

(j) When the HPC front hub is inspected, visually inspect for fretting wear and FMPI for cracks on 7th stage HPC disks and 9th stage-through-12th stage HPC disks coated with PWA 110–21. Inspection information can be found in the applicable sections of JT8D–200 Engine Manual P/N 773128, listed in Table 3 of this AD.

JT8D–209, –217, –217A, –217C, and –219 Turbofan Engines—Cycle Adjustment for HPC Front Hubs That Entered Service With Nickel-Cadmium Plating and PWA 110–21 Coating

(k) For JT8D–209, –217, –217A, –217C, and –219 turbofan engines with HPC front hubs that entered service with Nickel-Cadmium plating, but have also operated during the life of the hub with PWA 110–21 coating:

(1) You are allowed to make a cycle adjustment.

(2) Use the information under ''CONDITION A'' of PW ASB JT8D A6430, Revision 2, dated December 23, 2004, to determine the adjustment.

Replacement of HPC Front Hubs and Stage 8–9 Spacers That Have Operated With PWA 110–21 Coating, As Optional Action—All Engines

(l) For all applicable engines, as an optional action for the visual inspections in this AD, replace HPC front hubs and stage 8–9 spacers that have operated with PWA 110–21 coating in the interface between the hub and the stage 8–9 spacer and HPC disks currently coated with PWA 110–21, as follows:

(1) Install a Nickel-Cadmium plated HPC front hub that has never operated with PWA 110–21 coating in the interface between the HPC front hub and the stage 8–9 spacer.

(2) Install a Nickel-Cadmium plated or Electroless Nickel-plated stage 8–9 spacer.

(3) Install HPC disks that have never operated with PWA 110–21 coating.

Prohibition Against Recoating the HPC Front Hub, Stage 7 HPC Disk, and Stage 8–9 Spacer With PWA 110–21—All Engines

(m) Do not recoat the HPC front hub with PWA 110–21 (Repair-23 of Chapter/Section 72–36–42 of JT8D–200 Engine Manual, P/N 773128, and Repair-27 and Repair-28 of Chapter/Section 72–36–42 of JT8D Engine Manual, P/N 481672).

(n) Do not recoat the 7th stage disk with PWA 110–21 (Repair-15 of Chapter/Section 72–36–41 of JT8D–200 Engine Manual, P/N 773128, and Repair-15 of Chapter/Section 72–36–41 of JT8D Engine Manual, P/N 481672).

(o) Do not recoat the stage 8–9 spacer with PWA 110–21 (Repair-03, Task 72–36–12–30–003–002, of Chapter/Section 72–36–12 of JT8D–200 Engine Manual, P/N 773128, and Repair-01, Task 72–36–12–30–001–002, of Chapter/Section 72–36–12 of JT8D Engine Manual, P/N 481672).

Prohibition Against Reinstalling HPC Front Hubs and Stage 8–9 Spacers Coated With PWA 110–21

(p) After the effective date of this AD, do not reinstall HPC front hubs and stage 8–9 spacers coated with PWA 110–21.

Definition

(q) For the purpose of this AD, ''accessible'' is defined as when the HPC front hub is removed from the engine and the hub is debladed.

Alternative Methods of Compliance

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

Related Information

(s) None.

Material Incorporated by Reference

(t) You must use the service information specified in Table 6 of this AD to perform the actions required by this AD. The Director of the Federal Register previously approved the incorporation by reference of these alert service bulletins in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of October 4, 2006 (71 FR 51459, August 30, 2006). Contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108, telephone (860) 565–7700; fax (860) 565–1605 for a copy of this service information. You may review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE 6.—INCORPORATION BY REFERENCE

Pratt & Whitney Alert Service Bulletin No.	Page	Revision	Date
JT8D A6430, Total Pages: 35	ALL	2	December 23, 2004.
JT8D A6468, Total Pages: 20	ALL	Original	December 23, 2004.

Issued in Burlington, Massachusetts, on October 11, 2006.

Thomas A. Boudreau,

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

[FR Doc. E6–17327 Filed 10–17–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 12 and 163

[USCBP–2006–0108; CBP Dec. 06–25]

RIN 1505–AB73

Entry of Softwood Lumber Products From Canada

AGENCIES: Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Interim rule.

SUMMARY: This document sets forth interim amendments to title 19 of the Code of Federal Regulations (CFR) establishing special entry requirements applicable to shipments of softwood lumber products from Canada. The interim amendments involve the collection of additional entry summary information for purposes of monitoring and enforcing the Softwood Lumber Agreement between the Governments of Canada and the United States, entered into on September 12, 2006.

DATES: Interim rule effective October 16, 2006. Comments must be received on or before December 18, 2006.

ADDRESSES: You may submit comments, identified by *docket number*, by *one* of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP–2006–0108.
- Mail: Trade and Commercial Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

Instructions: All submissions received must include the agency name and

docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' 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.regulations.gov*. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, Bureau of Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Millie Gleason, Office of Field Operations, Tel: (202) 344–1131.

SUPPLEMENTARY INFORMATION:

Public Participation

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

Background

Softwood Lumber Agreement

On September 12, 2006, the Governments of the United States and Canada (the ''Parties'') signed a bilateral Softwood Lumber Agreement (''SLA 2006'') concerning trade in softwood lumber products. The scope of the SLA 2006 is limited to the softwood lumber products listed as covered by the Agreement in Annex 1A of that document. A copy of the SLA 2006 is available for public viewing on the website of the Office of the United States Trade Representative located at *http://www.ustr.gov*.

The SLA 2006 entered into force on October 12, 2006, (effective date), as designated by the Parties in an exchange of letters certifying that certain conditions have been met pursuant to Article II.1 of the Agreement. Unless terminated according to the terms set forth in Article XX, the SLA 2006 will remain in force until October 12, 2013, and may be extended by agreement of the Parties for an additional 2 years.

The SLA 2006, in pertinent part requires:

- The United States to retroactively revoke, in their entirety, any antidumping (AD) and countervailing duty (CVD) orders that relate to softwood lumber products beginning May 22, 2002 (the initiation date of the order) to the effective date of the Agreement, without the possibility of their reinstatement, and terminates all U.S. Department of Commerce proceedings related to the orders. The United States is also required to liquidate unliquidated entries subject to AD/CVD orders made on or after May 22, 2002, without regard to antidumping or countervailing duties, and with interest, pursuant to 19 U.S.C. 1677g(b).
- The United States to not initiate and/or take action concerning trade remedy investigations.
- Canada to apply export measures to exports of Softwood Lumber Products to the United States. For example, Canada will impose either an export charge or an export charge coupled with a volume restraint on exports of softwood lumber products to the United States from each Region described in 5 the Agreement and issue Export Permits on each entry of softwood lumber products exported from Canada to the United States.

SLA 2006 Entry Requirements

In addition to the entry and entry summary information otherwise required for importation into the United States, as per section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. 1484), the SLA 2006 obligates the United States to require that a U.S. importer provide specific information in connection with each entry of covered softwood lumber products from Canada. The information required under the SLA 2006 includes the following data elements:

(1) The Region of Origin of the softwood lumber product. The identified Regions are: Alberta, British Columbia (B.C.) Coast, B.C. Interior, Manitoba, Ontario, Saskatchewan, and Quebec. The regions designated as B.C. Coast and B.C. Interior are defined in *Forest Regions and Districts Regulation*, B.C. Reg, 123/2003, which is available for public viewing at *http://www.qp.gov.bc.ca/statreg/reg/F/Forest/123_2003.htm.*

(2) The Export Permit Number issued by the Government of Canada for the shipment; and

(3) The original paper Certificate of Origin issued by the Maritime Lumber Bureau, where applicable.

Exclusions From SLA 2006 Export Measures

Article X of the SLA 2006 identifies lumber products that are first produced in certain Canadian provinces, or produced by specific companies, as excluded from the export measures set forth in the Agreement. Specifically, Article X provides that SLA 2006 export measures will not apply to the following products:

(1) Softwood lumber products first produced in the Maritimes from logs originating in the Maritimes or State of Maine, that are:

(i) Exported directly to the United States from a Maritime province or

(ii) Shipped to a province that is not a Maritime province, and reloaded or further processed and subsequently exported to the United States, provided that the products are accompanied by an original Certificate of Origin issued by the Maritime Lumber Bureau. An original Certificate of Origin issued by the Maritime Lumber Bureau is a required entry summary document by CBP. The Certificate must specifically state that the corresponding CBP entries are for softwood lumber products first produced in the Maritimes from logs originating in the Maritimes or State of Maine;

(2) Softwood lumber products first produced in the Yukon, Northwest Territories or Nunavut from logs originating therein; and

(3) Softwood lumber products produced by the companies listed in Annex 10 of the SLA 2006.

Certificate of Origin From Maritime Lumber Bureau

As the SLA 2006 requires softwood lumber products whose Region of Origin is the Maritimes to be accompanied by an original Certificate of Origin issued by the Maritime Lumber Bureau, and provides that the Certificate of Origin is a required entry summary document, CBP requires importers of this commodity to submit the original paper Certificate of Origin to CBP with the paper entry summary documentation (CBP Form 7501) for each entry. All other entries of softwood lumber products from Canada subject to the SLA 2006 may be filed electronically using the CBP Form e-7501.

It is noted that the Certificate of Origin issued by the Maritime Lumber Bureau is distinct from the NAFTA

Certificate of Origin required under § 181.22 of title 19 of the CFR.

This interim regulation adds the Certificate of Origin to the ''List of Records Required for the Entry of Merchandise'' set forth in the Appendix to part 163. The list, commonly referred to as the ''(a)(1)(A) list,'' implements section 509(e) of the Trade Act of 1930, as amended (19 U.S.C. 1509(e)), whereby CBP is required to identify and publish a list of the records and entry information that is required to be maintained and produced under section 509(a)(1)(A) of the Tariff Act of 1930, as amended by title VI of Public Law 103–182 (19 U.S.C. 1509(a)(1)(A)). Section 509(a)(1)(A) requires the production of records, within a reasonable time after demand by CBP, ''if such record is required by law or regulation for the entry of the merchandise (whether or not the Customs Service required its presentation at the time of entry).''

SLA 2006 Exchange of Information and Monitoring

In order to facilitate monitoring of the SLA 2006, and in order to ensure that Canadian exporters have obtained the required export permits, the SLA 2006 also sets forth various cooperative measures which include the periodic exchange of export and import information collected by the two countries. The SLA 2006 also requires the Parties to establish Technical Working Groups to ensure the effective implementation and application of the export charges and the administration of the customs-related aspects of the Agreement, including export permits, volume restraints, data collection, and exchange of information.

CBP Entry Requirements Specific to Softwood Lumber Products From Canada in Revised 19 CFR 12.140

The purpose of this document is to provide an appropriate regulatory context for the new requirements resulting from the SLA 2006. As these requirements relate to a special class of imported products, CBP is of the view that a distinct provision pertaining to this commodity and its specific entry requirements is appropriate. As existing § 12.140 of title 19 of the Code of Federal Regulations (CFR) contains obsolete provisions pertaining to a prior Softwood Lumber Agreement between the Governments of Canada and the United States that expired in March, 2001, this document amends, on an interim basis, § 12.140 to set forth the entry requirements mandated by the SLA 2006, as discussed below.

Section 12.140(a) sets forth definitions pertinent to the administration of this provision.

Section 12.140(b) specifies the information required to be collected pursuant to the SLA 2006. Importers are required to enter a letter code representing the softwood lumber product's Canadian Region of Origin in the data entry field entitled ''Country of Origin'' located on the CBP Form 7501. Importers must also enter a Canadian-issued 8-digit export permit number preceded by a letter code designating either: (1) The date of shipment; (2) a Canadian Region whose exports of softwood lumber products are exempt from the export measures contained in the SLA 2006; or (3) a company listed in Annex 10 of the SLA 2006 as exempt from the Agreement's export measures.

Section 12.140(c) states that where a softwood lumber product's Region of Origin is the Maritimes, the original paper Certificate of Origin issued by the Maritime Lumber Bureau must be submitted to CBP with the paper entry summary documentation.

The letter codes described above are necessitated by the fact that the Canadian-issued Export Permit Number consists of eight digits, and the entry field for this data on the CBP Form 7501 holds nine digits. Accordingly, CBP uses an alpha-numeric code system whereby the first piece of data input into the Export Permit Number field on the CBP Form 7501 is a letter code designating either an exclusion from export measures based on a product's Region of Origin or a company's exempt-status, or the code is used to designate the date of shipment as defined in Article XXI.16 of the SLA 2006, in which the first twelve letters of the alphabet represent the twelve months of the year (*e.g.*, ''A'' represents January, ''B'' represents February, etc.). These codes enable the United States to fulfill its information collection and exchange obligations under Article XV of the Agreement by being able to assess monthly volumes attributable to specific Regions and excluded companies.

It is also noted that the SLA 2006 recognizes two separate and distinct Canadian Regions comprising the territory of the Canadian Province of British Columbia. Article XXI.45 of the Agreement designates B.C. Coast and B.C. Interior as separate Regions for purposes of the SLA 2006. As noted above, the geographic boundaries of B.C. Coast and B.C. Interior are set forth in *Forest Regions and Districts Regulation,* B.C. Reg, 123/2003. The code ''XD'' is to be used to designate B.C. Coast in the ''Country of Origin'' data field on the CBP Form 7501. The code ''XE'' is to be used to designate B.C. Interior. These new codes, as well as the existing codes applicable to the other Regions designated in the SLA 2006, are posted on the Administrative Message Board in the Automated Commercial System (ACS). In addition, this information will be provided to all Automated Broker Interface (ABI) Administrative Message System filers.

The requirement to submit these data elements to CBP goes into effect upon the date of filing of these interim amendments for public inspection in the **Federal Register**.

As noted above, the ''List of Records Required for the Entry of Merchandise'' set forth in the Appendix to part 163 of title 19 of the CFR (19 CFR part 163) is amended by this document to reflect the entry document requirements mandated by the SLA 2006. Section IV of the Appendix currently lists 19 CFR 12.140 as the authority for the entry records requirements, ''Province of first manufacture, export permit number and fee status of softwood lumber from Canada.'' This document revises that requirement to state that § 12.140(c) requires a ''Certificate of Origin issued by Canada's Maritime Lumber Bureau.''

Comments

Submitted comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 103.11(b) of title 19 of the CFR (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Office of Regulations and Rulings, Customs and Border Protection, 799 9th St., NW., Washington, DC. Arrangements to inspect submitted documents should be made in advance by calling Joseph Clark at (202) 572–8768.

Inapplicability of Notice and Delayed Effective Date Requirements

Pursuant to 5 U.S.C. 553(a)(1), public notice and a delayed effective date are inapplicable to this interim regulation because it involves a foreign affairs function of the United States. The collection of information provided for in this interim regulation is required under the terms of the 2006 Softwood Lumber Agreement with Canada and is necessary to ensure effective monitoring of the operation of that Agreement.

Executive Order 12866

Because this rule involves a foreign affairs function of the United States, it is not subject to Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this interim rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Paperwork Reduction Act

The collection of information referenced in this regulation, CBP Form 7501, has been previously reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under OMB-assigned control number 1651–0022.

Signing Authority

This document is being issued in accordance with 19 CFR 0.1(a)(1).

List of Subjects

19 CFR Part 12

Bonds, Customs duties and inspection, Entry of merchandise, Imports, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise.

19 CFR Part 163

Customs duties and inspection, Reporting and recordkeeping requirements.

Amendment to the Regulations

■ For the reasons stated above, parts 12 and 163 of title 19 of the Code of Federal Regulations are amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The authority citation for part 12 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

■ 2. Section 12.140 is revised to read as follows:

§ 12.140 Entry of softwood lumber products from Canada.

The requirements set forth in this section are applicable for as long as the Softwood Lumber Agreement (SLA 2006), entered into on September 12, 2006, by the Governments of the United States and Canada, remains in effect.

(a) *Definitions.* The following definitions apply for purposes of this section:

(1) *British Columbia Coast.* ''British Columbia Coast'' means the Coastal Forest Regions as defined by the existing *Forest Regions and Districts Regulation,* B.C. Reg. 123/2003.

(2) *British Columbia Interior.* ''British Columbia Interior'' means the Northern Interior Forest Region and the Southern Interior Forest Region as defined by the existing *Forest Regions and Districts Regulation,* B.C. Reg. 123/2003.

(3) *Date of shipment.* ''Date of shipment'' means, in the case of products exported by rail, the date when the railcar that contains the products is assembled to form part of a train for export; otherwise, the date when the products are loaded aboard a conveyance for export. If a shipment is transshipped through a Canadian reload center or other inventory location, the date of shipment is the date the merchandise leaves the reload center or other inventory location for final shipment to the United States.

(4) *Maritimes.* ''Maritimes'' means New Brunswick, Canada; Nova Scotia, Canada; Prince Edward Island, Canada; and Newfoundland and Labrador, Canada.

(5) *Region.* ''Region'' means British Columbia Coast or British Columbia Interior as defined in paragraphs (a)(1) and (2) of this section; Alberta, Canada; Manitoba, Canada; Maritimes, Canada; Northwest Territories, Canada; Nunavut Territory, Canada; Ontario, Canada; Saskatchewan, Canada; Quebec, Canada; or Yukon Territory, Canada.

(6) *Region of Origin.* ''Region of Origin'' means the Region where the facility at which the softwood lumber product was first produced into such a product is located, regardless of whether that product was further processed (for example, by planing or kiln drying) or was transformed from one softwood lumber product into another such product (for example, a remanufactured product) in another Region, with the following exceptions:

(i) The Region of Origin of softwood lumber products first produced in the Maritime Provinces from logs originating in a non-Maritime Region will be the Region where the logs originated; and

(ii) The Region of Origin of softwood lumber products first produced in the Yukon, Northwest Territories or Nunavut (the 'Territories') from logs originating outside the Territories will be the Region where the logs originated.

(7) *SLA 2006.* ''SLA 2006'' or ''SLA'' means the Softwood Lumber Agreement entered into between the Governments of Canada and the United States on September 12, 2006.

(8) *Softwood lumber products.* ''Softwood lumber products'' mean those products described as covered by the SLA 2006 in Annex 1A of the Agreement.

(b) *Reporting requirements.* In the case of softwood lumber products from Canada listed in Annex 1A of the SLA 2006, the following information must be included on the electronic entry summary documentation (CBP Form 7501) for each entry:

(1) *Region of Origin.* The letter code representing a softwood lumber product's Canadian Region of Origin, as posted on the Administrative Message Board in the Automated Commercial System. (For example, the letter code ''XD'' designates softwood lumber products whose Region of Origin is British Columbia Coast. The letter code ''XE'' designates softwood lumber products whose Region of Origin is British Columbia Interior.)

(2) *Export Permit Number.* The 8-digit Canadian-issued Export Permit Number, preceded by one of the following letter codes:

(i) The letter code assigned to represent the date of shipment (*i.e.,* ''A'' represents January, ''B'' represents February, ''C'' represents March, *etc.*), except for those softwood lumber products produced by a company listed in Annex 10 of the SLA 2006 or whose Region of Origin is the Maritimes, Yukon, Northwest Territories or Nunavut;

(ii) The letter code ''X'', which designates a company listed in Annex 10 of the SLA 2006; or

(iii) The letter code assigned to represent the Maritimes (code M); Yukon (code Y); Northwest Territories (code W); or Nunavut (code N), for softwood lumber products originating in these regions.

(c) *Original Maritime Certificate of Origin.* Where a softwood lumber product's Region of Origin is the Maritimes, the original paper copy of the Certificate of Origin issued by the Maritime Lumber Bureau must be submitted to CBP with the paper entry summary documentation for each entry. The Certificate of Origin must specifically state that the corresponding CBP entries are for softwood lumber products first produced in the Maritimes from logs originating in the Maritimes or State of Maine.

(d) *Recordkeeping.* Importers must retain copies of export permits, certificates of origin, and any other substantiating documentation issued by the Canadian Government pursuant to the recordkeeping requirements set forth in part 163 of title 19 to the CFR.

PART 163—RECORDKEEPING

■ 3. The authority citation for part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

■ 4. The Appendix to part 163 is amended by removing the listing for § 12.140 and adding in its place § 12.140(c) under section IV to read as follows:

Appendix to Part 163—Interim (a)(1)(A) List

* * * * *

IV. * * *

§ 12.140(c) Certificate of Origin issued by Canada's Maritime Lumber Bureau.

* * * * *

Chris J. Clark,

Acting Commissioner, Bureau of Customs and Border Protection.

Approved: October 13, 2006.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 06–8761 Filed 10–16–06; 9:39 am]

BILLING CODE 9111–14–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 408 and 416

RIN 0960–AG09

Representative Payment Policies and Administrative Procedure for Imposing Penalties for False or Misleading Statements or Withholding of Information

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: We are amending our regulations on representative payment and on the administrative procedure for imposing penalties for false or misleading statements or withholding of information to reflect and implement certain provisions of the Social Security Protection Act of 2004 (SSPA). The SSPA amends representative payment policies by providing additional safeguards for Social Security, Special Veterans and Supplemental Security Income beneficiaries served by representative payees. These changes include additional disqualifying factors for representative payee applicants, additional requirements for non-governmental fee-for-service payees, authority to redirect delivery of benefit payments when a representative payee fails to provide required accountings, and authority to treat misused benefits as an overpayment to the representative payee. In addition, we are amending our rules to explain financial requirements for representative payees, and we have made minor clarifying plain language changes.

The SSPA also allows us to impose a penalty on any person who knowingly withholds information that is material for use in determining any right to, or the amount of, monthly benefits under titles II or XVI. The penalty is nonpayment for a specified number of months of benefits under title II that would otherwise be payable and ineligibility for the same period of time for payments under title XVI (including State supplementary payments).

DATES: These final rules are effective November 17, 2006.

Applicability Date: Sections 404.459 and 416.1340, reflecting and implementing section 201(a)(2) of Public Law 108–203 relating to the withholding of information from us, or failure to disclose information to us, will be applicable upon implementation of the centralized computer file described in section 202 of Public Law 108–203. This is because Congress provided that section 201 of the SSPA would apply only with respect to violations committed after that centralized computer file was implemented. If you want information regarding the applicability date of this provision, call or write the SSA contact person. We will publish a document announcing the applicability date in the **Federal Register** when the centralized computer file has been implemented. The remainder of §§ 404.459 and 416.1340 currently in effect is unaffected by this delay.

FOR FURTHER INFORMATION CONTACT: Betsy M. Byrd, Social Insurance Specialist, Social Security Administration, Office of Income Security Programs, 252 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–7981 or TTY (410) 966–5609 for information about this **Federal Register** document. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

Background

Public Law 108–203, the SSPA, enacted March 2, 2004, required a number of changes to our representative payee policy and procedures. A representative payee is the person, agency, organization, or institution selected to receive and manage benefits on behalf of an incapable beneficiary. This includes a parent who is receiving benefits on behalf of his or her minor child. The SSPA also changes the rules for imposing penalties for false or misleading statements or for withholding information.

Section 102 of the SSPA requires non-governmental fee-for-service organizational representative payees to be both bonded and licensed, provided that licensing is available in the State.

Section 103 of the SSPA expands the scope of disqualification to prohibit an individual from serving as a representative payee if he or she: (1) Has been convicted of any offense resulting in imprisonment for more than 1 year, unless we determine that an exception to this prohibition is appropriate; or (2) is fleeing to avoid prosecution, or custody or confinement after conviction of a crime, or an attempt to commit a crime, that is a felony.

Section 104 of the SSPA requires fee-for-service representative payees to forfeit their fees for any months during which they misuse all or part of any beneficiary's benefits.

Section 105 of the SSPA makes non-governmental representative payees liable for any benefits they misuse and requires us to treat such misused benefits as overpayments to the representative payees, subject to overpayment recovery authorities.

Section 106 of the SSPA authorizes us to require a representative payee to receive benefits in person at a Social Security field office or a United States Government facility that we designate if the payee fails to provide an annual accounting of benefits report or other requested information.

In addition to the changes required by Public Law 108–203, we are clarifying financial requirements for representative payees. Our current regulations specify that the interest earned on conserved funds belongs to the beneficiary. However, the regulations do not specifically address interest earned on current benefits or how current benefits should be held. We are now specifying that a representative payee must keep any payments received for the beneficiary separate from the representative payee's own funds and ensure that the beneficiary's ownership is shown, unless the representative

payee is the spouse or parent of the beneficiary and lives in the same household with the beneficiary. We also provide for an exception to this requirement for State or local government agencies when we determine that their accounting structure sufficiently protects the beneficiaries' interest in the benefits (i.e., accounting structure clearly identifies what funds belong to the beneficiary). We are further specifying that the payee must treat any interest earned on current benefits as the beneficiary's own property. In addition, we are clarifying that the payee is responsible for making records available for review if requested by us.

Section 201(a)(2) of the SSPA amended section 1129A of the Social Security Act (the Act) to help us prevent and respond to fraud and abuse in our programs and operations. Prior to its amendment by the SSPA, section 1129A allowed us to impose a penalty against any person who makes, or causes to be made, a statement or representation of a material fact that the person knows or should know is false or misleading or that omits a material fact, or that the person makes with a knowing disregard for the truth. The statement must have been made for use in determining eligibility for, or the amount of, benefits under titles II or XVI. The sanction period of nonpayment lasts for 6 consecutive months for the first occurrence, 12 consecutive months for the second occurrence, and 24 consecutive months for each subsequent occurrence for benefits under title II that would otherwise be payable to the person. For payments under title XVI (including State supplementary payments that we make under § 416.2005), the penalty results in ineligibility for the same periods of time.

Section 201(a)(2) amended section 1129A of the Act to also allow us to impose this penalty against any person who withholds disclosure of information that is material for use in determining any right to, or the amount of, monthly benefits under titles II or XVI if the person knows, or should know, that the withholding of such disclosure is misleading. Prior to the enactment of section 201(a)(2), in order for a penalty to be imposed, the law required an affirmative act on the part of the individual who made the statement that omitted a material fact.

This new penalty under section 1129A of the Act applies only for violations occurring after the date on which we implement the centralized computer file described in section 202 of the SSPA to record the date of submission of information by a disabled beneficiary (or representative) regarding a change in the beneficiary's work or earnings status. As noted above in the Applicability Date section of the preamble, we will publish a document announcing the applicability date in the **Federal Register** when the centralized computer file has been implemented.

Explanation of Changes on Representative Payment

Because our regulations for representative payment under the title VIII program cross-refer to the appropriate material in our title II representative payment rules, most of the changes to our title II representative payment regulations also apply to title VIII. We have shown a specific rule for title VIII only when a cross-reference to the title II rules would not be sufficient.

We are making the following changes to our representative payment regulations:

1. We are amending §§ 404.2022 and 416.622 to explain that a person who is convicted of an offense resulting in imprisonment for more than 1 year may not serve as a representative payee. These sections also explain that we may make an exception to this rule if the nature of the conviction poses no risk to the beneficiary and selection of the applicant is in the beneficiary's best interest.

2. We are amending §§ 404.2035 and 416.635 to explain that a representative payee must keep any payments received for the beneficiary separate from the payee's own funds and ensure the beneficiary's ownership is shown, unless the payee is the spouse or parent of the beneficiary and lives in the same household with the beneficiary. We will provide for an exception to this requirement for State or local government agencies that use a different accounting structure. We would grant such an exception to a State or local government agency if we determine that its accounting structure sufficiently protects the beneficiaries' interest in the benefits. These sections also explain that the payee must treat any interest earned on current benefits as the beneficiary's own property.

3. We are amending §§ 404.2035 and 416.635 to require representative payees to make available to us their records supporting their written accounting reports. We believe those records are essential to verify the written reports.

4. We are amending §§ 404.2040a and 416.640a to require fee-for-service non-governmental community-based nonprofit organizational representative payees to be both bonded and licensed (provided that licensing is available in the State). The bond must be of a sufficient amount to repay any funds (current Social Security benefits and Supplemental Security Income payments, plus any conserved funds and interest) lost by the beneficiaries in the event of misuse or theft, and the license must be appropriate under the laws of the State for the type of services the organization provides. These bonding and licensing requirements do not apply to the title VIII program. In addition, these sections explain that a fee-for-service representative payee must forfeit its fee for the months during which it misused benefits.

5. We are amending §§ 404.2041 and 416.641 to explain that a non-governmental representative payee will be liable for any benefits it misuses and that we will treat the misused benefits as an overpayment to the representative payee, subject to overpayment recovery authorities.

6. We are amending §§ 404.2065, 408.665 and 416.665 to explain that we may require a representative payee to receive benefits in person at a local Social Security field office or a United States Government facility that we designate if the payee fails to provide an annual accounting of benefits or other requested information.

Explanation of Changes on Administrative Procedures for Imposing Administrative Penalties

We are amending §§ 404.459 and 416.1340 of our regulations by revising the heading and paragraphs (a) and (e) of each section to reflect that, as a result of section 201 of the SSPA, an individual will be subject to the penalty if he or she withholds information that is material for use in determining any right to, or the amount of, monthly benefits under title II or XVI if the person knows, or should know, that the withholding of the information is misleading.

Public Comments

On October 17, 2005, we published proposed rules in the **Federal Register** at 70 FR 60251 and provided a 60-day comment period. We received comments from four organizations and one individual. We carefully considered all of the comments in publishing these final rules. Because some of the comments received were quite detailed, we have condensed, summarized and paraphrased them in the following discussion. However, we have tried to present all views adequately and to carefully address all of the issues raised by the commenters that are within the scope of the proposed rules. We have not addressed in this preamble

comments that are outside the scope of this rulemaking proceeding.

Comment: One commenter stated that exempting spouses and parents from the obligations to keep the beneficiary's funds separate from their own funds and to show the beneficiary's ownership of his or her funds will make it more difficult for us to track and account for the beneficiary's funds and make it easier for a spouse or parent to misuse the beneficiary's funds and not be caught.

Response: We do not agree with this comment. We still require custodial parents or spouses to account annually for the funds received on behalf of a child or spouse. We afford this exception to parents or spouses living in the same households as their children or spouses in recognition of the inherent familial bonds and in support of family relationships. This exemption allows families the flexibility to manage their own finances without unwarranted, unnecessary, or excessive Federal Government intrusion.

Comment: One commenter suggested that we create a discretionary exception to the 10-day period allowed for payees to respond to notification that they are no longer qualified to serve because they have an unsatisfied felony warrant. The commenter stated that we should allow for a longer time period for the payee to dispute the information in order to ensure that the beneficiary does not lose an otherwise good payee.

Response: On December 6, 2005, the U.S. Court of Appeals for the Second Circuit issued a decision in the Fowlkes Court Case invalidating SSA's fugitive felon policy, which relies on an outstanding felony warrant as the sole basis for finding that an individual is a fugitive felon. The court ruled that SSA must have evidence that the individual knew that his or her apprehension was sought and consciously evaded arrest. Because of this case, we will be reviewing all fugitive felon policies and plan to publish a final rule at a later time. All comments regarding fugitive felons will be addressed as part of that publication. Therefore, we have removed the fugitive felon provision that was in the notice of proposed rulemaking.

Comment: One commenter who supported the proposed bar against felons being representative payees, and the exception to that rule recommended that we provide additional language that would allow us to consider how long ago the offense occurred and the nature of the offense.

Response: The procedures for appointing persons who have a criminal history are provided in our operating instructions (found in the Program Operations Manual System (POMS), chapter GN 00502 at *https://s044a90.ssa.gov/apps10/poms.nsf/)* and do not need to be addressed in these regulations. When we make a determination involving such an applicant, our procedures discuss weighing information about the nature of the crime and when it occurred, along with the relationship to, and custody of, the beneficiary.

Comment: One commenter suggested that we expand the proposed language regarding the redirection of benefit checks and require specific actions on the part of field office personnel in handling representative payees who have not responded to our request to complete an annual payee report. Another commenter suggested that we revise the proposed language to stress that the provision allowing for the redirection of benefit checks should be used sparingly to avoid delays in processing cases and to prevent potential harm to beneficiaries which might occur by interrupting benefits.

Response: When we request it, the representative payee is required by §§ 404.2025, 404.2035, 416.625, and 416.635 to account for how benefits were used. These final rules do not change that requirement. Rather, the redirection provision outlined in these rules provides field office personnel with an additional tool to use, at their discretion, to obtain accounting information when we request it. The description in these final rules regarding the frequency and manner in which this provision will be applied will give local field offices the flexibility to address payees on a case-by-case basis. In this way, field offices can use their experience with payees to decide which actions are most likely to succeed in obtaining the accounting report with the least harm to beneficiaries and without causing delays in the processing of critical workloads.

Comment: A commenter noted that in order to differentiate between ''improper use'' and ''misuse,'' the regulations should include the definition of the term ''misuse'' as described in section 205(j)(9) of the Act. This commenter also noted that it would be helpful to include examples of ''improper use.''

Response: Because the law includes the definition of the term ''misuse,'' we do not believe that we need to include it in these regulations. ''Improper use'' is currently discussed in our operating instructions (found in POMS chapter GN 00602) , and we do not believe it needs to be addressed in these regulations as it is a different concept and is outside the scope of the proposed rule.

Comment: A commenter recommended that a representative payee who has been charged with an overpayment due to the misuse of a beneficiary's funds should have the right to seek waiver of the overpayment.

Response: A representative payee who is charged with an overpayment due to misuse of a beneficiary's funds is entitled to the same rights that we give to all overpaid individuals, including the right to request waiver of overpayment recovery, and the full administrative appeals process.

Comment: One commenter expressed a concern that we might impose a penalty on a beneficiary if his or her representative payee made a false or misleading statement or intentionally withheld information to be used in determining the amount of, or the eligibility for, a benefit. The comment stated that such a penalty would unfairly punish the beneficiary because of the actions of another.

Response: We agree that it would be unfair to penalize a person because of another person's actions and believe the regulation is clear in this regard. In addition, current processing instructions for administrative sanction (found in POMS chapter GN 02604) cases specifically state that we will not impose a sanction on a beneficiary because a representative payee makes a false or misleading statement on the beneficiary's behalf, unless there is evidence that the beneficiary knowingly caused the false statement to be made. Those existing instructions will apply to the knowing withholding of information by a representative payee if the information affects the amount of, or eligibility for, a payment.

Comment: One commenter was concerned that we would impose a penalty on a person who unknowingly made an incorrect statement.

Response: The regulations reflecting the statutory provision providing penalties for knowingly making false or misleading statements have been in effect since 2000. These final rules now amend those regulations to reflect legislation that extends the penalties to cover situations where a claimant or recipient fails to provide information that affects the amount of, or eligibility for, a payment, but only if the person knows or should know that the failure to do so is misleading. Our regulations have provided that the decision to impose a sanction will be based on the evidence and the reasonable inferences that can be drawn from that evidence, not on speculation or suspicion, and will be documented with the basis and

rationale for that decision. In determining whether a person acted knowingly, our regulations have provided that we will consider, among other things, any physical, mental, educational or linguistic limitations the person might have, as well as the significance of the person's false or misleading statement or omission in terms of its likely impact on benefits. Those same guidelines will apply to persons who fail to report important information. We have an internal review process already established to help ensure that sanctions are imposed only when the evidence supports the finding that the person being penalized acted or failed to provide information knowingly.

Comment: One commenter addressed the possibility that a person might attempt to return to work and fail to report that attempt because he or she was not aware of the need to report. The commenter suggested that we should take steps to ensure that disabled beneficiaries are reminded periodically of the need to contact us if they resume work activities.

Response: We routinely remind beneficiaries of the need to report specific changes and events that might affect their payment status. We do this with mid-year mailers, check stuffers and redetermination notices. Under these final rules, we will not impose a penalty on a beneficiary for failing to report an event unless the evidence supports a finding that the person knew or should have known of the need to report.

Comment: One commenter was concerned that a person who is incapable of understanding the reporting requirements might be penalized for not reporting something using the ''should have known'' standard.

Response: We believe the existing regulations and instructions clearly explain when a person should know to report something. We have used the ''should have known'' standard for imposing penalties for false or misleading statements since 2000. During that time, we are not aware of any problem with applying the ''should have known'' standard, which is mandated by Congress. Our regulations and instructions clearly state that if a person cannot be aware of something because of a physical or mental impairment, we will not find that the person should be aware, and we will not impose a penalty.

Comment: The same commenter also pointed out the need for more detailed instructions about considering a person's limitations and lack of proficiency with the English language.

Response: Our current operating instructions for imposing administrative sanctions (found in POMS chapter GN 02604) contain guidelines that are much more detailed than the regulatory language contained in these final rules. We intend to update those instructions to include even more examples of scenarios that might arise. We do not believe that such detailed information should be included in the regulations.

Other Changes

For the reasons discussed above, we have not changed the text of the proposed rules based on public comments. However, in addition to a few minor technical changes for clarification purposes, we did make two significant changes. First, as noted in our response to a public comment, we are not including the provision on fugitive felons that was included in the NPRM. Instead, we are reviewing all of our fugitive felon policies and will publish a final rule on this representative payee provision at a later time. Second, we have changed the regulation text for § 408.665 from the NPRM to indicate that a title VIII beneficiary may also be served by a local Social Security field office as well as a United States Government facility.

Regulatory Procedures

Executive Order 12866, as Amended by Executive Order 13258

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were reviewed by OMB. We have also determined that these final rules meet the plain language requirement of Executive Order 12866, as amended by Executive Order 13258.

Executive Order 13132 (Federalism) and the Unfunded Mandates Reform Act of 1995

We have reviewed these final rules for compliance with Executive Order 13132 and the Unfunded Mandates Reform Act of 1995 (UMRA of 1995). We have determined that the final rules are not significant within the meaning of the UMRA of 1995, nor will they have any substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government within the meaning of Executive Order 13132.

The provision requiring a State license for certain qualified organizations seeking compensation for serving as representative payees affects a very small number of organizational payees and will not have a significant impact on the States. First, the total number of organizations seeking compensation is very small, approximately 800. We do not require most of the organizations within this group to be licensed because they are State or local government agencies. Only the very small number of remaining organizations (community-based nonprofit social service organizations) must seek State licensing. Second, such organizations should already have obtained the necessary license to be in compliance with State law. Therefore, the very small number of organizations seeking a State license will not have a significant impact on the States.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis, as provided for in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final rules contain information collection requirements that require Office of Management and Budget (OMB) clearance under the Paperwork Reduction Act of 1995 (PRA). As required by the PRA, we have submitted a clearance request to OMB for approval. We will publish the OMB number and expiration date upon approval.

As required by the PRA, we published an NPRM in the **Federal Register** on October 17, 2005 at 70 FR 60251. In this NPRM, we solicited comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. None of the comments submitted in response to the Notice addressed the specific issues cited above.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income; 96.020, Special Benefits for Certain World War II Veterans)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance; Reporting and recordkeeping requirements, Social Security.

20 CFR Part 408

Administrative practice and procedure, Aged; Reporting and recordkeeping requirements, Social Security; Special Veterans benefits; Veterans.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental security income (SSI).

Dated: July 10, 2006.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending subparts E and U of part 404, subpart F of part 408, and subparts F and M of part 416 of title 20 of the Code of Federal Regulations as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart E—[Amended]

■ 1. The authority citation for subpart E of part 404 continues to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 222(b), 223(e), 224, 225, 702(a)(5), and 1129A of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 422(b), 423(e), 424a, 425, 902(a)(5) and 1320a–8a).

■ 2. Amend § 404.459 by revising the section heading and paragraphs (a) and (e) to read as follows:

§ 404.459 Penalty for making false or misleading statements or withholding information.

(a) *Why would SSA penalize me?* You will be subject to a penalty if:

(1) You make, or cause to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to, or the amount of, monthly insurance benefits under title II or benefits or payments under title XVI, that you know or should know is false or misleading; or

(2) You make a statement or representation of a material fact for use as described in paragraph (a)(1) of this section with knowing disregard for the truth; or

(3) You omit from a statement or representation made for use as described in paragraph (a)(1) of this section, or otherwise withhold disclosure (for example, fail to come forward to notify us) of, a fact which you know or should know is material to the determination of any initial or continuing right to, or the amount of, monthly insurance benefits under title II or benefits or payments under title XVI, if you know, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading.

* * * * *

(e) *How will SSA make its decision to penalize me?* In order to impose a penalty on you, we must find that you knowingly (knew or should have known or acted with knowing disregard for the truth) made a false or misleading statement or omitted or failed to report a material fact if you knew, or should have known, that the omission or failure to disclose was misleading. We will base our decision to penalize you on the evidence and the reasonable inferences that can be drawn from that evidence, not on speculation or suspicion. Our decision to penalize you will be documented with the basis and rationale for that decision. In determining whether you knowingly made a false or misleading statement or omitted or failed to report a material fact so as to justify imposition of the penalty, we will consider all evidence in the record, including any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have had at the time. In determining whether you acted knowingly, we will also consider the significance of the false or misleading statement or omission or failure to disclose in terms of its likely impact on your benefits.

* * * * *

Subpart U—[Amended]

■ 3. The authority citation for subpart U of part 404 continues to read as follows:

Authority: Secs. 205(a), (j), and (k), and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), (j), and (k), and 902(a)(5)).

■ 4. Amend § 404.2022 by redesignating paragraphs (b), (c) and (d) as paragraphs (c), (d) and (e) and adding a new paragraph (b) to read as follows:

§ 404.2022 Who may not serve as a representative payee?

* * * * *

(b) Has been convicted of an offense resulting in imprisonment for more than 1 year. However, we may make an exception to this prohibition, if the nature of the conviction is such that selection of the applicant poses no risk to the beneficiary and the exception is in the beneficiary's best interest.

* * * * *

■ 5. Revise § 404.2035 to read as follows:

§ 404.2035 What are the responsibilities of your representative payee?

A representative payee has a responsibility to—

(a) Use the benefits received on your behalf only for your use and benefit in a manner and for the purposes he or she determines, under the guidelines in this subpart, to be in your best interests;

(b) Keep any benefits received on your behalf separate from his or her own funds and show your ownership of these benefits unless he or she is your spouse or natural or adoptive parent or stepparent and lives in the same household with you or is a State or local government agency for whom we have granted an exception to this requirement;

(c) Treat any interest earned on the benefits as your property;

(d) Notify us of any event or change in your circumstances that will affect the amount of benefits you receive, your right to receive benefits, or how you receive them;

(e) Submit to us, upon our request, a written report accounting for the benefits received on your behalf, and make all supporting records available for review if requested by us; and

(f) Notify us of any change in his or her circumstances that would affect performance of his/her payee responsibilities.

■ 6. Amend § 404.2040a by revising paragraph (a)(2), redesignating paragraph (g)(6) as (g)(7), and adding a new paragraph (g)(6) to read as follows:

§ 404.2040a Compensation for qualified organizations serving as representative payees.

(a) * * *

(2) Any community-based nonprofit social service organization founded for religious, charitable or social welfare purposes, which is tax exempt under section 501(c) of the Internal Revenue Code and which is bonded/insured to cover misuse and embezzlement by officers and employees and which is licensed in each State in which it serves as representative payee (if licensing is available in the State). The minimum amount of bonding or insurance coverage must equal the average monthly amount of social security payments received by the organization

plus the amount of the beneficiaries' conserved funds (i.e., beneficiaries' saved social security benefits) plus interest on hand. For example, an organization that has conserved funds of $5,000 and receives an average of $12,000 a month in social security payments must be bonded/insured for a minimum of $17,000. The license must be appropriate under the laws of the State for the type of services the organization provides. An example of an appropriately licensed organization is a community mental health center holding a State license to provide community mental health services.

* * * * *

(g) * * *

(6) Fees for services may not be taken from beneficiary benefits for the months for which we or a court of competent jurisdiction determine(s) that the representative payee misused benefits. Any fees collected for such months will be treated as a part of the beneficiary's misused benefits.

* * * * *

■ 7. Amend § 404.2041 by adding a new paragraph (f) to read as follows:

§ 404.2041 Who is liable if your representative payee misuses your benefits?

* * * * *

(f) Any amounts that the representative payee misuses and does not refund will be treated as an overpayment to that representative payee. See subpart F of this part.

■ 8. Amend § 404.2065 by revising the introductory text to read as follows:

§ 404.2065 How does your representative payee account for the use of benefits?

Your representative payee must account for the use of your benefits. We require written reports from your representative payee at least once a year (except for certain State institutions that participate in a separate onsite review program). We may verify how your representative payee used your benefits. Your representative payee should keep records of how benefits were used in order to make accounting reports and must make those records available upon our request. If your representative payee fails to provide an annual accounting of benefits or other required reports, we may require your payee to receive your benefits in person at the local Social Security field office or a United States Government facility that we designate serving the area in which you reside. The decision to have your representative payee receive your benefits in person may be based on a variety of reasons. Some of these reasons may include the payee's history of past performance or our past difficulty in contacting the payee. We may ask your representative payee to give us the following information:

* * * * *

PART 408—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS (SVB)

Subpart F—[Amended]

■ 9. The authority citation for subpart F of part 408 continues to read as follows:

Authority: Secs. 702(a)(5), 807, and 810 of the Social Security Act (42 U.S.C. 902(a)(5), 1007, and 1010).

■ 10. Revise § 408.665 to read as follows:

§ 408.665 How does your representative payee account for the use of your SVB benefits?

Your representative payee must account for the use of your benefits. We require written reports from your representative payee at least once a year. We may verify how your representative payee used your benefits. Your representative payee should keep records of how benefits were used in order to provide accounting reports and must make those records available upon our request. If your representative payee fails to provide an annual accounting of benefits or other required report, we may require your payee to appear in person at the local Social Security field office or a United States Government facility that we designate serving the area in which you reside. The decision to have your representative payee receive your benefits in person may be based on a variety of reasons. Some of these reasons may include the payee's history of past performance or our past difficulty in contacting the payee. We may ask your representative payee to give us the following information:

(a) Where you lived during the accounting period;

(b) Who made the decisions on how your benefits were spent or saved;

(c) How your benefit payments were used; and

(d) How much of your benefit payments were saved and how the savings were invested.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED

Subpart F—[Amended]

■ 11. The authority citation for subpart F of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631(a)(2) and (d)(1) of the Social Security Act (42 U.S.C. 902(a)(5) and 1383(a)(2) and (d)(1)).

■ 12. Amend § 416.622 by redesignating paragraphs (b), (c) and (d) as paragraphs (c), (d) and (e) and adding a new paragraph (b) to read as follows:

§ 416.622 Who may not serve as a representative payee?

* * * * *

(b) Has been convicted of an offense resulting in imprisonment for more than 1 year. However, we may make an exception to this prohibition, if the nature of the conviction is such that selection of the applicant poses no risk to the beneficiary and the exception is in the beneficiary's best interest.

* * * * *

■ 13. Revise § 416.635 to read as follows:

§ 416.635 What are the responsibilities of your representative payee?

A representative payee has a responsibility to—

(a) Use the benefits received on your behalf only for your use and benefit in a manner and for the purposes he or she determines under the guidelines in this subpart, to be in your best interests;

(b) Keep any benefits received on your behalf separate from his or her own funds and show your ownership of these benefits unless he or she is your spouse or natural or adoptive parent or stepparent and lives in the same household with you or is a State or local government agency for whom we have granted an exception to this requirement;

(c) Treat any interest earned on the benefits as your property;

(d) Notify us of any event or change in your circumstances that will affect the amount of benefits you receive, your right to receive benefits, or how you receive them;

(e) Submit to us, upon our request, a written report accounting for the benefits received on your behalf, and make all supporting records available for review if requested by us;

(f) Notify us of any change in his or her circumstances that would affect performance of his/her payee responsibilities; and

(g) Ensure that you are receiving treatment to the extent considered medically necessary and available for the condition that was the basis for providing benefits (see § 416.994a(i)) if you are under age 18 (including cases in which your low birth weight is a contributing factor material to our determination that you are disabled).

■ 14. Amend § 416.640a by revising paragraph (a)(2), redesignating

paragraph (g)(6) as (g)(7), and adding a new paragraph (g)(6) to read as follows:

§ 416.640a Compensation for qualified organizations serving as representative payees.

(a) * * *

(2) Any community-based nonprofit social service organization founded for religious, charitable or social welfare purposes, which is tax exempt under section 501(c) of the Internal Revenue Code and which is bonded/insured to cover misuse and embezzlement by officers and employees and which is licensed in each State in which it serves as representative payee (if licensing is available in the State). The minimum amount of bonding or insurance coverage must equal the average monthly amount of supplemental security income payments received by the organization plus the amount of the beneficiaries' conserved funds (i.e., beneficiaries' saved supplemental security income payments) plus interest on hand. For example, an organization that has conserved funds of $5,000 and receives an average of $12,000 a month in supplemental security income payments must be bonded/insured for a minimum of $17,000. The license must be appropriate under the laws of the State for the type of services the organization provides. An example of an appropriately licensed organization is a community mental health center holding a State license to provide community mental health services.

* * * * *

(g) * * *

(6) Fees for services may not be taken from beneficiary benefits for the months for which we or a court of competent jurisdiction determine(s) that the representative payee misused benefits. Any fees collected for such months will be treated as a part of the beneficiary's misused benefits.

* * * * *

■ 15. Amend § 416.641 by adding a new paragraph (f) to read as follows:

§ 416.641 Who is liable if your representative payee misuses your benefits?

* * * * *

(f) Any amounts that the representative payee misuses and does not refund will be treated as an overpayment to that representative payee. See subpart E of this part.

■ 16. Amend § 416.665 by revising the introductory text to read as follows:

§ 416.665 How does your representative payee account for the use of benefits?

Your representative payee must account for the use of your benefits. We require written reports from your representative payee at least once a year (except for certain State institutions that participate in a separate onsite review program). We may verify how your representative payee used your benefits. Your representative payee should keep records of how benefits were used in order to make accounting reports and must make those records available upon our request. If your representative payee fails to provide an annual accounting of benefits or other required reports, we may require your payee to receive your benefits in person at the local Social Security field office or a United States Government facility that we designate serving the area in which you reside. The decision to have your representative payee receive your benefits in person may be based on a variety of reasons. Some of these reasons may include the payee's history of past performance or our past difficulty in contacting the payee. We may ask your representative payee to give us the following information:

* * * * *

Subpart M—[Amended]

■ 17. The authority citation for subpart M of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1129A, 1611–1614, 1619, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1320a–8a, 1382–1382c, 1382h, and 1383).

■ 18. Amend § 416.1340 by revising the section heading and paragraphs (a) and (e) to read as follows:

§ 416.1340 Penalty for making false or misleading statements or withholding information.

(a) *Why would SSA penalize me?* You will be subject to a penalty if:

(1) You make, or cause to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to, or the amount of, monthly insurance benefits under title II or benefits or payments under title XVI, that you know or should know is false or misleading; or

(2) You make a statement or representation of a material fact for use as described in paragraph (a)(1) of this section with knowing disregard for the truth; or

(3) You omit from a statement or representation made for use as described in paragraph (a)(1) of this section, or otherwise withhold disclosure (for example, fail to come forward to notify us) of, a fact which you know or should know is material to the determination of any initial or continuing right to, or the amount of, monthly insurance benefits under title II or benefits or payments under title XVI, if you know, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading.

* * * * *

(e) *How will SSA make its decision to penalize me?* In order to impose a penalty on you, we must find that you knowingly (knew or should have known or acted with knowing disregard for the truth) made a false or misleading statement or omitted or failed to report a material fact if you knew, or should have known, that the omission or failure to disclose was misleading. We will base our decision to penalize you on the evidence and the reasonable inferences that can be drawn from that evidence, not on speculation or suspicion. Our decision to penalize you will be documented with the basis and rationale for that decision. In determining whether you knowingly made a false or misleading statement or omitted or failed to report a material fact so as to justify imposition of the penalty, we will consider all evidence in the record, including any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have had at the time. In determining whether you acted knowingly, we will also consider the significance of the false or misleading statement or omission or failure to disclose in terms of its likely impact on your benefits.

* * * * *

[FR Doc. E6–17320 Filed 10–17–06; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–06–127]

Drawbridge Operation Regulations; Passaic River, Harrison, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Amtrak Dock Bridge across the Passaic River at mile 5.0, at Harrison, New Jersey. Under this temporary deviation, the bridge may

remain in the closed position for six weekends from October 13, 2006 through November 20, 2006. This deviation is necessary to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from October 13, 2006 through November 20, 2006.

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

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Amtrak Dock Bridge across the Passaic River at mile 5.0, at Harrison, New Jersey, has a vertical clearance in the closed position of 13 feet at mean high water and 20 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.739(e).

The owner of the Dock Bridge is the National Railroad Passenger Corporation (Amtrak). The bridge operator, the Port Authority Trans Hudson Corporation (PATH), requested a temporary deviation to facilitate scheduled bridge maintenance, replacement of the miter joints. The bridge will not be able to open while the bridge maintenance is underway.

Under this temporary deviation, the Amtrak Dock Bridge may remain in the closed position for six weekends from October 13, 2006 through November 20, 2006. The weekend bridge closures shall begin each week at 11 p.m. on Friday and continue through 5 a.m. on Monday.

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

Should the bridge maintenance authorized by this temporary deviation be completed before the end of the effective period published in this notice, the Coast Guard will rescind the remainder of this temporary deviation, and the bridge shall be returned to its normal operating schedule. Notice of the above action shall be provided to the public in the Local Notice to Mariners and the **Federal Register**, where practicable.

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

Dated: October 10, 2006.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E6–17390 Filed 10–17–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–06–104]

Drawbridge Operation Regulations; Mill Neck Creek, Oyster Bay, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Bayville Bridge, across Mill Neck Creek, mile 0.1, at Oyster Bay, New York. This deviation, allows the bridge owner to open only one of the two moveable bascule spans for the passage of vessel traffic from October 28, 2006 through November 20, 2006. This deviation is necessary to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from October 28, 2006 through November 20, 2006.

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

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Bayville Bridge, across Mill Neck Creek, mile 0.1, at Oyster Bay, New York, has a vertical clearance in the closed position of 9 feet at mean high water and 16 feet at mean low water. The existing regulation requires the bridge to open on demand.

The owner of the bridge, County of Nassau, Department of Public Works, requested a temporary deviation to facilitate scheduled structural bridge repairs, rehabilitation of the two bascule spans.

In order to perform the structural repairs, the bascule span undergoing work must remain in the closed position.

Therefore, under this temporary deviation the Bayville Bridge across Mill Neck Creek, mile 0.1, at Oyster Bay, New York, shall open only one of the two movable spans for the passage of vessel traffic from October 28, 2006 through November 20, 2006.

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

Should the bridge maintenance authorized by this temporary deviation be completed before the end of the effective period published in this notice, the Coast Guard will rescind the remainder of this temporary deviation, and the bridge shall be returned to its normal operating schedule. Notice of the above action shall be provided to the public in the Local Notice to Mariners and the **Federal Register**, where practicable.

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

Dated: October 3, 2006.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E6–17385 Filed 10–17–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0792; FRL–8098–5]

Flumioxazin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of flumioxazin, 2-[7-fluoro-3,4-dihydro-3-oxo-4-(2-propynyl)-2*H*-1,4-benzoxazin-6-yl]-4,5,6,7-tetrahydro-1*H*-isoindole-1,3(2*H*)-dione in or on alfalfa forage and alfalfa hay. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on alfalfa. This regulation establishes a maximum permissible level for residues of flumioxazin in this food commodity.

The tolerance expires and is revoked on December 31, 2009.

DATES: This regulation is effective October 18, 2006. Objections and requests for hearings must be received on or before December 18, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0792. All documents in the docket are listed on the regulations.gov Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Libby Pemberton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9364; e-mail address: *Sec-18-Mailbox@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0792 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before December 18, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0792, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for residues of the herbicide, flumioxazin, 2-[7-fluoro-3,4-dihydro-3-oxo-4-(2-propynyl)-2*H*-1,4-benzoxazin-6-yl]-4,5,6,7-tetrahydro-1*H*-isoindole-1,3(2*H*)-dione in or on alfalfa forage at 0.13 parts per million (ppm) and alfalfa hay at 0.45 ppm. These tolerances expire and are revoked on December 31, 2009. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). EPA is also removing an expired tolerance for residues of flumioxazin on sweet potato, roots.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes

exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Flumioxazin on Alfalfa and FFDCA Tolerances

[Arizona states that herbicides currently available for use in Arizona alfalfa have not been effective either because they provided poor control of groundsel, had poor crop safety, or undesirable plantback intervals. Losses resulting from groundsel infestation of alfalfa are generated not by actual yield losses due to groundsel infestation but rather they are due to loss of sale of alfalfa for horse and cattle feed. There is an approximate 85% reduction in the net revenue for alfalfa producers because alfalfa infested with groundsel is not marketable feed for cattle and horses because groundsel is highly toxic for these animals]. EPA has authorized under FIFRA section 18 the use of flumioxazinon alfalfa for control of common groundsel (*Senecio vulgarius*) in Arizona. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of flumioxazin in or on alfalfa. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerances under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although these tolerances expire and are revoked on December 31, 2009, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on alfalfa forage and alfalfa hay after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether flumioxazin meets EPA's registration requirements for use on alfalfa or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of flumioxazin by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Arizona to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for flumioxazin, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of flumioxazin and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for time-limited tolerances for residues of flumioxazin in or on alfalfa forage at 0.13 ppm and alfalfa hay at 0.45 ppm.

On May 3, 2006 the Agency published a Final Rule (71 FR 25951, FRL–8057–5) establishing tolerances for residues of flumioxazin, 2-[7-fluoro-3,4-dihydro-3-oxo-4-(2-propynyl)-2*H*-1,4-benzoxazin-6-yl]-4,5,6,7-tetrahydro-1*H*-isoindole-1,3(2*H*)-dione in or on pome fruit crop group 11, stone fruit crop group 12 and strawberry. When the Agency conducted the risk assessments in support of those tolerance actions, the Agency also assessed the use of flumioxazin on alfalfa under section 18 of FIFRA. Therefore, establishing the alfalfa tolerances will not change the most recent estimated aggregate risks resulting from use of flumioxazin, as discussed in the May 3, 2006 **Federal Register**. Refer to the May 3, 2006 **Federal Register** document for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon those risk assessments and the findings made in the **Federal Register** document in support of this action.

Based on the risk assessments discussed in the final rule published in the **Federal Register** of May 3, 2006, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to flumioxazin residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography-nitrogen phosphorus detection) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no Codex, Canadian or Mexican maximum residue limits established for flumioxazin on alfalfa.

VI. Conclusion

Therefore, tolerances are established for residues of flumioxazin, 2-[7-fluoro-3,4-dihydro-3-oxo-4-(2-propynyl)-2H-1,4-benzoxazin-6-yl]-4,5,6,7-tetrahydro-1H-isoindole-1,3(2H)-dione, in or on alfalfa forage at 0.13 ppm and alfalfa hay at 0.45 ppm.

VII. Statutory and Executive Order Reviews

This final rule establishes time-limited tolerances under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this

rule has been exempted from review under Executive Order 12866 due to its lack of significance, 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). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under section 408 of the FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will 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, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). 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.'' This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, 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.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

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

Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 5, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.568 is amended by revising the table in paragraph (b) to read as follows:

§ 180.568 Flumioxazin; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/revocation date
Alfalfa, forage ...	0.13	12/31/09
Alfalfa, hay	0.45	12/31/09

* * * * *

[FR Doc. E6–17138 Filed 10–17–06; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 67 and 68

[USCG–2005–20258]

RIN 1625–AA95

Vessel Documentation: Lease Financing for Vessels Engaged in the Coastwise Trade

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard amends its regulations for documenting lease-financed vessels that have a ''coastwise endorsement'' (i.e., vessels used in trade and passenger service within the U.S. or between U.S. ports and those used in dredging and towing in U.S. waters). The vessels affected by this proposal are owned by foreign owned or controlled U.S. companies, where there is a ''demise charter'' to a U.S. citizen (i.e., an agreement for the charterer to assume responsibility for operating, crewing, and maintaining the vessel as if the charterer owned it).

DATES: This final rule is effective November 17, 2006, except for §§ 68.65, 68.70, 68.75, 68.100, 68.107, and 68.109, which contain certain collection of information requirements that have not

yet been approved by the Office of Management and Budget (OMB). The Coast Guard will publish a document in the **Federal Register** announcing the effective date of those sections.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2005–20258 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Patricia Williams, Deputy Director, National Vessel Documentation Center, Coast Guard, telephone 304–271–2506. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

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I. Regulatory History

On February 15, 2006, we published a notice of proposed rulemaking (proposed rule) entitled ''Vessel Documentation: Lease Financing for Vessels Engaged in the Coastwise Trade'' in the **Federal Register** (71 FR 7897). We received 14 letters commenting on the proposed rule. One party requested that the 90-day comment period be extended to 120 days. After consideration of the reasons for the request, we believe that the 90 day comment period was far more than adequate to allow for carefully researched, thoroughly responsive comments and, therefore, deny the request for extension. To do otherwise would be a disservice to those who complied with the published deadline of May 16, 2006, and would unnecessarily delay publication of this final rule. No public meeting was requested and none was held.

II. Background and Purpose

This final rule amends the regulations in title 46, Code of Federal Regulations (CFR), parts 67 and 68, on the documentation of U.S.-built vessels owned by foreign owned or controlled U.S. companies that are lease financed to a U.S. citizen for use in the coastwise trade. Under lease financing, ownership of the vessel is in the name of the owner, with a demise charter to the charterer (i.e., the operator) of the vessel. A demise charter, also known as a bareboat charter, is an agreement in which the charterer assumes the responsibility for operating, crewing, and maintaining the vessel as if the charterer owned it.

This final rule is necessary to align our lease-financing regulations with amendments made by Congress under the Coast Guard and Maritime Transportation Act of 2004 (Pub. L. 108–293) (the Act) concerning the information needed to determine the eligibility of a vessel owner for a coastwise endorsement under the lease-financing law. As the lease-financing provisions of the Act do not require regulatory action on our part to make them effective, this rule merely aligns our lease-financing regulations with the provisions of the Act. Specifically, the final rule makes the following five changes primarily to align our regulations with the Act:

1. It clarifies the requirements used to determine the eligibility of lease-financed vessels for coastwise endorsements.

2. It permanently grandfathers, from the new statutory requirements, all lease-financed vessels, except for offshore supply vessels documented on or before August 9, 2004.

3. It requires the owners of lease-financed offshore supply vessels with valid coastwise endorsements issued before August 9, 2004, to reapply for a new coastwise endorsement by August 9, 2007.

4. It requires all owners of lease-financed vessels with recently-issued coastwise endorsements (i.e., those issued after August 9, 2004) to certify each year that their ownership and investment status has not changed.

5. It requires entities that enter into a demise sub-charter agreement to file a copy of the sub-charter and amendments to the sub-charter with the Director of the National Vessel Documentation Center (Documentation Center).

III. Discussion of Comments and Changes

By the close of the comment period for the proposed rule, 14 letters were received. Three of the letters were received after the May 16, 2006, deadline. We considered the comments in the late-filed letters, but the comments either were similar to those in the on-time letters or suggested organizational changes that we determined were not suitable for this rulemaking. Thus, we made no changes to the regulatory text as a result of the late-filed letters. The request made by one party for an extension of the comment period is discussed in the ''Regulatory History'' section of this preamble.

1. *Section 68.55.* Two comments requested that paragraph (2) of the definition of the word ''affiliate'' in proposed § 68.55 be changed to include reports submitted to a comparable agency of a foreign government as well as reports submitted to the United States Securities and Exchange Commission (SEC) or the Internal Revenue Service (IRS). They pointed out that not being named as being part of the same consolidated group in any report or other document submitted to the SEC or IRS is not the only proof of non-affiliation. They noted that the affiliation test, as a practical matter, could be applied in cases where the document was not one submitted to the SEC or IRS but to a comparable agency of a foreign government.

Though there is merit to this suggestion, to adopt it would expand the term ''affiliate'' beyond the scope of the definition in the Act. We believe that, in providing a specific definition, Congress expected the Coast Guard to apply that definition.

2. *Section 68.55.* One comment noted that the definition of the term ''passive investment'' in § 68.55, though tracking the language of the Act, needed further clarification. The comment offered no suggestion as to how the definition should be clarified.

We believe that, in providing a specific definition, Congress expected the Coast Guard to apply that definition.

3. *Section 68.55.* One comment requested that we provide a less complicated definition of the term ''qualified proprietary cargo'' than is found in proposed § 68.55. The comment makes no suggestion as to how to improve the definition.

The definition in § 68.55, though lengthy, is identical to the language in the Act. We do not believe that further clarification is necessary or desirable.

4. *Section 68.65(a)(1)(i).* One comment noted that neither the Act nor the proposed rule defines ''leasing company, bank, and financial institution,'' as used in § 68.65(a)(1)(i). They requested that we provide ''a clearer standard for qualification.''

We believe that, by doing so, we could inadvertently and improperly restrict sources of funding. Accordingly, we left the term unchanged.

5. *Section 68.65(a)(2)(vi).* One comment noted a typographical error in

proposed § 68.65(a)(2)(vi), which refers to a non-existent § 68.10.

The correct reference is § 67.20. However, because § 67.20 is removed by this final rule, we revised § 68.65(a)(2)(vi) to read: ''That person owned one or more vessels documented as of August 9, 2004, under § 67.20, as that section was in effect on that date.''

6. *Section 68.70(e).* One comment suggested that, in proposed § 68.70(e), we exclude time charters, voyage charters, and contracts of affreightment from the requirement that they be filed with the Documentation Center.

We disagree. The purpose of § 68.70(e) is to provide for discretionary review by the Documentation Center of these instruments in order to ensure that, regardless of their title, they do not transfer impermissible control of the vessel to a person not qualified to operate vessels in coastwise trade.

7. *Sections 68.70(d) and 68.75(d).* Two comments took issue with the requirement in proposed §§ 68.70(d) and 68.75(d) that sub-charters and amendments to them be filed within 10 days after their effective date. The comments requested that we require sub-charters and amendments to be filed no later than 10 days before their effective date.

Although we understand the concern behind this comment, 46 U.S.C. 12106(e)(2) requires that amendments to charters be filed within 10 days following the filing of an amendment. We believe that all demise charters should be treated equally and that Congress did not intend to place a greater burden on sub-charterers than on the original demise charterer. Therefore, we require both to be filed within 10 days after their effective date.

8. *Section 68.100.* One comment noted that the proposed rule did not account for the special grandfather clause in sections 608(c)(1) and (c)(2) of the Act concerning permanent replacement vessels contracted for purchase or construction not later than December 31, 2004.

We deliberately left these provisions out of our regulations because of the very small universe of vessels to which these provisions apply. Instead, we intend to evaluate applications for these vessels on a case-by-case basis, applying the literal language of the Act.

9. *Section 68.105(b) and (d).* Two comments noted that proposed § 68.105(b) and (d) would extend grandfather provisions to vessels documented before February 4, 2004, instead of those documented before August 9, 2004, as provided by the Act.

We agree and have changed the dates in § 68.105(b) and (d) to August 9, 2004, to align with the Act.

10. *Section 68.111.* Four comments expressed concern that a coastwise endorsement under § 68.111(a)(1) and (b)(1) would be invalidated upon the expiration or termination of a demise charter. The comments noted that, under the Act, vessels documented for coastwise trade under a lease-financing arrangement before August 9, 2004, are ''grandfathered'' and are not subject to regulations published after February 4, 2004.

These provisions are from previous 46 CFR 67.167(c)(10) and (c)(11), which are relocated by this rulemaking, without change, to new § 68.111(a)(1) and (b)(1). We believe that the invalidation of endorsements upon expiration or transfer of a charter is essential to proper management and integrity of the coastwise-documentation process. There are numerous other circumstances under which an endorsement becomes invalid, such as a change in the vessel's tonnage, change of ownership, change of the vessel's name, change of hailing port, or even a failure to renew. However, it has always been our position that vessels documented under 46 U.S.C. 12106(e) before August 9, 2004, will be eligible to apply, under subpart D of part 68, for a new coastwise endorsement. However, because it is probable that other readers may have similar concerns, we have added new paragraph (c) to § 68.111 to clearly state these grandfather rights.

11. A late-filed comment requested that we reorganize the proposed rule to provide a separate subpart for owners of ''certain tank vessels'' specifically addressed in 46 U.S.C. 12106(f)(3). It further requested a new opportunity for comment on the proposed rule following such a reorganization.

We do not believe that a new subpart would be helpful in light of the delay it would cause. The uncertainty engendered by the lack of a final rule while a supplemental notice of proposed rulemaking is being prepared and submitted for comment outweighs any perceived advantage which might be realized through such a reorganization.

12. One late-filed comment requested an extension of the comment period to allow for comments ''within the financial community concerning the desirability of provisions that would allow large non-citizen vessel financing organizations, that might include a single vessel operating affiliate, to qualify on the basis of some form of *de minimis* exception.''

Should we re-open the comment period as suggested, we would not be able to consider this issue because the Act makes no provision for these exceptions. Therefore, we did not adopt this suggestion.

13. *Third-party audits.* Four comments addressed the issue of third-party audits in response to a question in the preamble to the proposed rule (71 FR 7899; February 15, 2006). The proposed rule itself did not contain a third-party-audit provision. The question was: ''Should we require each applicant for a coastwise endorsement issued under lease financing to provide a certification from an independent auditor with expertise in the business of vessel financing and operations?''

All of the comments on third-party-audit question stated that any benefit which might be derived from these audits would be outweighed by the cost of the audits. As explained in the preamble to the proposed rule (71 FR 7899), the same question was asked in an earlier lease-financing rulemaking that was withdrawn on April 13, 2005, before the Act was passed. Though the comments to the withdrawn rulemaking were evenly split between those favoring third-party audits and those opposing it, we believe that the new self-certification requirement in the Act (46 U.S.C. 12106(f)) evidently caused those who favored third-party audits to change their minds. Therefore, we do not intend to further consider the issue of third-party audits.

IV. Regulatory Analysis and Review

Assessment

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review. We expect the economic impact of this rule to be minimal. The supplemental ''Regulatory Analysis'' in the docket for the proposed rule is unchanged for the final rule. There were no comments on the Regulatory Analysis. A summary of the analysis follows:

The Coast Guard amends its regulations on the documentation for U.S.-built vessels owned by foreign-owned or controlled U.S. companies that are lease financed to a U.S. citizen for use in the coastwise trade. This rule addresses amendments provided by Congress under the Act concerning information needed to determine the eligibility of a vessel owner for a coastwise endorsement under the lease-financing law.

This rule will update and provide consistent documentation requirements to determine the eligibility of lease-

financed vessels for coastwise endorsements as discussed under the ''Background and Purpose'' section of this preamble. The rule also implements the Congressionally-mandated permanent grandfathering of all lease-financed vessels, except for offshore supply vessels documented on or before August 9, 2004, from the new requirements.

This rule will make three changes to the existing regulations that will cause additional costs to industry. First, it requires owners of lease-financed offshore supply vessels with valid coastwise endorsements issued before August 9, 2004, to reapply for a new coastwise endorsement by August 9, 2007. Second, it will require all owners of lease-financed vessels with recently issued coastwise endorsements (i.e., those issued after August 9, 2004) to certify each year that their ownership and investment status has not changed. Lastly, it will require entities that enter into a demise sub-charter agreement to file a copy of the sub-charter and amendments to the sub-charter with the Director of the Documentation Center. These changes are additional collection-of-information (paperwork) requirements.

Based on Coast Guard data, we estimate that this rule will affect eight current owners of offshore supply vessels. We also estimate, from the Coast Guard data and information from the Documentation Center, that there will be 25 current and future owners affected by the annual certification requirements of this rule, which includes the eight owners of offshore supply vessels affected by this rule. Based on projections from the Documentation Center, we assume that there will be approximately three demise sub-charter agreements over the next 10 years.

We estimate that the total first-year cost of this rule to industry is $11,059. This first-year cost includes the one-time cost to the affected offshore supply vessel owners to reapply for a new coastwise endorsement, the first year cost of annual certification for the affected vessel owners, and a portion of the cost to affected vessel charterers associated with paperwork submissions of future demise sub-charter agreements. After the first year of implementation, the total annual cost of this rule to industry is $1,621, which is the first-year cost less the one-time cost to the affected offshore supply vessel owners to reapply for a new coastwise endorsement. The estimated 10-year (2006–2015), discounted present value of the total cost of this rule to all affected owners and charterers is $21,623 based on a 7 percent discount rate and $23,684 based on a 3 percent discount rate.

The benefit of this rule is that it updates and provides consistent documentation requirements. These requirements comply with mandates provided by Congress under the Act concerning information and documentation needed to determine the eligibility of a vessel owner. These updated documentation requirements will assist the Coast Guard in determining the eligibility of lease-financed vessels for coastwise endorsements. We need this information to determine whether an entity meets the current statutory requirements. We will use these documentation requirements to issue coastwise endorsements to eligible lease-financed vessels.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will 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. This rule will not have a significant economic impact on a substantial number of small entities. The Initial Regulatory Flexibility Analysis in the supplemental ''Regulatory Analysis'' in the docket for the proposed rule is unchanged for the final rule.

This rule will affect owners of lease-financed offshore supply vessels with valid coastwise endorsements issued before August 9, 2004, owners of lease-financed vessels with recently-issued coastwise endorsements, and charterers that enter into a demise sub-charter agreement.

The owners and charterers mentioned above are U.S. subsidiaries or branch companies that are owned or controlled by larger, foreign, corporate affiliates and, therefore, are considered as ''one party with such interests aggregated'' under the small business size regulations (13 CFR 121.103). We determined in the Initial Regulatory Flexibility Analysis whether an owner is a small or large entity using the North American Industry Classification System (NAICS) codes and the small entity revenue or employee size standards provided by the U.S. Small Business Administration (SBA).

Based on our determination in the Initial Regulatory Flexibility Analysis in the docket for the proposed rule, the owners in each NAICS code category exceed the SBA size standard and are classified as large businesses. We received no comments on this initial determination or any potential economic impacts on small entities from this rulemaking.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking. The proposed rule provided small businesses, organizations, and governmental jurisdictions with a Coast Guard contact to handle questions concerning this rule's provisions.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Under 46 CFR 68.65, 68.70, 68.75, 68.100, 68.107, and 68.109, this rule will amend the collection-of-information requirements for vessel owners and charterers engaging in the coastwise trade under the lease-financing provisions of 46 U.S.C. 12106(e). The Coast Guard needs this information to determine whether an entity meets the statutory requirements. These provisions will modify the burden in the collection previously approved by the Office of Management and Budget (OMB) under OMB Control Number 1625–0027, Vessel Documentation.

We performed an assessment of the additional burden associated with these provisions and published them in the proposed rule and in the supplemental ''Regulatory Analysis'' in the docket. We received no public comment on the assessment of these provisions or the extent they modify the burden in the

previously approved collection. The assessment published in the proposed rule and the supplemental Regulatory Analysis in the docket is unchanged for the final rule.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this rule to OMB for its review of the collection of information. OMB has not yet completed its review of, or approved the changes to, this collection. Therefore, §§ 68.65, 68.70, 68.75, 68.100, 68.107, and 68.109 in this rule will not become effective until this collection is approved by OMB. We will publish a notice in the **Federal Register** announcing OMB's approval and effective date of those sections.

You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them.

We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(d), of the Instruction, from further environmental documentation. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 67

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 68

Oil pollution, Reporting and recordkeeping requirements, Vessels.

■ For the reasons discussed in the preamble, the Coast Guard amends 46 CFR parts 67 and 68 as follows:

PART 67—DOCUMENTATION OF VESSELS

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103, 2110; 46 U.S.C. app. 876; Department of Homeland Security Delegation No. 0170.1.

§ 67.3 [Amended]

■ 2. In § 67.3, remove the following terms and their definitions: ''affiliate,'' ''group,'' ''operation or management of vessels,'' ''parent,'' ''primarily engaged in leasing or other financing transactions,'' ''sub-charter,'' and ''subsidiary.''

§ 67.20 [Removed]

■ 3. Remove § 67.20.

§ 67.35 [Amended]

■ 4. In § 67.35(c), remove the words ''§ 67.20'' and add, in their place, the words ''§§ 68.60 or 68.105 of this chapter''.

§ 67.36 [Amended]

■ 5. In § 67.36(c)(2), remove the words ''§ 67.20'' and add, in their place, the words ''§ 68.60 or § 68.105 of this chapter''.

§ 67.39 [Amended]

■ 6. In § 67.39(c)(2), remove the words ''§ 67.20'' and add, in their place, the words ''§ 68.60 or § 68.105 of this chapter''.

§ 67.147 [Removed]

■ 7. Remove § 67.147.

■ 8. In § 67.167, in paragraph (c)(9), following the semicolon, add the word ''and''; revise paragraph (c)(10) to read as shown below; and remove paragraph (c)(11):

§ 67.167 Requirement for exchange of Certificate of Documentation.

* * * * *

(c) * * *

(10) For a vessel with a coastwise endorsement under 46 U.S.C. 12106(e), one of the events in §§ 68.80 or 68.111 of this chapter occurs.

§ 67.179 [Removed]

■ 9. Remove § 67.179.

PART 68—DOCUMENTATION OF VESSELS: EXCEPTIONS TO COASTWISE QUALIFICATION

■ 10. Revise the authority citation for part 68 to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103, 2110; 46 U.S.C. app. 876; Department of Homeland Security Delegation No. 0170.1.

■ 11. Revise the heading to part 68 to read as shown above.

Subpart 68.03 [Removed]

■ 12. Remove subpart 68.03.

■ 13. In part 68—

■ a. Redesignate the subparts and their appendices as shown in the following table:

Old subpart/appendix	New subpart/appendix
Subpart 68.01	Subpart A.
Appendix A to Subpart 68.01 of Part 68	Appendix A to Subpart A of Part 68.
Appendix B to Subpart 68.01 of Part 68	Appendix B to Subpart A of Part 68.
Subpart 68.03	[Removed].
Subpart 68.05	Subpart B.
Appendix A to Subpart 68.05 of Part 68	Appendix A to Subpart B of Part 68.
Appendix B to Subpart 68.05 of Part 68	Appendix B to Subpart B of Part 68.

■ b. In the redesignated subparts, redesignate the sections as shown in the following table:

Old section	New section
68.01–1	68.3
68.01–3	68.5
68.01–5	68.7
68.01–7	68.9
68.01–9	68.11
68.01–11	68.13
68.01–13	68.15
68.01–15	68.17
68.01–17	68.19
68.05–1	68.25
68.05–3	68.27
68.05–5	68.29
68.05–7	68.31
68.05–9	68.33
68.05–11	68.35
68.05–13	68.37

■ c. In the redesignated sections listed in the first column of the following table, the reference in the second column is revised to read as shown in the third column:

New section	Old reference	New reference
68.7	68.01–3	68.5
68.7	68.01–9(a)	68.11(a)
68.9	68.01–1	68.3
68.9	68.01–9(a)	68.11(a)
68.11	68.01–5	68.7
68.11	68.01–3(a)	68.5(a)
68.11	68.01–11	68.13
68.11	68.01–13	68.15
68.11	68.01–7	68.9
68.11	13	68.15
68.13	68.01–15	68.17
68.13	68.01–17	68.19
68.15	68.01–15	68.17
68.15	68.01–1	68.3
68.15	68.01–15(c)	68.17(c)
68.17	68.01–1	68.3
68.19	68.01–5	68.7
68.29	68.05–9	68.33
68.31	68.05–5	68.29
68.35	68.05–13	68.37
68.35	68.05–7(a)	68.31(a)
68.37	68.05–11(a)	68.35(a)
68.37	68.05–5	68.29
68.37	68.05–9	68.33

■ d. The table of contents for part 68 reads as follows:

PART 68—DOCUMENTATION OF VESSELS: EXCEPTIONS TO COASTWISE QUALIFICATION

■ 14. In part 68, revise the heading to subpart A to read as follows:

Subpart A—Regulations for Engaging in Limited Coastwise Trade

■ 15. Add § 68.1 to subpart A to read as follows:

§ 68.1 Purpose of subpart.

This subpart contains citizen ownership requirements and procedures to allow documentation of vessels that do not meet the requirements of part 67 of this chapter. The requirements are for corporations engaged in a manufacturing or mineral industry in the United States.

§ 68.7 [Amended]

■ 16. In § 68.7—
■ a. In paragraph (b), after the redesignated number ''§ 68.11(a)'', remove the words ''of this subpart''; and following the words ''appendix A'', add the words ''of this subpart''.

§ 68.9 [Amended]

■ 17. In § 68.9—
■ a. In paragraph (a), following the words ''appendix B'', add the words ''of this subpart'';
■ b. In paragraph (b), following the words ''appendix B'', add the words ''of this subpart''; and
■ c. In paragraph (c), following the redesignated number ''§ 68.11(a)'', remove the words ''of this subpart''; and, following the words ''appendix B'', add the words ''of this subpart''.

§ 68.11 [Amended]

■ 18. In § 68.11—
■ a. In paragraph (a), after the redesignated number ''§ 68.7'', remove the words ''of this subpart''; and
■ b. In paragraph (b), after the redesignated number ''§ 68.9'', remove the words ''of this subpart''.

Appendix A to Subpart A of Part 68 [Amended]

■ 19. In appendix A—
■ a. In the appendix heading and in the text, remove the words ''(46 U.S.C. 883–1)'' and add, in their place, the words ''(46 U.S.C. app. 883–1)''; and
■ b. Following the word ''§ 67.39(c)'', add the words ''of this chapter''.

Appendix B to Subpart A of Part 68 [Amended]

■ 20. In appendix B, in the appendix heading and in the text, remove the words ''(46 U.S.C. 883–1)'' and add, in their place, the words ''(46 U.S.C. app. 883–1)''.

■ 21. Add new subpart C, consisting of §§ 68.50 through 68.80, to read as follows:

Subpart C—Vessels With a Coastwise Endorsement Issued on or After August 9, 2004, That Are Demised Chartered to Coastwise Qualified Citizens

Subpart C—Vessels With a Coastwise Endorsement Issued on or After August 9, 2004, That Are Demised Chartered to Coastwise Qualified Citizens

§ 68.50 Purpose and applicability.

(a) This subpart contains requirements, in addition to those in part 67 of this chapter, for obtaining a coastwise endorsement for a U.S.-built vessel—

(1) That is owned by a person that qualifies as a citizen under §§ 67.35(a), 67.36(a), 67.37, or 67.39(a) of this chapter; and

(2) That is demise chartered to a coastwise qualified citizen under §§ 67.33, 67.35(c), 67.36(c), 67.37, 67.39(c), or 67.41 of this chapter.

(b) This subpart applies to a vessel with a coastwise endorsement issued on or after August 9, 2004. It does not apply to a vessel under subpart D of this part.

§ 68.55 Definitions.

In addition to the terms defined in § 67.3 of this chapter, as used in this subpart—

Affiliate means, with respect to any person, any other person that is—

(1) Directly or indirectly controlled by, under common control with, or controlling that person; or

(2) Named as being part of the same consolidated group in any report or other document submitted to the United States Securities and Exchange Commission or the Internal Revenue Service.

Cargo does not include cargo to which title is held for non-commercial reasons and primarily for the purpose of evading the requirements of § 68.65(a)(2).

Oil has the meaning given that term in 46 U.S.C. 2101(20).

Operation or management, for vessels, means all activities related to the use of vessels to provide services. These activities include, but are not limited to, ship agency; ship brokerage; activities performed by a vessel operator or demise charterer in exercising direction and control of a vessel, such as crewing, victualing, storing, and maintaining the vessel and ensuring its safe navigation; and activities associated with controlling the use and employment of the vessel under a time charter or other use agreement. It does not include activities directly associated with making financial investments in vessels or the receipt of earnings derived from these investments.

Passive investment means an investment in which neither the investor nor any affiliate of the investor is involved in, or has the power to be involved in, the formulation, determination, or direction of any activity or function concerning the use, operation, or management of the asset that is the subject of the investment.

Qualified proprietary cargo means—

(1) Oil, petroleum products, petrochemicals, or liquefied natural gas cargo that is beneficially owned by the person who submits to the Director, National Vessel Documentation Center, an application or annual certification under § 68.65(a)(2), or by an affiliate of that person, immediately before, during, or immediately after the cargo is carried in coastwise trade on a vessel owned by that person;

(2) Oil, petroleum products, petrochemicals, or liquefied natural gas cargo not beneficially owned by the person who submits to the Director, National Vessel Documentation Center, an application or an annual certification under § 68.65(a)(2), or by an affiliate of that person, but that is carried in coastwise trade by a vessel owned by that person and which is part of an arrangement in which vessels owned by that person and at least one other person are operated collectively as one fleet, to the extent that an equal amount of oil, petroleum products, petrochemicals, or liquefied natural gas cargo beneficially owned by that person, or an affiliate of that person, is carried in coastwise trade on one or more other vessels, not owned by that person, or an affiliate of that person, if the other vessel or vessels are also part of the same arrangement;

(3) In the case of a towing vessel associated with a non-self-propelled tank vessel where the two vessels function as a single self-propelled vessel, oil, petroleum products, petrochemicals, or liquefied natural gas

cargo that is beneficially owned by the person who owns both the towing vessel and the non-self-propelled tank vessel, or any United States affiliate of that person, immediately before, during, or immediately after the cargo is carried in coastwise trade on either of the two vessels; or

(4) Any oil, petroleum products, petrochemicals, or liquefied natural gas cargo carried on any vessel that is either a self-propelled tank vessel having a length of at least 210 meters (about 689 feet) or a tank vessel that is a liquefied natural gas carrier that—

(i) Was delivered by the builder of the vessel to the owner of the vessel after December 31, 1999; and

(ii) Was purchased by a person for the purpose, and with the reasonable expectation, of transporting on the vessel liquefied natural gas or unrefined petroleum beneficially owned by the owner of the vessel, or an affiliate of the owner, from Alaska to the continental United States.

Sub-charter means all types of charters or other contracts for the use of a vessel that are subordinate to a charter. The term includes, but is not limited to, a demise charter, a time charter, a voyage charter, a space charter, and a contract of affreightment.

United States affiliate means, with respect to any person, an affiliate the principal place of business of which is located in the United States.

§ 68.60 Eligibility of a vessel for a coastwise endorsement under this subpart.

(a) To be eligible for a coastwise endorsement under 46 U.S.C. 12106(e) and to operate in coastwise trade under 46 U.S.C. 12106(e) and 12110(b), a vessel must meet the following:

(1) The vessel is eligible for documentation under 46 U.S.C. 12102.

(2) The vessel is eligible for a coastwise endorsement under § 67.19(c) of this chapter and has not lost coastwise eligibility under § 67.19(d) of this chapter.

(3) The person that owns the vessel (or, if the vessel is owned by a trust or similar arrangement, the beneficiary of the trust or similar arrangement) makes the certification in § 68.65.

(4) The person that owns the vessel has transferred to a qualified U.S. citizen under 46 U.S.C. app. 802 full possession, control, and command of the vessel through a demise charter in which the demise charterer is considered the owner *pro hac vice* during the term of the charter.

(5) The charterer must certify to the Director, National Vessel Documentation Center, that the charterer is a citizen of the United States for engaging in the coastwise trade under 46 U.S.C. app. 802.

(6) The demise charter is for a period of at least 3 years, unless a shorter period is authorized by the Director, National Vessel Documentation Center, under circumstances such as—

(i) When the vessel's remaining life would not support a charter of 3 years; or

(ii) To preserve the use or possession of the vessel.

(b) To apply for a coastwise endorsement for a vessel under a demise charter, see § 68.70 and, for a barge, see § 68.75.

Note to § 68.60: Section 608(b) of Public Law 108–293 provides special requirements for certain vessels in the Alaska trade.

§ 68.65 Annual ownership certification.

(a) At the time of initial application for documentation and at the time for annual renewal of the endorsement as required by § 67.163 of this chapter, the person that owns a vessel with a coastwise endorsement under § 68.60 must certify in writing to the Director, National Vessel Documentation Center—

(1) That the person who owns a vessel with a coastwise endorsement under § 68.60—

(i) Is a leasing company, bank, or financial institution;

(ii) Owns, or holds the beneficial interest in, the vessel solely as a passive investment;

(iii) Does not operate any vessel for hire and is not an affiliate of any person who operates any vessel for hire; and

(iv) Is independent from, and not an affiliate of, any charterer of the vessel or any other person who has the right, directly or indirectly, to control or direct the movement or use of the vessel.

(2) For vessels under paragraph (b) of this section, that—

(i) The aggregate book value of the vessels owned by that person and United States affiliates of that person does not exceed 10 percent of the aggregate book value of all assets owned by that person and its United States affiliates;

(ii) Not more than 10 percent of the aggregate revenues of that person and its United States affiliates is derived from the ownership, operation, or management of vessels;

(iii) At least 70 percent of the aggregate tonnage of all cargo carried by all vessels owned by that person and its United States affiliates and documented under 46 U.S.C. 12106 is qualified proprietary cargo;

(iv) Any cargo other than qualified proprietary cargo carried by all vessels owned by that person and its United States affiliates and documented under 46 U.S.C. 12106 consists of oil, petroleum products, petrochemicals, or liquified natural gas;

(v) No vessel owned by that person or any of its United States affiliates and documented under 46 U.S.C. 12106 carries molten sulphur; and

(vi) That person owned one or more vessels documented as of August 9, 2004, under § 67.20, as that section was in effect on that date.

(b) Paragraph (a)(2) of this section applies only to—

(1) A tank vessel having a tonnage of not less than 6,000 gross tons, as measured under 46 U.S.C. 14502 (or an alternative tonnage measured under 46 U.S.C. 14302 as prescribed under 46 U.S.C. 14104); or

(2) A towing vessel associated with a non-self-propelled tank vessel that meets the requirements of paragraph (b)(1) of this section, where the two vessels function as a single self-propelled vessel.

Note to § 68.65: The Secretary of Transportation may waive or reduce the qualified proprietary cargo requirement of § 68.65(a)(2)(iii) for a vessel if the person that owns the vessel (or, if the vessel is owned by a trust or similar arrangement, the beneficiary of the trust or similar arrangement) notifies the Secretary that circumstances beyond the direct control of the person that owns the vessel or its affiliates prevent, or reasonably threaten to prevent, the person that owns the vessel from satisfying this requirement, and the Secretary does not, with good cause, determine otherwise. The waiver or reduction applies during the period of time that the circumstances exist.

§ 68.70 Application procedure for vessels other than barges to be operated in coastwise trade without being documented.

(a) The person that owns the vessel (other than a barge under § 68.75) and that seeks a coastwise endorsement under § 68.60 must submit the following to the National Vessel Documentation Center:

(1) Application for Initial Issue, Exchange, or Replacement of Certificate of Documentation; or Redocumentation (form CG–1258);

(2) Title evidence, if applicable;

(3) Mortgagee consent on form CG–4593, if applicable;

(4) If the application is for replacement of a mutilated document or for exchange of documentation, the outstanding Certificate of Documentation;

(5) The certification required by § 68.65(a)(1) or, if a vessel under § 68.65(b), the certification required by § 68.65(a)(2);

(6) A certification in the form of an affidavit and, if requested by the Director, National Vessel Documentation Center, supporting documentation establishing the following facts with respect to the transaction from an individual who is authorized to provide certification on behalf of the person that owns the vessel and who is an officer in a corporation, a partner in a partnership, a member of the board of managers in a limited liability company, or their equivalent. The certificate must certify that the person that owns the vessel has transferred to a qualified United States citizen under 46 U.S.C. app. 802 full possession, control, and command of the U.S.-built vessel through a demise charter in which the demise charterer is considered the owner *pro hac vice* during the term of the charter.

(7) A copy of the charter, which must provide that the charterer is deemed to be the owner *pro hac vice* for the term of the charter.

(b) The charterer must submit the following to the National Vessel Documentation Center:

(1) A certificate certifying that the charterer is a citizen of the United States for the purpose of engaging in the coastwise trade under 46 U.S.C. app. 802.

(2) Detailed citizenship information in the format of form CG–1258, Application for Documentation, section G, citizenship. The citizenship information may be attached to the form CG–1258 that is submitted under paragraph (a)(1) of this section and must be signed by, or on behalf of, the charterer.

(c) Whenever a charter submitted under paragraph (a)(7) of this section is amended, the vessel owner must file a copy of the amendment with the Director, National Vessel Documentation Center, within 10 days after the effective date of the amendment.

(d) Whenever the charterer of a vessel under paragraph (a) of this section enters into a sub-charter that is a demise charter with another person for the use of the vessel, the charterer must file a copy of the sub-charter and amendments to the sub-charter with the Director, National Vessel Documentation Center, within 10 days after the effective date of the sub-charter and the sub-charterer must provide detailed citizenship information in the format of form CG–1258, Application for Documentation, section G, citizenship.

(e) Whenever the charterer of a vessel under paragraph (a) of this section enters into a sub-charter other than a demise charter with another person for the use of the vessel, the charterer must file a copy of the sub-charter and amendments to the sub-charter with the Director, National Vessel Documentation Center, within 10 days after a request by the Director to do so.

(f) A person that submits a false certification under this section is subject to penalty under 46 U.S.C. 12122 and 18 U.S.C. 1001.

§ 68.75 Application procedure for barges to be operated in coastwise trade without being documented.

(a) The person that owns a barge qualified to engage in coastwise trade must submit the following to the National Vessel Documentation Center:

(1) The certification required by § 68.65(a)(1) or (a)(2).

(2) A certification in the form of an affidavit and, if requested by the Director, National Vessel Documentation Center, supporting documentation establishing the following facts with respect to the transaction from an individual who is authorized to provide certification on behalf of the person that owns the barge and who is an officer in a corporation, a partner in a partnership, a member of the board of managers in a limited liability company, or their equivalent. The certificate must certify the following:

(i) That the person that owns the barge is organized under the laws of the United States or a State.

(ii) That the person that owns the barge has transferred to a qualified United States citizen under 46 U.S.C. app. 802 full possession, control, and command of the U.S.-built barge through a demise charter in which the demise charterer is considered the owner *pro hac vice* during the term of the charter.

(iii) That the barge is qualified to engage in the coastwise trade and that it is owned by a person eligible to own vessels documented under 46 U.S.C. 12102(e).

(3) A copy of the charter, which must provide that the charterer is deemed to be the owner *pro hac vice* for the term of the charter.

(b) The charterer must submit the following to the National Vessel Documentation Center:

(1) A certificate certifying that the charterer is a citizen of the United States for engaging in the coastwise trade under 46 U.S.C. app. 802.

(2) Detailed citizenship information in the format of form CG–1258, Application for Documentation, section G, citizenship. The citizenship information must be signed by, or on behalf of, the charterer.

(c) Whenever a charter under paragraph (a) of this section is amended, the barge owner must file a copy of the amendment with the Director, National Vessel Documentation Center, within 10 days after the effective date of the amendment.

(d) Whenever the charterer of a barge under paragraph (a) of this section enters into a sub-charter that is a demise charter with another person for the use of the barge, the charterer must file a copy of the sub-charter and amendments to the sub-charter with the Director, National Vessel Documentation Center, within 10 days after the effective date of the sub-charter and the sub-charterer must provide detailed citizenship information in the format of form CG–1258, Application for Documentation, section G, citizenship.

(e) Whenever the charterer of a barge under paragraph (a) of this section enters into a sub-charter other than a demise charter with another person for the use of the barge, the charterer must file a copy of the sub-charter and amendments to the sub-charter with the Director, National Vessel Documentation Center, within 10 days after a request by the Director to do so.

(f) A person that submits a false certification under this section is subject to penalty under 46 U.S.C. 12122 and 18 U.S.C. 1001.

§ 68.80 Invalidation of a coastwise endorsement.

In addition to the events in § 67.167(c)(1) through (c)(9) of this chapter, a Certificate of Documentation together with a coastwise endorsement under this subpart becomes invalid when—

(a) The owner fails to make the certification required by § 68.65 or ceases to meet the requirements of the certification on file;

(b) The demise charter expires or is transferred to another charterer; or

(c) The citizenship of the charterer or sub-charterer changes to the extent that they are no longer qualified for a coastwise endorsement.

22. Add new subpart D, consisting of §§ 68.100 through 68.111, to read as follows:

Subpart D—Vessels With a Coastwise Endorsement Issued Before August 9, 2004, and Their Replacements That Are Demise Chartered to Coastwise Qualified Citizens

Sec.

Subpart D—Vessels With a Coastwise Endorsement Issued Before August 9, 2004, and Their Replacements That Are Demised Chartered to Coastwise-Qualified Citizens

§ 68.100 Purpose and applicability.

(a) This subpart contains requirements for the documentation of U.S.-built vessels in the coastwise trade that were granted special rights under the Coast Guard and Maritime Transportation Action of 2004 (Pub. L. 108–293).

(b) This subpart applies to—

(1) A vessel under a demise charter that was eligible for, and received, a document with a coastwise endorsement under § 67.19 of this chapter and 46 U.S.C. 12106(e) before August 9, 2004;

(2) A barge deemed eligible under 46 U.S.C. 12106(e) and 12110(b) to operate in coastwise trade without being documented before August 9, 2004; and

(3) A replacement vessel of a similar size and function for any vessel under paragraphs (b)(1) through (b)(3) of this section.

(c) Except for vessels under paragraph (d) of this section, this subpart applies to a certificate of documentation, or renewal of one, endorsed with a coastwise endorsement for a vessel under 46 U.S.C. 12106(e) or a replacement vessel of a similar size and function that was issued before August 9, 2004, as long as the vessel is owned by the person named in the certificate, or by a subsidiary or affiliate of that person, and the controlling interest in the owner has not been transferred to a person that was not an affiliate of the owner as of August 9, 2004.

(d) With respect to offshore supply vessels with a certificate of documentation endorsed with a coastwise endorsement as of August 9, 2004, this subpart applies until August 9, 2007. On and after August 9, 2007, subpart C of this part applies to these vessels.

§ 68.103 Definitions.

In addition to the terms defined in § 67.3 of this chapter, as used in this subpart—

Affiliate means a person that is less than 50 percent owned or controlled by another person.

Group means the person that owns a vessel, the parent of that person, and all subsidiaries and affiliates of the parent of that person.

Offshore supply vessel means a motor vessel of more than 15 gross tons but less than 500 gross tons as measured under 46 U.S.C. 14502, or an alternate tonnage measured under 46 U.S.C. 14302 as prescribed under 46 U.S.C. 14104, that regularly carries goods, supplies, individuals in addition to the crew, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources.

Operation or management of vessels means all activities related to the use of vessels to provide services. These activities include ship agency; ship brokerage; activities performed by a vessel operator or demise charterer in exercising direction and control of a vessel, such as crewing, victualing, storing, and maintaining the vessel and ensuring its safe navigation; and activities associated with controlling the use and employment of the vessel under a time charter or other use agreement. It does not include activities directly associated with making financial investments in vessels or the receipt of earnings derived from these investments.

Parent means any person that directly or indirectly owns or controls at least 50 percent of another person. If an owner's parent is directly or indirectly controlled at least 50 percent by another person, that person is also a parent of the owner. Therefore, an owner may have multiple parents.

Person means an individual; corporation; partnership; limited liability partnership; limited liability company; association; joint venture; trust arrangement; and the government of the United States, a State, or a political subdivision of the United States or a State; and includes a trustee, beneficiary, receiver, or similar representative of any of them.

Primarily engaged in leasing or other financing transactions means lease financing, in which more than 50 percent of the aggregate revenue of a person is derived from banking, investing, lease financing, or other similar transactions.

Replacement vessel means—

(1) A temporary replacement vessel for a period not to exceed 180 days if the vessel described in § 68.50 is unavailable due to an act of God or a marine casualty; or

(2) A permanent replacement vessel if—

(i) The vessel described in § 68.50 is unavailable for more than 180 days due to an act of God or a marine casualty; or

(ii) A contract to purchase or construct a replacement vessel is executed not later than December 31, 2004.

Sub-charter means all types of charters or other contracts for the use of a vessel that are subordinate to a charter. The term includes, but is not limited to, a demise charter, a time charter, a voyage charter, a space charter, and a contract of affreightment.

Subsidiary means a person at least 50 percent of which is directly or indirectly owned or controlled by another person.

§ 68.105 Eligibility of a vessel for a coastwise endorsement under this subpart.

(a) Except as under paragraphs (b) through (e) of this section, to be eligible for a coastwise endorsement under 46 U.S.C. 12106(e) and to operate in coastwise trade under 46 U.S.C. 12106(e) and 12110(b), a vessel under a demise charter must meet the following:

(1) The vessel is eligible for documentation under 46 U.S.C. 12102.

(2) The vessel is eligible for a coastwise endorsement under § 67.19(c) of this chapter, has not lost coastwise eligibility under § 67.19(d) of this chapter, and was financed with lease financing.

(3) The person that owns the vessel, the parent of that person, or a subsidiary of the parent of that person is primarily engaged in leasing or other financing transactions.

(4) The person that owns the vessel is organized under the laws of the United States or of a State.

(5) None of the following is primarily engaged in the direct operation or management of vessels:

(i) The person that owns the vessel.

(ii) The parent of the person that owns the vessel.

(iii) The group of which the person that owns the vessel is a member.

(6) The ownership of the vessel is primarily a financial investment without the ability and intent to directly or indirectly control the vessel's operations by a person not primarily engaged in the direct operation or management of vessels.

(7) The majority of the aggregate revenues of each of the following is not derived from the operation or management of vessels:

(i) The person that owns the vessel.

(ii) The parent of the person that owns the vessel.

(iii) The group of which the person that owns the vessel is a member.

(8) None of the following is primarily engaged in the operation or management of commercial, foreign-flag vessels used for the carriage of cargo for parties unrelated to the vessel's owner or charterer:

(i) The person that owns the vessel.

(ii) The parent of the person that owns the vessel.

(iii) The group of which the person that owns the vessel is a member.

(9) The person that owns the vessel has transferred to a qualified U.S. citizen under 46 U.S.C. app. 802 full possession, control, and command of the U.S.-built vessel through a demise charter in which the demise charterer is considered the owner *pro hac vice* during the term of the charter.

(10) The charterer must certify to the Director, National Vessel Documentation Center, that the charterer is a citizen of the United States for engaging in the coastwise trade under 46 U.S.C. app. 802.

(11) The demise charter is for a period of at least 3 years, unless a shorter period is authorized by the Director, National Vessel Documentation Center, under circumstances such as—

(i) When the vessel's remaining life would not support a charter of 3 years; or

(ii) To preserve the use or possession of the vessel.

(b) A vessel under a demise charter that was eligible for, and received, a document with a coastwise endorsement under § 67.19 of this chapter and 46 U.S.C. 12106(e) before August 9, 2004, may continue to operate under that endorsement on and after that date and may renew the document and endorsement if the certificate of documentation is not subject to—

(1) Exchange under § 67.167(b)(1) through (b)(3) of this chapter;

(2) Deletion under § 67.171(a)(1) through (a)(6) of this chapter; or

(3) Cancellation under § 67.173 of this chapter.

(c) A vessel under a demise charter that was constructed under a building contract that was entered into before February 4, 2004, in reliance on a letter ruling from the Coast Guard issued before February 4, 2004, is eligible for documentation with a coastwise endorsement under § 67.19 of this chapter and 46 U.S.C. 12106(e). The vessel may continue to operate under that endorsement and may renew the document and endorsement if the certificate of documentation is not subject to—

(1) Exchange under § 67.167(b)(1) through (b)(3) of this chapter;

(2) Deletion under § 67.171(a)(1) through (a)(6) of this chapter; or

(3) Cancellation under § 67.173 of this chapter.

(d) A barge deemed eligible under 46 U.S.C. 12106(e) and 12110(b) to operate in coastwise trade before August 9, 2004, may continue to operate in that trade after that date unless—

(1) The ownership of the barge changes in whole or in part;

(2) The general partners of a partnership owning the barge change by addition, deletion, or substitution;

(3) The State of incorporation of any corporate owner of the barge changes;

(4) The barge is placed under foreign flag;

(5) Any owner of the barge ceases to be a citizen within the meaning of part 67, subpart C, of this chapter; or

(6) The barge ceases to be capable of transportation by water.

(e) A barge under a demise charter that was constructed under a building contract that was entered into before February 4, 2004, in reliance on a letter ruling from the Coast Guard issued before February 4, 2004, is eligible to operate in coastwise trade under 46 U.S.C. 12106(e) and 12110(b). The barge may continue to operate in coastwise trade unless—

(1) The ownership of the barge changes in whole or in part;

(2) The general partners of a partnership owning the barge change by addition, deletion, or substitution;

(3) The State of incorporation of any corporate owner of the barge changes;

(4) The barge is placed under foreign flag;

(5) Any owner of the barge ceases to be a citizen within the meaning of subpart C of this part; or

(6) The barge ceases to be capable of transportation by water.

§ 68.107 Application procedure for vessels other than barges to be operated in coastwise trade without being documented.

(a) In addition to the items under § 67.141 of this chapter, the person that owns the vessel (other than a barge under § 68.109) and that seeks a coastwise endorsement under this subpart must submit the following to the National Vessel Documentation Center:

(1) A certification in the form of an affidavit and, if requested by the Director, National Vessel Documentation Center, supporting documentation establishing the following facts with respect to the transaction from an individual who is authorized to provide certification on behalf of the person that owns the vessel and who is an officer in a corporation, a partner in a partnership, a member of the board of managers in a limited liability company, or their equivalent. The certificate must certify the following:

(i) That the person that owns the vessel, the parent of that person, or a subsidiary of a parent of that person is primarily engaged in leasing or other financing transactions.

(ii) That the person that owns the vessel is organized under the laws of the United States or a State.

(iii) That none of the following is primarily engaged in the direct operation or management of vessels:

(A) The person that owns the vessel.

(B) The parent of the person that owns the vessel.

(C) The group of which the person that owns the vessel is a member.

(iv) That ownership of the vessel is primarily a financial investment without the ability and intent to directly or indirectly control the vessel's operations by a person not primarily engaged in the direct operation or management of vessels.

(v) That the majority of the aggregate revenues of each of the following is not derived from the operation or management of vessels:

(A) The person that owns the vessel.

(B) The parent of the person that owns the vessel.

(C) The group of which the person that owns the vessel is a member.

(vi) That none of the following is primarily engaged in the operation or management of commercial, foreign-flag vessels used for the carriage of cargo for parties unrelated to the vessel's owner or charterer:

(A) The person that owns the vessel.

(B) The parent of the person that owns the vessel.

(C) The group of which the person that owns the vessel is a member.

(vii) That the person that owns the vessel has transferred to a qualified United States citizen under 46 U.S.C. app. 802 full possession, control, and command of the U.S.-built vessel through a demise charter in which the demise charterer is considered the owner *pro hac vice* during the term of the charter.

(viii) That the vessel is financed with lease financing.

(2) A copy of the charter, which must provide that the charterer is deemed to be the owner *pro hac vice* for the term of the charter.

(b) The charterer must submit the following to the National Vessel Documentation Center:

(1) A certificate certifying that the charterer is a citizen of the United States for the purpose of engaging in the coastwise trade under 46 U.S.C. app. 802.

(2) Detailed citizenship information in the format of form CG–1258, Application for Documentation, section G, citizenship. The citizenship information may be attached to the form CG–1258 that is submitted under § 67.141 of this chapter and must be signed by, or on behalf of, the charterer.

(c) Whenever a charter under paragraph (a) of this section is amended, the vessel owner must file a copy of the amendment with the Director, National Vessel Documentation Center, within 10 days after the effective date of the amendment.

(d) Whenever the charterer of a vessel under paragraph (a) of this section enters into a sub-charter that is a demise charter with another person for the use of the vessel, the charterer must file a copy of the sub-charter and amendments to the sub-charter with the Director, National Vessel Documentation Center, within 10 days after the effective date of the sub-charter and the sub-charterer must provide detailed citizenship information in the format of form CG–1258, Application for Documentation, section G, citizenship.

(e) Whenever the charterer of a vessel under paragraph (a) of this section enters into a sub-charter other than a demise charter with another person for the use of the vessel, the charterer must file a copy of the sub-charter and amendments to the sub-charter with the Director, National Vessel Documentation Center, within 10 days after a request by the Director to do so.

(f) A person that submits a false certification under this section is subject to penalty under 46 U.S.C. 12122 and 18 U.S.C. 1001.

§ 68.109 Application procedure for barges to be operated in coastwise trade without being documented.

(a) The person that owns a barge qualified to engage in coastwise trade under the lease-financing provisions of 46 U.S.C. 12106(e) must submit the following to the National Vessel Documentation Center:

(1) A certification in the form of an affidavit and, if requested by the Director, National Vessel Documentation Center, supporting documentation establishing the following facts with respect to the transaction from an individual who is authorized to provide certification on behalf of the person that owns the barge and who is an officer in a corporation, a partner in a partnership, a member of the board of managers in a limited liability company, or their equivalent. The certificate must certify the following:

(i) That the person that owns the barge, the parent of that person, or a subsidiary of the parent of that person is primarily engaged in leasing or other financing transactions.

(ii) That the person that owns the barge is organized under the laws of the United States or a State.

(iii) That none of the following is primarily engaged in the direct operation or management of vessels:

(A) The person that owns the barge.

(B) The parent of the person that owns the barge.

(C) The group of which the person that owns the barge is a member.

(iv) That ownership of the barge is primarily a financial investment without the ability and intent to directly or indirectly control the barge's operations by a person not primarily engaged in the direct operation or management of the barge.

(v) That the majority of the aggregate revenues of each of the following is not derived from the operation or management of vessels:

(A) The person that owns the barge.

(B) The parent of the person that owns the barge.

(C) The group of which the person that owns the barge is a member.

(vi) That none of the following is primarily engaged in the operation or management of commercial, foreign-flag vessels used for the carriage of cargo for parties unrelated to the vessel's owner or charterer:

(A) The person that owns the barge.

(B) The parent of the person that owns the barge.

(C) The group of which the person that owns the barge is a member.

(vii) That the person that owns the barge has transferred to a qualified United States citizen under 46 U.S.C. app. 802 full possession, control, and command of the U.S.-built barge through a demise charter in which the demise charterer is considered the owner *pro hac vice* for the term of the charter.

(viii) That the barge is qualified to engage in the coastwise trade and that it is owned by a person eligible to own vessels documented under 46 U.S.C. 12102(e).

(ix) That the barge is financed with lease financing.

(2) A copy of the charter, which must provide that the charterer is deemed to be the owner *pro hac vice* for the term of the charter.

(b) The charterer must submit the following to the National Vessel Documentation Center:

(1) A certificate certifying that the charterer is a citizen of the United States for engaging in the coastwise trade under 46 U.S.C. app. 802.

(2) Detailed citizenship information in the format of form CG–1258, Application for Documentation, section G, citizenship. The citizenship information must be signed by, or on behalf of, the charterer.

(c) Whenever a charter under paragraph (a) of this section is amended, the barge owner must file a copy of the amendment with the Director, National Vessel Documentation Center, within 10 days after the effective date of the amendment.

(d) Whenever the charterer of a barge under paragraph (a) of this section enters into a sub-charter that is a demise charter with another person for the use of the barge, the charterer must file a copy of the sub-charter and amendments to the sub-charter with the Director, National Vessel Documentation Center, within 10 days after the effective date of the sub-charter and the sub-charterer must provide detailed citizenship information in the format of form CG–1258, Application for Documentation, section G, citizenship.

(e) Whenever the charterer of a barge under paragraph (a) of this section enters into a sub-charter other than a demise charter with another person for the use of the barge, the charterer must file a copy of the sub-charter and amendments to the sub-charter with the Director, National Vessel Documentation Center, within 10 days after a request by the Director to do so.

(f) A person that submits a false certification under this section is subject to penalty under 46 U.S.C. 12122 and 18 U.S.C. 1001.

§ 68.111 Invalidation of a coastwise endorsement.

(a) In addition to the events in § 67.167(c)(1) through (c)(9) of this chapter, a Certificate of Documentation together with a coastwise endorsement in effect before February 4, 2004, becomes invalid when—

(1) The demise charter expires or is transferred to another charterer;

(2) The citizenship of the charterer or sub-charterer changes to the extent that they are no longer qualified for a coastwise endorsement; or

(3) Neither the person that owns the vessel, nor the parent of that person, nor a subsidiary of the parent of that person is primarily engaged in leasing or other financing transactions.

(b) In addition to the events in § 67.167(c)(1) through (c)(9) of this chapter, a Certificate of Documentation together with a coastwise endorsement in effect on or after February 4, 2004, and before August 9, 2004, becomes invalid when—

(1) The demise charter expires or is transferred to another charterer;

(2) The citizenship of the charterer or sub-charterer changes to the extent that they are no longer qualified for a coastwise endorsement;

(3) Neither the person that owns the vessel, nor the parent of that person, nor any subsidiary of the parent of that

person is primarily engaged in leasing or other financing transactions;

(4) The majority of the aggregate revenues of at least one of the following is derived from the operation or management of vessels:

(i) The person that owns the vessel.

(ii) The parent of the person that owns the vessel.

(iii) The group of which the person that owns the vessel is a member; or

(5) At least one of the following is primarily engaged in the operation or management of commercial, foreign-flag vessels used for the carriage of cargo for parties unrelated to the vessel's owner or charterer:

(i) The person that owns the vessel.

(ii) The parent of the person that owns the vessel.

(iii) The group of which the person that owns the vessel is a member.

(c) When the coastwise endorsement for a vessel to which this subpart applies becomes invalid under paragraph (a)(1) or (b)(1) of this section, the vessel remains eligible for documentation under this subpart provided it is a vessel to which § 68.100(b) or (c) applies.

Dated: October 6, 2006.

B.M. Salerno,

Rear Admiral, U.S. Coast Guard, Acting Assistant Commandant for Prevention.

[FR Doc. E6–17037 Filed 10–17–06; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1906; MB Docket No. 04–20; RM–10842, RM–11128, RM–11129, RM–11130]

Radio Broadcasting Services; Cambridge, MD, Chincoteague, VA; Newark, St. Michaels, and Stockton, MD

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: In response to a petition for reconsideration of a *Report and Order*, this *Memorandum Opinion and Order* denies a request by CWA Broadcasting, Inc. (''Petitioner''), the licensee of Station WINX–FM, St. Michaels, Maryland, to upgrade its present Channel 232A to Channel 232B1, reallot Channel 232B1 to Cambridge, and modify Station WINX–FM's license accordingly. The *Memorandum Opinion and Order* also denies the Petitioner's alternative request to allot Channel 232B1 to Oxford, Maryland, and to change Petitioner's community of license from St. Michaels to Oxford, Maryland, as untimely and in contravention of Section 1.420(d) of the Commission's Rules.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MB Docket No. 04–20, adopted September 20, 2006, and released September 22, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* This document is not subject to the Congressional Review Act. The Commission is, therefore, not required to send a copy of this *Memorandum Opinion and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A), because the petition for reconsideration was denied.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–17349 Filed 10–17–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1886; MB Docket No. 06–65; RM–11320; RM–11335]

Radio Broadcasting Service; Alva, OK; Ashland, Greensburg, and Kinsley, KS; and Medford, and Mustang, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division: grants in part a counterproposal (RM–11335) filed by Chisholm Trail Broadcasting Company (''Chisholm'') only to the extent of allotting Channel 288C3 at Kinsley, Kansas, and denying in all other respects; dismisses a Petition for Rule Making (11320) filed by OKAN Community Radio to allot Channel 288C3 at Ashland, Kansas for lack of continuing interest; and dismisses per Chisholm's request its pending Petition for Rule Making to allot *inter alia* Channel 259C1 at Greensburg, Kansas. Channel 288C3 can be allotted at Kinsley, Kansas in compliance with the Commission's minimum distance separation requirements at 37–53–20 North Latitude and 99–24–34 West Longitude with a site restriction of 3.8 kilometers (2.4 miles) south of city reference.

DATES: Effective November 6, 2006.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 06–65, adopted September 20, 2006, and released September 22, 2006. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by adding Kinsley, Channel 288C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–17346 Filed 10–17–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216045–6045–01; I.D. 101206F]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Processor Vessels Using Pot Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2006 directed fishing allowance (DFA) of Pacific cod specified for catcher processor vessels using pot gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 15, 2006, until 2400 hrs, A.l.t., December 31, 2006.

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

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

The 2006 Pacific cod DFA specified for catcher processor vessels using pot gear in the BSAI is 2,913 metric tons as established by the 2006 and 2007 final harvest specifications for groundfish in the BSAI (71 FR 10894, March 3, 2006) and the adjustment on March 14, 2006 (71 FR 13777, March 17, 2006).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the 2006 Pacific cod DFA specified for catcher processor vessels using pot gear in the BSAI has been reached. Therefore, the Regional Administrator is prohibiting directed fishing for Pacific cod by catcher processor vessels using pot gear in the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher processor vessels using pot gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 12, 2006.

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

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

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

Dated: October 12, 2006.

Alan D. Risenhoover,

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

[FR Doc. 06–8747 Filed 10–13–06; 2:36 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 201
Wednesday, October 18, 2006

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM355; Notice No. 25–06–10–SC]

Special Conditions: Dassault Aviation Model Falcon 7X Airplane; Interaction of Systems and Structures, Limit Pilot Forces, and High Intensity Radiated Fields (HIRF) Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Dassault Aviation Model Falcon 7X airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features include interaction of systems and structures, limit pilot forces, and electrical and electronic flight control systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: We must receive your comments by December 4, 2006.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM355, 1601 Lind Avenue SW., Renton, Washington, 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM355. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Thomas Rodriguez, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057–3356; telephone (425) 227–1137; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On June 4, 2002, Dassault Aviation, 9 rond Point des Champs Elysées, 75008, Paris, France, applied for a type certificate for its new Model Falcon 7X airplane. The Model Falcon 7X is a 19 passenger transport category airplane, powered by three aft mounted Pratt & Whitney PW307A high bypass ratio turbofan engines. The airplane is operated using a fly-by-wire (FBW) primary flight control system. This will be the first application of a FBW primary flight control system in a private/corporate use airplane.

The Dassault Aviation Model Falcon 7X design incorporates equipment that was not envisioned when part 25 was created. This equipment affects the interaction of systems and structures, limit pilot forces, and high intensity radiated fields (HIRF) protection. Therefore, special conditions are required to provide the level of safety equivalent to that established by the regulations.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Dassault Aviation must show that the Model Falcon 7X airplane meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–108.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model Falcon 7X because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model Falcon 7X must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36 and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in § 11.19, under § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The Model Falcon 7X airplane will incorporate three novel or unusual design features: interaction of systems and structures, limit pilot forces, and electrical and electronic flight control systems. These proposed special conditions address equipment which may affect the airplane's structural performance, either directly or as a

result of failure or malfunction; pilot limit forces; and electrical and electronic systems which perform critical functions that may be vulnerable to HIRF.

These proposed special conditions are identical or nearly identical to those previously required for type certification of other Dassault airplane models. In general, the proposed special conditions were derived initially from standardized requirements developed by the Aviation Rulemaking Advisory Committee (ARAC), comprised of representatives of the FAA, Europe's Joint Aviation Authorities (now replaced by the European Aviation Safety Agency), and industry.

Additional special conditions will be issued for other novel or unusual design features of the Dassault Model Falcon 7X airplane. These additional proposed special conditions will pertain to the following topics:

Dive Speed Definition With Speed Protection System,

Sudden Engine Stoppage,

High Incidence Protection Function,

Side Stick Controllers,

Lateral-Directional and Longitudinal Stability and Low Energy Awareness,

Flight Envelope Protection: General Limiting Requirements,

Flight Envelope Protection: Normal Load Factor (g) Limiting,

Flight Envelope Protection: Pitch, Roll and High Speed Limiting Functions,

Flight Control Surface Position Awareness,

Flight Characteristics Compliance via Handling Qualities Rating Method,

Operation Without Normal Electrical Power.

Proposed special conditions have been issued for the Model Falcon 7X with the novel or unusual design feature pertaining to Pilot Compartment View–Hydrophobic Coatings in Lieu of Windshield Wipers. This special condition was published for public comment in the **Federal Register** on July 12, 2006 (71 FR 39235).

Discussion

Because of rapid improvements in airplane technology, the applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. Therefore, in addition to the requirements of part 25, subparts C and D, the following three special conditions apply.

Special Condition No. 1. Interaction of Systems and Structures

The Dassault Model Falcon 7X is equipped with systems that may affect the airplane's structural performance either directly or as a result of failure or malfunction. The effects of these systems on structural performance must be considered in the certification analysis. This analysis must include consideration of normal operation and of failure conditions with required structural strength levels related to the probability of occurrence.

Previously, special conditions have been specified to require consideration of the effects of systems on structures. The special condition proposed for the Model Falcon 7X is nearly identical to that issued for other fly-by-wire airplanes.

Special Condition No. 2. Limit Pilot Forces

Like some other certificated transport category airplane models, the Dassault Model Falcon 7X airplane is equipped with a side stick controller instead of a conventional wheel or control stick. This kind of controller is designed to be operated using only one hand. The requirement of § 25.397(c), which defines limit pilot forces and torques for conventional wheel or stick controls, is not appropriate for a side stick controller. Therefore, a special condition is necessary to specify the appropriate loading conditions for this kind of controller.

Special Condition No. 3. High Intensity Radiated Fields (HIRF) Protection

The Dassault Model Falcon X will utilize electrical and electronic systems which perform critical functions. These systems may be vulnerable to HIRF external to the airplane. There is no specific regulation that addresses requirements for protection of electrical and electronic systems from HIRF. With the trend toward increased power levels from ground-based transmitters and the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, a special condition is needed for the Dassault Model Falcon 7X airplane. This special condition requires that avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, adequate protection from exists when there is compliance with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz ...	100	100
200 MHz–400 MHz ...	100	100
400 MHz–700 MHz ...	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to the Dassault Model Falcon 7X. Should Dassault Aviation apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features of the

Dassault Model Falcon 7X airplane. It is not a rule of general applicability, and it affects only the applicant which applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Dassault Aviation Model Falcon 7X airplanes.

1. Interaction of Systems and Structures

In addition to the requirements of part 25, subparts C and D, the following proposed special conditions would apply:

a. For airplanes equipped with systems that affect structural performance—either directly or as a result of a failure or malfunction—the influence of these systems and their failure conditions must be taken into account when showing compliance with the requirements of part 25, subparts C and D. Paragraph c below must be used to evaluate the structural performance of airplanes equipped with these systems.

b. Unless shown to be extremely improbable, the airplane must be designed to withstand any forced structural vibration resulting from any failure, malfunction, or adverse condition in the flight control system. These loads must be treated in accordance with the requirements of paragraph a above.

c. Interaction of Systems and Structures.

(1) General: The following criteria must be used for showing compliance with this special condition for interaction of systems and structures and with § 25.629 for airplanes equipped with flight control systems, autopilots, stability augmentation systems, load alleviation systems, flutter control systems, and fuel management systems. If this special condition is used for other systems, it may be necessary to adapt the criteria to the specific system.

(a) The criteria defined herein address only the direct structural consequences of the system responses and performances. They cannot be considered in isolation but should be included in the overall safety evaluation of the airplane. These criteria may, in some instances, duplicate standards already established for this evaluation. These criteria are applicable only to structures whose failure could prevent continued safe flight and landing. Specific criteria that define acceptable limits on handling characteristics or stability requirements when operating in the system degraded or inoperative modes are not provided in this special condition.

(b) Depending upon the specific characteristics of the airplane, additional studies may be required that go beyond the criteria provided in this special condition in order to demonstrate the capability of the airplane to meet other realistic conditions, such as alternative gust or maneuver descriptions for an airplane equipped with a load alleviation system.

(c) The following definitions are applicable to this paragraph.

Structural performance: Capability of the airplane to meet the structural requirements of part 25.

Flight limitations: Limitations that can be applied to the airplane flight conditions following an in-flight occurrence and that are included in the flight manual (e.g., speed limitations and avoidance of severe weather conditions).

Operational limitations: Limitations, including flight limitations, that can be applied to the airplane operating conditions before dispatch (e.g., fuel, payload, and Master Minimum Equipment List limitations).

Probabilistic terms: The probabilistic terms (probable, improbable, and extremely improbable) used in this Special Conditions are the same as those used in § 25.1309.

Failure condition: The term failure condition is the same as that used in § 25.1309. However, this Special Conditions applies only to system failure conditions that affect the structural performance of the airplane (e.g., system failure conditions that induce loads, change the response of the airplane to inputs such as gusts or pilot actions, or lower flutter margins).

(2) Effects of Systems on Structures.

(a) *General.* The following criteria will be used in determining the influence of a system and its failure conditions on the airplane structure.

(b) *System fully operative.* With the system fully operative, the following apply:

(1) Limit loads must be derived in all normal operating configurations of the system from all the limit conditions specified in subpart C (or used in lieu of those specified in subpart C), taking into account any special behavior of such a system or associated functions or any effect on the structural performance of the airplane that may occur up to the limit loads. In particular, any significant non-linearity (rate of displacement of control surface, thresholds or any other system non-linearities) must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

(2) The airplane must meet the strength requirements of part 25 (static strength, residual strength), using the specified factors to derive ultimate loads from the limit loads defined above. The effect of non-linearities must be investigated beyond limit conditions to ensure that the behavior of the system presents no anomaly compared to the behavior below limit conditions. However, conditions beyond limit conditions need not be considered, when it can be shown that the airplane has design features that will not allow it to exceed those limit conditions.

(3) The airplane must meet the aeroelastic stability requirements of § 25.629.

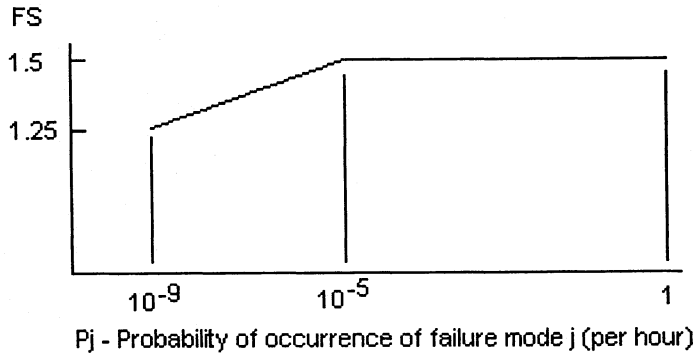
(c) *System in the failure condition.* For any system failure condition not shown to be extremely improbable, the following apply:

(1) At the time of occurrence. Starting from 1g level flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine the loads occurring at the time of failure and immediately after failure.

(i) For static strength substantiation, these loads multiplied by an appropriate factor of safety that is related to the probability of occurrence of the failure are ultimate loads to be considered for design. The factor of safety (FS) is defined in Figure 1.

Figure 1

Factor of safety at the time of occurrence



(ii) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in paragraph (c)(1)(i) of this section. For pressurized cabins, these loads must be combined with the normal operating differential pressure.

(iii) Freedom from aeroelastic instability must be shown up to the speeds defined in § 25.629(b)(2). For failure conditions that result in speed increases beyond V_C/M_C, freedom from aeroelastic instability must be shown to increased speeds, so that the margins intended by § 25.629(b)(2) are maintained.

(iv) Failures of the system that result in forced structural vibrations (oscillatory failures) must not produce loads that could result in detrimental deformation of primary structure.

(2) For the continuation of the flight. For the airplane in the system failed state and considering any appropriate reconfiguration and flight limitations, the following apply:

(i) The loads derived from the following conditions (or used in lieu of the following conditions) at speeds up to V_C/M_C or the speed limitation prescribed for the remainder of the flight must be determined:

(A) the limit symmetrical maneuvering conditions specified in §§ 25.331 and in 25.345.

(B) the limit gust and turbulence conditions specified in §§ 25.341 and in 25.345.

(C) the limit rolling conditions specified in § 25.349 and the limit unsymmetrical conditions specified in §§ 25.367 and 25.427(b) and (c).

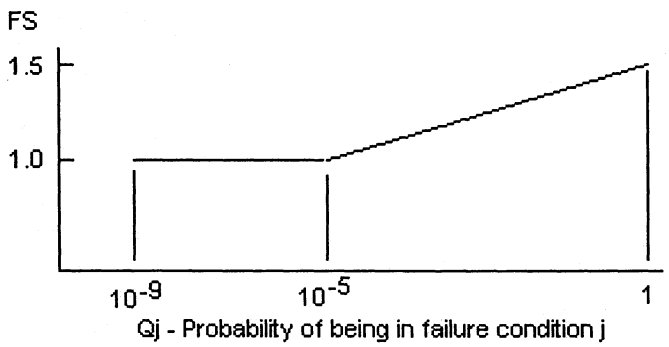
(D) the limit yaw maneuvering conditions specified in § 25.351.

(E) the limit ground loading conditions specified in §§ 25.473 and 25.491.

(ii) For static strength substantiation, each part of the structure must be able to withstand the loads in paragraph (c)(2)(i) of this special condition multiplied by a factor of safety, depending on the probability of being in this failure state. The factor of safety is defined in Figure 2.

Figure 2

Factor of safety for continuation of flight



$Qj = (T_j)(P_j)$

Where:

T_j = Average time spent in failure condition j (in hours)

P_j = Probability of occurrence of failure mode j (per hour)

Note: If P_j is greater than 10^{-3} per flight hour, then a 1.5 factor of safety must be applied to all limit load conditions specified in subpart C.

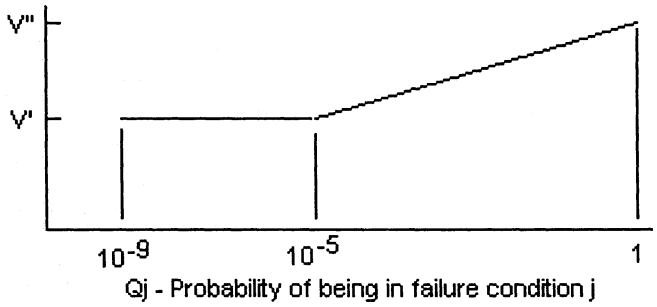
(iii) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in paragraph (c)(2)(ii). For pressurized cabins, these loads must be combined with the normal operating differential pressure.

(iv) If the loads induced by the failure condition have a significant effect on fatigue or damage tolerance, then their effects must be taken into account.

(v) Freedom from aeroelastic instability must be shown up to a speed determined from Figure 3. Flutter clearance speeds V′ and V″ may be based on the speed limitation specified for the remainder of the flight, using the margins defined by § 25.629(b).

Figure 3

Clearance speed



V′ = Clearance speed as defined by § 25.629(b)(2).

V″ = Clearance speed as defined by § 25.629(b)(1).

$Qj = (T_j)(P_j)$

Where:

T_j = Average time spent in failure condition j (in hours)

P_j = Probability of occurrence of failure mode j (per hour)

Note: If P_j is greater than 10^{-3} per flight hour, then the flutter clearance speed must not be less than V″.

(vi) Freedom from aeroelastic instability must also be shown up to V′ in Figure 3 above for any probable system failure condition combined with any damage required or selected for investigation by § 25.571(b).

(3) Consideration of certain failure conditions may be required by other sections of this Part, regardless of calculated system reliability. Where analysis shows the probability of these failure conditions to be less than 10^{-9}, criteria other than those specified in this paragraph may be used for structural substantiation to show continued safe flight and landing.

(d) *Warning considerations.* For system failure detection and warning, the following apply:

(1) The system must be checked for failure conditions, not extremely improbable, that degrade the structural capability below the level required by part 25 or significantly reduce the reliability of the remaining system. As far as reasonably practicable, the flightcrew must be made aware of these failures before flight. Certain elements of the control system, such as mechanical and hydraulic components, may use special periodic inspections, and electronic components may use daily checks in lieu of warning systems to achieve the objective of this requirement. These certification maintenance requirements must be limited to components that are not readily detectable by normal warning systems and where service history shows that inspections will provide an adequate level of safety.

(2) The existence of any failure condition, not extremely improbable, during flight that could significantly affect the structural capability of the airplane and for which the associated reduction in airworthiness can be minimized by suitable flight limitations must be signaled to the flightcrew. For example, failure conditions that result in a factor of safety between the airplane strength and the loads of part 25, subpart C, below 1.25 or flutter margins below V″ must be signaled to the crew during flight.

(e) *Dispatch with known failure conditions.* If the airplane is to be dispatched in a known system failure condition that affects structural performance or affects the reliability of the remaining system to maintain structural performance, then the provisions of these Special Conditions must be met, including the provisions of paragraph (b), for the dispatched condition and paragraph (c) for subsequent failures. Expected operational limitations may be taken into account in establishing P_j as the probability of failure occurrence for determining the safety margin in Figure 1. Flight limitations and expected operational limitations may be taken into account in establishing Qj as the combined probability of being in the dispatched failure condition and the subsequent failure condition for the safety margins in Figures 2 and 3. These limitations must be such that the probability of being in this combined failure state and then subsequently encountering limit load conditions is extremely improbable. No reduction in these safety margins is allowed if the subsequent system failure rate is greater than 1E–3 per flight hour.

2. Limit Pilot Forces

In addition to the requirements of § 25.397(c) the following special condition applies.

The limit pilot forces are:

a. For all components between and including the handle and its control stops.

Pitch	Roll
Nose up 200 lbf (pounds force).	Nose left 100 lbf.
Nose down 200 lbf	Nose right 100 lbf.

b. For all other components of the side stick control assembly, but

excluding the internal components of the electrical sensor assemblies to avoid damage as a result of an in-flight jam.

Pitch	Roll
Nose up 125 lbf	Nose left 50 lbf.
Nose down 125 lbf	Nose right 50 lbf.

3. High Intensity Radiated Fields (HIRF) Protection

a. *Protection from Unwanted Effects of High Intensity Radiated Fields.* Each electrical and electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions is not adversely affected when the airplane is exposed to high intensity radiated fields.

b. For the purposes of this special condition, the following definition applies:

Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on October 10, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–8762 Filed 10–17–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM354; Notice No. 25–06–09–SC]

Special Conditions: Boeing Commercial Airplane Group, Boeing Model 777–200 Series Airplane; Overhead Cross Aisle Stowage Compartments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: The FAA proposes special conditions for the Boeing Model 777–200 series airplanes. This airplane, modified by Boeing Commercial Airplane Group, will have novel or unusual design features associated with overhead cross aisle stowage compartments. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These proposed special conditions contain the additional safety standards the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: We must receive your comments on or before November 7, 2006.

ADDRESSES: You may mail or deliver comments on these special conditions in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM354, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. You must mark your comments: Docket No. NM354.

FOR FURTHER INFORMATION CONTACT: Jayson Claar, FAA, Airframe/Cabin Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2194; facsimile (425) 227–1232.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You may inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these proposed special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On April 20, 2005, Boeing Commercial Airplane Group, Seattle, Washington, applied for a supplemental type certificate to permit installation of overhead cross aisle stowage compartments in Boeing 777–200 series airplanes. The Boeing Model 777–200 series airplanes are large twin engine airplanes with four pairs of Type A exits, a passenger capacity of 440, and a range of 5000 miles. (The Boeing 777–200 airplanes can be configured with various passenger capacities and range).

The regulations do not address the novel and unusual design features associated with the installation of overhead cross aisle stowage compartments installed on the Boeing Model 777–200, making these special conditions necessary. Generally, the requirements for overhead stowage compartments are similar to stowage compartments in remote crew rest compartments (i.e., located on lower lobe, main deck or overhead) already in use on Boeing Model 777–200 and –747 series airplanes. Remote crew rest compartments have been previously installed and certified in the main passenger cabin area, above the main passenger area, and below the passenger cabin area adjacent to the cargo compartment of the Boeing Model 777–200, and –300 series airplanes.

Type Certification Basis

Under the provisions of § 21.101, Boeing Commercial Airplane Group must show that the Boeing Model 777–200, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. T00001SE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. T00001SE for the Boeing Model 777–200 series airplanes include Title 14 Code of Federal Regulations (CFR), part 25, as amended by Amendments 25–1 through 25–82, except for § 25.571(e)(1) which remains at Amendment 25–71, with exceptions. Refer to Type Certificate No. T00001SE, as applicable, for a complete description of the certification basis for this model, including certain special conditions that are not relevant to these proposed special conditions.

If the Administrator finds the applicable airworthiness regulations (part 25 as amended) do not contain adequate or appropriate safety standards for the Boeing Model 777–200 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special

conditions, the Boeing Model 777–200 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in § 11.19, under § 11.38 and they become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The Boeing Model 777–200 will incorporate the following novel or unusual design features: the installation of powered lift-enabled stowage compartments that rise into the overhead area and lower into the emergency exit cross aisle.

The overhead cross aisle stowage compartments are configured to allow stowage of galley type standard containers as well as coats, bags, and other items typically stowed in closets or bins. These stowage compartments will be located above the emergency exit cross aisle at Doors 2 and 4 of Boeing Model 777–200 series airplanes.

Each stowage compartment is accessed from the main deck by a powered lift that lowers and raises the stowage compartment between the overhead and the main deck. In addition, the lift can be hand cranked up and down in the event of a power or lift motor failure. A smoke detection system will be provided in the overhead cross aisle stowage compartments.

Discussion of the Proposed Special Conditions

In general, the requirements listed in these proposed special conditions for overhead cross aisle stowage compartments are similar to those previously approved for overhead crew rest compartments in earlier certification programs, such as for the Boeing Model 777–200 and Model 747 series airplanes. These proposed special conditions establish compartment access, power lift, electrical power, smoke/fire detection, fire extinguisher, fire containment, smoke penetration, and compartment design criteria for the overhead cross aisle stowage compartments. The overhead stowage compartments are not a direct analogy to stowage compartments in remote crew rest compartments installed and certified for Boeing Model 777 series airplanes, but the safety issues raised are similar. Features similar to those considered in the development of previous special conditions for fire protection will be included here also. The proposed requirements would provide an equivalent level of safety to that provided by other Boeing Model 777–200 series airplanes with similar overhead compartments.

Operational Evaluations and Approval

The FAA's Aircraft Certification Service will administer these proposed special conditions, which specify requirements for design approvals (that is, type design changes and supplemental type certificates) of overhead cross aisle stowage compartments.

The Aircraft Evaluation Group of the FAA's Flight Standards Service must evaluate and approve the operational use of overhead cross aisle stowage compartments prior to use. The Aircraft Evaluation Group must receive all instructions for continued airworthiness, including service bulletins, prior to the FAA accepting and issuing approval of the modification.

Proposed Special Condition No. 1, Compartment Access and Placards

Appropriate placards, or other means, are required to address door access and locking to prohibit passenger access and operation of the overhead storage compartment. There must also be a means to preclude anyone from being trapped inside the stowage compartment.

Proposed Special Condition No. 2, Power Lift

The power lift must be designed so the overhead stowage compartment will not jam in the down position, even if lowered on top of a hard structure. The lift must operate at a speed that allows anyone underneath the compartment to move clear without injury. The lift controls must be placed clear of the compartment door and must be pressed continuously for lift operation. Training on operation procedures must be added to appropriate manuals.

Proposed Special Condition No. 3, Manual Lift

There must be a means to manually operate the lift that is independent of the electrical drive system and is capable of overcoming jamming in the drive and lift mechanisms. The lift must be operable by a range of occupants, including a fifth percentile female. The manual lift must be capable of lowering the overhead stowage compartment quickly to the main deck to fight a fire. The manual lift system must be capable of raising the compartment quickly so the cross aisle is not blocked in an emergency. Training on manual operation must be added to appropriate manuals.

Proposed Special Condition No. 4, Handheld Fire Extinguisher

A handheld fire extinguisher appropriate to fight the kinds of fire likely to occur in the overhead stowage compartment must be provided. This handheld fire extinguisher must be adjacent to the overhead compartment. This extinguisher must be in addition to those required for the passenger cabin.

Proposed Special Condition No. 5, Fire Containment

This special condition requires either the installation of a manually activated fire extinguishing system that is accessible from outside the overhead stowage compartment, or a demonstration that the crew could satisfactorily perform the function of extinguishing a fire under the prescribed conditions. A manually activated built-in fire extinguishing system would be required only if a crewmember could not successfully locate and get access to the fire during a demonstration where the crewmember is responding to the alarm.

Proposed Special Condition No. 6, Smoke Penetration

The design of the compartment must provide means to exclude hazardous quantities of smoke or extinguishing agent originating in the compartment or drive motor from entering other occupied areas. The means must take into account the time period during which the compartment may be accessed to manually fight a fire, if applicable.

During the one-minute smoke detection time (see Special Condition No. 7), penetration of a small quantity of smoke (one that would dissipate within 3 minutes under normal ventilation conditions) from this overhead stowage compartment design into an occupied area on this airplane configuration would be acceptable based on the limitations placed in this and other associated special conditions. These special conditions place sufficient restrictions in the quantity and type of material allowed in the overhead stowage compartment that threat from a fire in this remote area would be equivalent to that experienced on the main cabin.

Proposed Special Condition No. 7, Compartment Design Criteria

The material used to construct the overhead stowage compartment must meet the flammability requirements for compartment interiors in § 25.853 and be fire resistant. Depending on the size of the compartment, certain fire protection features of Class B cargo compartments are also required. Enclosed stowage compartments equal to or exceeding 25 ft^3 in interior volume must be provided with a smoke or fire detection system to ensure that a fire can be detected within a one-minute detection time. This is the same requirement as has been applied to remote crew rest compartments.

Enclosed stowage compartments equal to or greater than 57 ft^3 in interior volume but less than or equal to 200 ft^3, must have a liner that meets the requirements of § 25.855 for a Class B cargo compartment. The overhead stowage compartment may not be greater than 200 ft^3 in interior volume. The in-flight accessibility of very large enclosed stowage compartments and the subsequent impact on the crewmember's ability to effectively reach any part of the compartment with the contents of a handheld fire extinguisher would require additional fire protection considerations similar to those required for inaccessible compartments such as Class C cargo compartments.

The overhead stowage compartment smoke or fire detection and fire suppression systems (including airflow management features which prevent hazardous quantities of smoke or fire extinguishing agent from entering any other compartment occupied by crewmembers or passengers) is considered complex in terms of paragraph 6d of Advisory Circular (AC) 25.1309–1A, ''System Design and Analysis.'' The FAA considers failure of the overhead stowage compartment fire protection system (that is, smoke or fire detection and fire suppression systems) in conjunction with an overhead stowage fire to be a catastrophic event. Based on the ''Depth of Analysis Flowchart'' shown in Figure 2 of AC 25.1309–1A, the depth of analysis should include both qualitative and quantitative assessments (reference paragraphs 8d, 9, and 10 of AC 25.1309–1A).

The requirements to enable crewmember(s) quick access to the overhead stowage compartment and to locate a fire source inherently places limits on the amount of baggage stowed and the size of the overhead stowage compartment. The overhead stowage compartment is limited to stowage of galley type standard containers as well as coats, bags, and other items typically stowed in closets or bins. It is not intended to be used for the stowage of other items. The design of such a system to include other items may require additional special conditions to ensure safe operation.

Applicability

These special conditions are applicable to the Boeing Model 777–200 series airplanes with overhead cross aisle stowage compartments. Should Boeing Commercial Airplane Group apply later for a change to the type certificate to include another model included on Type Certificate No. T00001SE, incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

The Boeing Model 777–200 series airplane is scheduled for imminent delivery. Special conditions for other types of stowage compartments in remote areas of airplanes have been subject to the notice and public comment procedure in several prior instances. Therefore, because a delay would significantly affect the applicant's installation of the overhead cross aisle stowage compartment and certification of the airplane, we are shortening the public comment period to 20 days.

Conclusion

This action affects only certain novel or unusual design features on the Boeing Model 777–200 series airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Boeing Model 777–200 series airplanes. Each overhead cross aisle stowage compartment and the adjacent area, including the structural frame, mechanical system and drive motor, must meet the following requirements:

1. *Compartment Access and Placards.* There must be a means to prohibit or prevent passengers from entering or operating the overhead cross aisle stowage compartment. Placards prohibiting access are acceptable. For all doors installed, there must be a means to preclude anyone from being trapped inside the stowage compartment. If a latching/locking mechanism is installed, the door must be capable of being opened from the outside without the aid of special tools. The mechanism must not prevent opening from the inside of the stowage at any time.

2. *Power Lift.* There must be a means such as a load or force limiter to protect the overhead cross aisle stowage compartment electrical lift drive system from failure or jamming in the down position in the event it is lowered on top of hard structure such as a galley cart.

(a) The electrical lift controls must be placed so the operator is clear of the lift and designed such that the controls must be pressed continuously for lift operation.

(b) The electrical lift must raise and lower the stowage compartment at a slow enough rate, and stop above the floor at such a height, that anyone underneath can easily move clear without injury.

(c) Stowage compartment operation training procedures must be added to the appropriate flight attendant manuals.

3. *Manual Lift.* There must be a means in the event of failure of the aircraft's main power system, or of the electrically powered overhead cross aisle stowage compartment lift system, for manually activating the lift system.

(a) This manual lift must be independent of the electrical drive system and capable of overcoming jamming in the drive and lift mechanisms.

(b) The manual lift must be accessible and operable by a range of occupants, including a fifth percentile female.

(c) The manual lift must be capable of lowering the stowage compartment to the main deck quickly enough to fight a fire in the stowage compartment before overhead cross aisle stowage compartment fire containment is compromised.

(d) The manual lift must be capable of quickly raising the stowage compartment such that the cross aisle is not blocked in the event of an emergency.

(e) Stowage compartment firefighting training procedures must be added to the appropriate flight attendant manuals.

4. *Fire Extinguisher.* The means to manually fight a fire in the overhead cross aisle stowage compartment or involving the compartment motor must

consider the additional stowage volume and time required to manually lower the compartment after indication. The following equipment must be provided directly adjacent to each overhead cross aisle stowage compartment: at least one approved handheld fire extinguisher appropriate for the kinds of fires likely to occur within the overhead stowage compartment and fires involving the compartment motor.

5. *Fire Containment.* Fires originating within the overhead cross aisle stowage compartment or at the drive motor must be controlled without a crewmember having to access the compartment. Alternatively, the design of the access provisions must allow crewmembers equipped for firefighting to have unrestricted access to the compartment and drive motor. If the latter approach is elected it must be demonstrated that a crewmember has sufficient access to enable them to extinguish a fire. The time for a crewmember on the main deck to react to the fire alarm, (and, if applicable, to don the firefighting equipment and to open the compartment) must not exceed the flammability and fire containment capabilities of the stowage compartment.

6. *Smoke Penetration.* There must be a means provided to exclude hazardous quantities of smoke or extinguishing agent originating in the overhead cross aisle stowage compartment or drive motor from entering any other compartment occupied by crewmembers or passengers. If access is required to comply with Special Condition 5., this means must include the time period when accessing the stowage compartment to manually fight a fire. Smoke entering any other compartment occupied by crewmembers or passengers, when access to the stowage compartment is opened to manually fight a fire, must dissipate within five minutes after the access to the stowage compartment is closed. Prior to the one minute smoke detection time (reference note 2 in paragraph (7)) penetration of a small quantity of smoke from the stowage compartment into an occupied area is acceptable. Flight tests must be conducted to show compliance with this requirement.

7. *Compartment Design Criteria.* The overhead cross aisle stowage compartment must be designed to minimize the hazards to the airplane in the event of a fire originating in the stowage compartment or drive motor.

(a) *Fire Extinguishing System.* If a built-in fire extinguishing system is used in lieu of manual firefighting, then the fire extinguishing system must be designed so no hazardous quantities of extinguishing agent will enter other compartments occupied by passengers or crew. The system must have adequate capacity to suppress any fire occurring in the stowage compartment or drive motor, considering the fire threat, volume of the compartment, and the ventilation rate.

(b) *Compartment Size.* All enclosed remote stowage compartments, including the overhead cross aisle stowage compartment, must meet the design criteria given in the table below. As indicated by the table below, enclosed stowage compartments greater than 200 ft^3 in interior volume are not addressed by this special condition.

STOWAGE COMPARTMENT INTERIOR VOLUMES

Fire protection features	less than 25 ft^3	25 ft^3 to 57 ft^3	57 ft^3 to 200 ft^3
Materials of Construction [1]	Yes	Yes	Yes.
Detectors [2]	No	Yes	Yes.
Liner [3]	No	Yes	Yes.

[1] *Material.* The material used to construct each enclosed stowage compartment must be at least fire resistant and must meet the flammability standards established for interior components (that is, 14 CFR Part 25 Appendix F, Parts I, IV, and V) per the requirements of § 25.853. For compartments less than 25 ft^3 in interior volume, the design must ensure the ability to contain a fire likely to occur within the compartment under normal use.

[2] *Detectors.* Enclosed stowage compartments equal to or exceeding 25 ft^3 in interior volume must be provided with a smoke or fire detection system to ensure that a fire can be detected within one minute. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide:

(a) A visual indication in the flight deck within one minute after the start of a fire;

(b) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main passenger compartment during various phases of flight.

[3] *Liner.* If it can be shown the material used to construct the stowage compartment meets the flammability requirements of a liner for a Class B cargo compartment (that is, § 25.855 at Amendment 25–93 and Appendix F, part I, paragraph (a)(2)(ii)), in addition to the above.

[1] *Material requirement*, then no liner would be required for enclosed stowage compartments equal to or greater than 25 ft^3 in interior volume but less than 57 ft^3 in interior volume. For all enclosed stowage compartments equal to or greater than 57 ft^3 in interior volume but less than or equal to 200 ft^3, a liner must be provided that meets the requirements of § 25.855 for a Class B cargo compartment.

Issued in Renton, Washington, on October 10, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–17345 Filed 10–17–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 732, 736, 740, 744, 752, 764, and 772

[Docket No. 040915266–6239–03]

RIN 0694–AC94

Revised ''Knowledge'' Definition, Revision of ''Red Flags'' Guidance and Safe Harbor

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed rule; withdrawal.

SUMMARY: BIS is withdrawing a proposed rule published October 2004. That rule would have revised the definition of ''knowledge'' in the Export Administration Regulations. It also would have updated the ''red flags'' guidance and would have provided a safe harbor from liability arising from knowledge under the definition of that term. In light of the public comments received on the proposed rule and BIS's review of relevant provisions of the existing regulations, this proposed rule is being withdrawn.

DATES: The proposed rule is withdrawn on October 18, 2006.

FOR FURTHER INFORMATION CONTACT: William Arvin, Office of Exporter Services, at *warvin@bis.doc.gov,* fax 202–482–3355 or telephone 202–482–2440.

SUPPLEMENTARY INFORMATION:

Background

On October 13, 2004, BIS published a proposed rule to amend the EAR by revising the definition of ''knowledge'' that applies throughout most of the regulations, to revise its ''red flag'' guidance and to create a safe harbor with respect to certain violations that have ''knowledge'' as one of the elements of the offense (69 FR 60829, October 13, 2004; Comment period reopened 69 FR 65555, November 15, 2004).

The proposed rule would have revised the definition of knowledge in § 772.1 of the EAR in four ways. It would have incorporated a ''reasonable person'' standard, replaced the phrase ''high probability'' with the phrase ''more likely than not,'' added the phrase ''inter alia'' to the description of the facts and circumstances that could make a person aware of the existence or future occurrence of a fact, and eliminated the phrase ''known to a person'' from the sentence in the knowledge definition that states that knowledge may be inferred from ''conscious disregard of facts known to a person.'' The proposed rule also would have limited the applicability of the definition to certain actors in transactions subject to the Export Administration Regulations (EAR) and excluded certain usages from the definition.

The proposed rule would have increased from 12 to 23 the number of circumstances explicitly set forth as ''red flags'' in Supplement No. 3 to part 732 of the EAR.

The proposed rule would have created a ''safe harbor'' from knowledge based violations. To take advantage of the safe harbor, a party would have to commit no violations of the EAR, in connection with the transaction, identify and resolve any ''red flags'' present in the transaction and report the red flags found and the resolution to BIS. BIS would have been required to acknowledge receipt of all such reports. Thereafter, if BIS responded to the party's report by stating that it concurred that the party had adequately addressed red flags or by advising the party that BIS would not be responding to the report, the party would have been able to take advantage of the safe harbor, assuming the party had accurately disclosed all relevant information to BIS. The proposed rule stated BIS's intention to respond to most reports within 45 days. However, the response might consist of a notice that BIS needed more time to evaluate the party's report. If BIS did not respond to the party's report by the date stated in the acknowledgment provided to the party, the party could have contacted BIS to inquire about the status of the report.

BIS received 18 comments on this proposed rule. Nine of these comments were filed by associations that have multiple members.

With regard to revising the definition of knowledge, the most frequently expressed opinion was that the revisions were, in fact, substantive changes to the definition rather than mere clarifications. Commenters also stated that BIS had not offered any reason as to why any change in the knowledge definition was necessary.

Although the revisions to the ''red flags'' were criticized less than other proposed changes, commenters made suggestions for revisions or elimination of 12 specific ''red flags.'' In addition, some commenters asserted that the proposal increased the number of circumstances that could be red flags without providing adequate guidance as to the circumstances when any particular ''red flag'' would be applicable. The notice did state (as does current Supplement No. 3 to part 732 of the EAR) that not all red flags are applicable in all circumstances.

A number of commenters criticized the safe harbor proposal, stating that it was too complex and lengthy. Several predicted that few, if any, firms would be inclined to use it. Some suggested that submitting a license application for the transaction would be simpler and probably faster than waiting to see if BIS approved of the manner in which the party resolved the ''red flags.''

Withdrawal of Proposal

BIS has considered the comments on the proposed rule. BIS has also reviewed the proposed rule as compared to the corresponding existing provisions of the EAR and has considered several possible modifications of the proposed rule. As a result of this consideration, BIS has concluded that utilizing this proposed rule as a basis for amending the EAR would neither clarify the public's responsibilities under the EAR nor make the regulations more effective. Accordingly, BIS is withdrawing this proposal.

Dated: October 11, 2006.

Christopher A. Padilla,

Assistant Secretary for Export Administration.

[FR Doc. E6–17265 Filed 10–17–06; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1312

[Docket No. DEA–276P]

RIN 1117–AB00

Reexportation of Controlled Substances

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Controlled Substances Export Reform Act of 2005 amended the Controlled Substances Import and Export Act to provide authority for the Drug Enforcement Administration (DEA) to authorize the export of controlled substances from the United States to another country for subsequent export from that country to a second country, if certain conditions and safeguards are satisfied. DEA is hereby proposing to amend its regulations to implement the new legislation.

DATES: Written comments must be postmarked, and electronic comments must be sent, on or before December 18, 2006.

ADDRESSES: Please submit comments, identified by ''Docket No. DEA–276,'' by one of the following methods:

1. *Regular mail:* Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL.

2. *Express mail:* DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, VA 22301.

3. *E-mail comments directly to agency: dea.diversion.policy@usdoj.gov.*

4. *Federal eRulemaking portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.

Anyone planning to comment should be aware that all comments received before the close of the comment period will be made available in their entirety for public inspection, including any personal information submitted. For those submitting comments electronically, DEA will accept attachments only in the following

formats: Microsoft Word, WordPerfect, Adobe PDF, or Excel.

FOR FURTHER INFORMATION CONTACT: Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION:

Background

The Controlled Substances Export Reform Act of 2005 (Pub. L. 109–57) was enacted on August 2, 2005. The Act amended the Controlled Substances Import and Export Act to provide authority for the Attorney General (and DEA, by delegation) [1] to authorize the export of controlled substances from the United States to another country for subsequent export from that country to a second country, if certain conditions and safeguards are satisfied.

Previously under the Controlled Substances Import and Export Act (prior to the 2005 legislation), there were no circumstances in which it was permissible to export a controlled substance in Schedules I and II, or a narcotic controlled substance in Schedules III and IV, for the purpose of reexport to another country. Such controlled substances could lawfully be exported only to the immediate country where they would be consumed.

With the passage of the Controlled Substances Export Reform Act of 2005, Congress added a new provision, designated Section 1003(f) of the Controlled Substances Import and Export Act (21 U.S.C. 953(f)), which states:

> Notwithstanding [21 U.S.C. 953] subsections (a)(4) and (c)(3), the Attorney General may authorize any controlled substance that is in schedule I or II, or is a narcotic drug in schedule III or IV, to be exported from the United States to a country for subsequent export from that country to another country, if each of the following conditions is met:
>
> (1) Both the country to which the controlled substance is exported from the United States (referred to in this subsection as the 'first country') and the country to which the controlled substance is exported from the first country (referred to in this subsection as the 'second country') are parties to the Single Convention on Narcotic Drugs, 1961, and the Convention on Psychotropic Substances, 1971.
>
> (2) The first country and the second country have each instituted and maintain, in conformity with such Conventions, a system of controls of imports of controlled substances which the Attorney General deems adequate.
>
> (3) With respect to the first country, the controlled substance is consigned to a holder of such permits or licenses as may be required under the laws of such country, and a permit or license to import the controlled substance has been issued by the country.
>
> (4) With respect to the second country, substantial evidence is furnished to the Attorney General by the person who will export the controlled substance from the United States that—
>
> (A) The controlled substance is to be consigned to a holder of such permits or licenses as may be required under the laws of such country, and a permit or license to import the controlled substance is to be issued by the country; and
>
> (B) The controlled substance is to be applied exclusively to medical, scientific, or other legitimate uses within the country.
>
> (5) The controlled substance will not be exported from the second country.
>
> (6) Within 30 days after the controlled substance is exported from the first country to the second country, the person who exported the controlled substance from the United States delivers to the Attorney General documentation certifying that such export from the first country has occurred.
>
> (7) A permit to export the controlled substance from the United States has been issued by the Attorney General.

Note: The above text of the Act is published for the convenience of the reader, given that the Act sets forth what are essentially regulatory requirements that must be directly incorporated into this proposed rule. The official text is published at 21 U.S.C. 953(f).

DEA Proposed Implementation of the Controlled Substances Export Reform Act of 2005

The rule being proposed here would amend DEA regulations to implement this new legislation. Most of the amendments to the regulations being proposed here either reiterate the new statutory provisions added by the 2005 Act or specify the procedural details for complying with the new statutory provisions. In three respects, however, the proposed rule contains substantive requirements not contained in the statute. The first additional proposed requirement is that the reexporter notify DEA when the shipment leaves the United States. The second additional proposed requirement is that the reexport from the first country to the second country take place within 90 days after the shipment leaves the United States. The third additional proposed requirement is that bulk materials undergo further manufacturing in the first country prior to being shipped to the second country. This is the same requirement contained in existing DEA regulations for reexports of nonnarcotic controlled substances in Schedules III and IV and Schedule V controlled substances (21 CFR 1312.27(b)(5)).

It is proposed that these three additional requirements would entail minimal regulatory burden yet allow the agency to carry out the 2005 Act more effectively. Under the 2005 Act (subsection (6)), Congress mandated that the reexporter notify DEA within 30 days after the controlled substance is shipped from the first country to the second country. It can be inferred that one purpose of this provision is to provide a means for DEA to maintain an awareness of the status of shipments leaving the United States for reexport and thereby enhance the agency's ability to monitor and prevent diversion of such shipments. The three additional proposed requirements listed above further this same goal by eliminating the possibility that DEA would be unable to ascertain the status of an approved reexport for an indefinite period of time. Without the requirements being proposed here, a scenario could arise in which DEA has issued a permit authorizing a reexport, yet be without sufficient documentation to determine whether the shipment (i) has remained for many months in the first country without being reexported, (ii) has been improperly reexported to a different second country than that indicated on the reexport application, or (iii) was properly reexported to the second country but the reexporter failed to notify DEA within 30 days as required by the statute. The proposed additional notification requirement and the 90-day time limit for reexports is intended to minimize the likelihood of such uncertainties regarding the status of reexport shipments and thereby minimize the likelihood of diversion.

Requiring that reexports be completed within a finite time frame is also consistent with the historical approach in the DEA regulations that export permits be of a finite duration. See 21 CFR 1312.25 (setting forth expiration dates for export permits and providing maximum duration of six months).

Finally, it is anticipated that it will not be unduly burdensome for reexporters to notify DEA within 30 days after the shipment has left the United States or to complete the reexport within 90 days thereafter. DEA notes that the statute requires the reexporter (as a condition of obtaining an export permit from DEA) to specify both the first and the second countries, and to provide substantial evidence that, with respect to the second country, the controlled substance is to be consigned to a holder of such permits or licenses as may be required under the laws of such country, and a permit or license to import the controlled substance is to be issued by the country.

[1] 28 CFR 0.100(b).

Further, the statute requires the exporter to provide substantial evidence that the controlled substance is to be applied exclusively to medical, scientific, or other legitimate uses within the second country. Therefore, DEA anticipates that reexporters will, themselves, seek to complete the reexport well within 90 days of arriving within the first country. DEA welcomes comments on these and any other relevant considerations.

Treaty Considerations

The first two subsections of the 2005 Act pertain to the Single Convention on Narcotic Drugs, 1961 (Single Convention), and the Convention on Psychotropic Substances, 1971 (Psychotropic Convention). Under these provisions, a reexport may take place only if both the first and second country are parties to both treaties and only if the Attorney General (DEA) determines that both the first country and the second country maintain an adequate system of controls in conformity with the treaties.

Thus, Congress expressly intended that reexports take place in accordance with the treaties. The control measures imposed under the 2005 Act, along with the regulations being proposed here, are intended to work in tandem with the international control regimes under the treaties. The ultimate goal of the 2005 Act and this proposed rule is to permit exportation of controlled substances in Schedules I and II and narcotic controlled substances in Schedules III and IV from the United States to a first country for subsequent exportation to one or more second countries while preventing international diversion resulting from reexports. Whenever considering safeguards against diversion of international shipments, one must bear in mind the backdrop of the treaties. Toward this end, the following treaty principles are noted.

Under the Single Convention, each country that is a party to the treaty is required to furnish the International Narcotics Control Board (INCB) with annual estimates of, among other things, the quantities of narcotic drugs on hand, the anticipated amounts that will be consumed by the party for legitimate purposes, and the anticipated production quantities. The Single Convention also requires parties to furnish the INCB with statistical returns for the prior year, indicating the amounts of drugs produced, utilized, consumed, imported, exported, seized, disposed of, and in stock. The Psychotropic Convention requires the parties to provide the INCB with statistical reports and assessments containing similar information with respect to psychotropic substances. Through the collection of this information, the INCB provides exporting countries with information on the legitimate requirements of the importing countries and can take steps to reduce the likelihood of international diversion. For example, the INCB may notify parties if the quantity of drugs exported to a particular country exceeded the estimates for that country. Parties that receive such notification from the INCB are prohibited from authorizing further exports of the drug concerned to that country.

The United States has always viewed as critical its obligation to work with the INCB closely to monitor imports and exports, and to take additional appropriate measures to safeguard against diversion. Therefore, based on the principles of the Single Convention and Psychotropic Convention pertaining to international drug control, and based on the requirements of the Controlled Substances Export Reform Act regarding the reporting of reexportations, DEA is proposing the additional requirements discussed above to ensure that DEA has the information necessary to determine whether controlled substances shipments intended for reexportation are occurring as initially reported to DEA or being diverted to illicit purposes.

Issuance of Permits

Under the 2005 Act, before a controlled substance can be exported for subsequent reexport, the exporter must obtain from DEA a permit that authorizes the export for this purpose. Consistent with the 2005 Act, DEA may only issue such permit if each of the conditions specified in the Act is met. Each of these conditions is restated in the proposed rule. Although most of these conditions are self-explanatory, some additional explanation is warranted.

First, as the proposed rule indicates, DEA will be issuing a new application form, DEA Form 161–r, for a permit to export controlled substances for subsequent reexport in accordance with the 2005 Act. The proposed rule also indicates what will constitute ''substantial evidence'' for purposes of subsection (4) of the 2005 Act. Specifically, if on the completed DEA 161–r, the applicant has identified an appropriately licensed or permitted consignee in the second country and certified that the second country is a party to the Conventions and maintains a system of controls of imports consistent with the requirements of the treaties, and so affirmed in the affidavit section of the application, DEA will consider this substantial evidence that a permit or license to import the controlled substance will be issued by the second country.

Reexportation to More Than One Second Country

DEA believes it is consistent with the text, structure, and purpose of the 2005 Act to allow a shipment of controlled substances to be exported from the United States to a ''first country'' for reexport to more than one ''second country,'' (but not further export from any second country to a third country) provided the exporter notifies DEA of such intent in the application for export permit, and provided further that the statute is fully complied with in all other respects. The proposed rule expressly provides for reexport to more than one second country, and the new Form 161–r will be structured accordingly. For example, DEA must be able to determine, based on information contained in the permit application (DEA Form 161–r), that each named second country is a party to the Single Convention and Psychotropic Convention and that each such country has instituted and maintains, in conformity with such treaties, a system of controls that DEA deems adequate.

Refused Shipments

Under current DEA regulations, 21 CFR 1312.27(b)(5), it is permissible under the conditions specified therein to reexport non-narcotic controlled substances in Schedules III and IV, and controlled substances in Schedule V. Subsection 1312.27(b)(5)(iv) of this existing regulation addresses the situation where a shipment has been exported from the United States but is refused by the consignee in the country of destination (the second country), or is otherwise unacceptable or undeliverable. The rule being proposed here would apply the same type of procedures set forth in subsection 1312.27(b)(5)(iv) to reexports under the 2005 Act, whereby the exporter may seek permission from DEA, in appropriate circumstances, to return the shipment to the registered exporter in the United States.

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Assistant Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial

number of small entities. This rulemaking permits Schedule I and II controlled substances, and narcotic controlled substances in Schedules III and IV, to be exported from the United States to the first country for subsequent reexport to second countries for consumption. Previously such reexportation was not permitted within DEA law and regulations.

Executive Order 12866

The Deputy Assistant Administrator further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 § 1(b). DEA has determined that this is a significant regulatory action. Therefore, this action has been reviewed by the Office of Management and Budget.

Executive Order 12988

This regulation meets the applicable standards set forth in §§ 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $118,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act of 1995

The Department of Justice, Drug Enforcement Administration, is revising the information collection entitled ''Application for Permit to Export Controlled Substances'', by adding a new DEA Form 161–r to be used by persons applying for a permit to reexport controlled substances in Schedules I and II, and narcotic controlled substances in Schedules III and IV. DEA has submitted the new DEA Form 161–r and the information collection request to the Office of Management and Budget for review and clearance in accordance with review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, *Telephone:* (202) 307–7297. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of an existing collection.

(2) *Title of the Form/Collection:* Application for Permit to Export Controlled Substances.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:*

Form Number: DEA Form 161, Application for Permit to Export Controlled Substances; DEA Form 161–r, Application for Permit to Export Controlled Substances for Subsequent Reexport.

Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: Title 21 CFR 1312.21 and 1312.22 require persons who export controlled substances in Schedules I and II and who reexport controlled substances in Schedules I and II and narcotic controlled substances in Schedules III and IV to obtain a permit from DEA. Information is used to issue export permits, exercise control over exportation of controlled substances, and compile data for submission to the United Nations to comply with treaty requirements.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 90 respondents will respond, with submissions as follows:

	Number of responses	Average time per response	Total (hours)
DEA Form 161 (exportation only)	2,200	30 minutes (0.5 hours)	1,100
DEA Form 161–r (reexportation)	400	45 minutes (0.75 hours)	300
Certification of exportation from United States to first country	400	15 minutes (0.25 hours)	100
Certification of reexportation from first country to second country*	1,200	15 minutes (0.25 hours)	300
Total	4,200		1,800

*Assumes three separate reexports to second countries.

(6) An estimate of the total public burden (in hours) associated with the collection: The total public burden (in hours) for this collection is estimated to be 1,800 hours.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1312

Administrative practice and procedure, Drug traffic control, Exports, Imports, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR part 1312 is proposed to be amended as follows:

PART 1312—IMPORTATION AND EXPORTATION OF CONTROLLED SUBSTANCES [AMENDED]

1. The authority citation for part 1312 continues to read as follows:

Authority: 21 U.S.C. 952, 953, 954, 957, 958.

2. § 1312.22 is proposed to be amended by revising paragraph (a) and adding paragraphs (c) through (e) to read as follows:

§ 1312.22 Application for export permit.

(a) An application for a permit to export controlled substances shall be made on DEA Form 161, and an application for a permit to reexport controlled substances shall be made on DEA Form 161–r. Forms may be obtained from, and shall be filed with, the Drug Enforcement Administration, Import/Export Unit, Washington, DC 20537. Each application shall show the exporter's name, address, and registration number; a detailed description of each controlled substance desired to be exported including the drug name, dosage form, National Drug Code (NDC) number, the Administration Controlled Substance Code Number as set forth in Part 1308 of this chapter, the number and size of packages or containers, the name and quantity of the controlled substance contained in any finished dosage units, and the quantity of any controlled substance (expressed in anhydrous acid, base, or alkaloid) given in kilograms or parts thereof. The application shall include the name, address, and business of the consignee, foreign port of entry, the port of exportation, the approximate date of exportation, the name of the exporting carrier or vessel (if known, or if unknown it should be stated whether shipment will be made by express, freight, or otherwise, exports of controlled substances by mail being prohibited), the date and number, if any, of the supporting foreign import license or permit accompanying the application, and the authority by whom such foreign license or permit was issued. The application shall also contain an affidavit that the packages are labeled in conformance with obligations of the United States under international treaties, conventions, or protocols in effect on May 1, 1971. The affidavit shall further state that to the best of affiant's knowledge and belief, the controlled substances therein are to be applied exclusively to medical or scientific uses within the country to which exported, will not be reexported therefrom and that there is an actual need for the controlled substance for medical or scientific uses within such country, unless the application is submitted for reexport in accordance with paragraphs (c) and (d) of this section. In the case of exportation of crude cocaine, the affidavit may state that to the best of affiant's knowledge and belief, the controlled substances will be processed within the country to which exported, either for medical or scientific use within that country or for reexportation in accordance with the laws of that country to another for medical or scientific use within that country. The application shall be signed and dated by the exporter and shall contain the address from which the substances will be shipped for exportation.

* * * * *

(c) Notwithstanding paragraphs (a) and (b) of this section, the Administration may authorize any controlled substance listed in Schedule I or II, or any narcotic drug listed in Schedule III or IV, to be exported from the United States to a country for subsequent export from that country to another country, if each of the following conditions is met, in accordance with § 1003(f) of the Controlled Substances Import and Export Act (21 U.S.C. 953(f)):

(1) Both the country to which the controlled substance is exported from the United States (referred to in this section as the ''first country'') and the country to which the controlled substance is exported from the first country (referred to in this section as the ''second country'') are parties to the Single Convention on Narcotic Drugs, 1961, and the Convention on Psychotropic Substances, 1971;

(2) The first country and the second country have each instituted and maintain, in conformity with such Conventions, a system of controls of imports of controlled substances which the Administration deems adequate;

(3) With respect to the first country, the controlled substance is consigned to a holder of such permits or licenses as may be required under the laws of such country, and a permit or license to import the controlled substance has been issued by the country;

(4) With respect to the second country, substantial evidence is furnished to the Administration by the applicant for the export permit that—

(i) The controlled substance is to be consigned to a holder of such permits or licenses as may be required under the laws of such country, and a permit or license to import the controlled substance is to be issued by the country; and

(ii) The controlled substance is to be applied exclusively to medical, scientific, or other legitimate uses within the country;

(5) The controlled substance will not be exported from the second country;

(6) The person who exported the controlled substance from the United States has complied with paragraph (d) of this section and a permit to export the controlled substance from the United States has been issued by the Administration; and

(7) Within 30 days after the controlled substance is exported from the first country to the second country, the person who exported the controlled substance from the United States must deliver to the Administration documentation certifying that such export from the first country has occurred. If the permit issued by the Administration authorized the reexport of a controlled substance from the first country to more than one second country, notification of each individual reexport shall be provided. This documentation shall be submitted on company letterhead, signed by the responsible company official, and shall include the following information:

(i) Name of second country;

(ii) Actual quantity shipped;

(iii) Actual date shipped; and

(iv) DEA export permit number for the original export.

(d) Where a person is seeking to export a controlled substance for

reexport in accordance with paragraph (c) of this section, the following requirements shall apply in addition to (and not in lieu of) the requirements of paragraphs (a) and (b) of this section:

(1) Bulk substances will not be reexported in the same form as exported from the United States, i.e., the material must undergo further manufacturing process. This further manufactured material may only be reexported to a country of ultimate consumption.

(2) Finished dosage units, if reexported, must be in a commercial package, properly sealed and labeled for legitimate medical use in the country of destination (the second country);

(3) Any proposed reexportation must be made known to the Administration at the time the initial DEA Form 161–r is submitted. In addition, the following information must also be provided where indicated on the form:

(i) Whether the drug or preparation will be reexported in bulk or finished dosage units;

(ii) The product name, dosage strength, commercial package size, and quantity;

(iii) The name of consignee, complete address, and expected shipment date, as well as the name and address of the ultimate consignee in the country to where the substances will be reexported.

(4) The application (DEA Form 161–r) must also contain an affidavit that the consignee in the country of ultimate destination (the second country) is authorized under the laws and regulations of the country of ultimate destination to receive the controlled substances. The affidavit must also contain the following statement, in addition to the statements required under paragraph (a) of this section:

(i) That the packages are labeled in conformance with the obligations of the United States under the Single Convention on Narcotic Drugs, 1961, the Convention on Psychotropic Substances, 1971, and any amendments to such treaties;

(ii) That the controlled substances are to be applied exclusively to medical or scientific uses within the country to which reexported (the second country);

(iii) That the controlled substances will not be further reexported from the second country, and

(iv) That there is an actual need for the controlled substances for medical or scientific uses within the second country.

(5) If the applicant proposes that the shipment of controlled substances will be separated into parts after it arrives in the first country and then reexported to more than one second country, the applicant shall so indicate on the DEA Form 161-r, providing all the information required in this section for each second country.

(6) Within 30 days after the controlled substance is exported from the United States, the person who exported the controlled substance shall deliver to the Administration documentation on the DEA Form 161-r initially completed for the transaction certifying that such export occurred. This documentation shall be signed by the responsible company official and shall include the following information:

(i) Actual quantity shipped;

(ii) Actual date shipped; and

(iii) DEA export permit number.

(7) The controlled substance will be reexported from the first country to the second country (or second countries) no later than 90 days after the controlled substance was exported from the United States.

(8) Shipments that have been exported from the United States and are refused by the consignee in the country of destination (the second country), or are otherwise unacceptable or undeliverable, may be returned to the registered exporter in the United States upon authorization of the Administration. In these circumstances, the exporter in the United States shall file a written request for the return of the controlled substances to the United States with a brief summary of the facts that warrant the return, along with a completed DEA Form 357, Application for Import Permit, with the Drug Enforcement Administration, Import/Export Unit, Washington, DC 20537. The Administration will evaluate the request after considering all the facts as well as the exporter's registration status with the Administration. If the exporter provides sufficient documentation, the Administration will issue an import permit for the return of these drugs, and the exporter can then obtain an export permit from the country of original importation. The substance may be returned to the United States only after affirmative authorization is issued in writing by the Administration.

(e) In considering whether to grant an application for a permit under paragraphs (c) and (d) of this section, the Administration shall consider whether the applicant has previously obtained such a permit and, if so, whether the applicant complied fully with the requirements of this section.

3. Section 1312.23 is proposed to be amended by revising paragraphs (a) and (f) to read as follows:

§ 1312.23 Issuance of export permit.

(a) The Administration may authorize exportation of any controlled substance listed in Schedule I or II or any narcotic controlled substance listed in Schedule III or IV if he finds that such exportation is permitted by subsections 1003(a), (b), (c), (d), or (f) of the Act (21 U.S.C. § 953(a), (b), (c), (d), or (f).

* * * * *

(f) No export permit shall be issued for the exportation, or reexportation, of any controlled substance to any country when the Administration has information to show that the estimates or assessments submitted with respect to that country for the current period, under the Single Convention on Narcotic Drugs, 1961, or the Convention on Psychotropic Substances, 1971, have been, or, considering the quantity proposed to be imported, will be exceeded. If it shall appear through subsequent advice received from the International Narcotics Control Board of the United Nations that the estimates or assessments of the country of destination have been adjusted to permit further importation of the controlled substance, an export permit may then be issued if otherwise permissible.

Dated: October 10, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. E6–17275 Filed 10–17–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–141901–05]

RIN 1545–BE92

Exchanges of Property for an Annuity

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that provide guidance on the taxation of the exchange of property for an annuity contract. These regulations are necessary to outline the proper taxation of these exchanges and will affect participants in transactions involving these exchanges. This document also provides notice of public hearing.

DATES: Written or electronic comments must be received by January 16, 2007.

Outlines of topics to be discussed at the public hearing scheduled for February 16, 2007, at 10 a.m. must be received by January 16, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–141901–05), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered to CC:PA:LPD:PR (REG–141901–05), Courier's Desk, Internal Revenue Service, Crystal Mall 4 Building, 1901 S. Bell St., Arlington, VA, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS and REG–141901–05).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, James Polfer, at (202) 622–3970; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Kelly Banks, at (202) 622–0392 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations.

Section 1001 of the Internal Revenue Code (Code) provides rules for determining the amount of gain or loss recognized. Gain from the sale or other disposition of property equals the excess of the amount realized therefrom over the adjusted basis of the property; loss from the sale or other disposition of property equals the excess of the adjusted basis of the property over the amount realized. Section 1.1001–1(a) of the Income Tax Regulations provides further that the exchange of property for other property differing materially either in kind or in extent is treated as income or as loss sustained. Under section 1001(b), the amount realized from the sale or other disposition of property is the sum of any money received plus the fair market value of any property (other than money) received. Except as otherwise provided in the Code, the entire amount of gain or loss on the sale or exchange of property is recognized.

Under section 72(a), gross income includes any amount received as an annuity (whether for a period certain or for the life or lives of one or more individuals) under an annuity, endowment, or life insurance contract. Section 72(b) provides that gross income does not include that part of any amount received as an annuity which bears the same ratio to such amount as the investment in the contract bears to the expected return under the contract. Under section 72(e), amounts received under an annuity contract before the annuity starting date are included in gross income to the extent allocable to income on the contract, and are excluded from gross income to the extent allocable to the investment in the contract. Investment in the contract is defined in section 72(c) as the aggregate amount of premiums or other consideration paid, reduced by amounts received before the annuity starting date that were excluded from gross income.

In *Lloyd* v. *Commissioner*, 33 B.T.A. 903 (1936), *nonacq.*, XV–2 CB 39 (1936), *nonacq. withdrawn and acq.*, 1950–2 CB 3, the Board of Tax Appeals considered the taxation of gain from a father's sale of property to his son for an annuity contract. The Board concluded that the annuity contract had no fair market value within the meaning of the predecessor of section 1001(b) because of the uncertainty of payment from the son. Because the annuity contract had no fair market value under that provision, the Board held that the gain from the sale of the property was not required to be recognized immediately but rather would be included in income only when the annuity payments exceeded the property's basis. In reaching its holding, the Board applied the open transaction doctrine articulated by the Supreme Court in *Burnet* v. *Logan*, 283 U.S. 404 (1931). Under this doctrine, if an amount realized from a sale cannot be determined with certainty, the seller recovers the basis of the property sold before any income is realized on the sale.

In Rev. Rul. 69–74, 1969–1 CB 43, a father transferred a capital asset having an adjusted basis of $20,000 and a fair market value of $60,000 to his son in exchange for the son's legally enforceable promise to pay him a life annuity of $7,200 per year, in equal monthly installments of $600. The present value of the life annuity was $47,713.08. The ruling concluded that: (1) The father realized capital gain based on the difference between the father's basis in the property and the present value of the annuity; (2) the gain was reported ratably over the father's life expectancy; (3) the investment in the contract for purposes of computing the exclusion ratio was the father's basis in the property transferred; (4) the excess of the fair market value of the property transferred over the present value of the annuity was a gift from the father to the son; and (5) the prorated capital gain reported annually was derived from the portion of each annuity payment that was not excludible.

In *Estate of Bell* v. *Commissioner,* 60 T.C. 469 (1973), *acq. in part and nonacq. in part,* 1974 WL 36039 (Jan. 8, 1974), *acq.*, AOD No. 1979–184 (August 15, 1979), a husband and wife transferred stock in two closely held corporations to their son and daughter and their spouses in exchange for an annuity contract. The fair market value of the stock substantially exceeded the value of the annuity contract. The stock transferred was placed in escrow to secure the promise of the transferees. As further security, the annuity agreement provided for a cognovit judgment against the transferees in the event of default. Because of the secured nature of the annuity, the tax court held that (i) the difference between the value of the stock and the value of the annuity contract constituted a gift; (ii) the difference between the adjusted basis of the stock and the value of the annuity contract constituted gain that was taxable in the year of the transfer (which was not before the court); and (iii) the investment in the annuity contract equaled the present value of the annuity. Similarly, in *212 Corp.* v. *Commissioner,* 70 T.C. 788 (1978), the tax court held that the entire amount of gain realized from the exchange of appreciated real property for an annuity contract was fully taxable in the year of the exchange because the annuity contract was secured by (i) an agreement that the annuity payments would be considered a charge against the rents from the property, (ii) an agreement not to mortgage or sell the property without written consent of the transferors, and (iii) the authorization of a confession of judgment against the transferee in the event of default.

The Treasury Department and the IRS have learned that some taxpayers are inappropriately avoiding or deferring gain on the exchange of highly appreciated property for the issuance of annuity contracts. Many of these transactions involve private annuity contracts issued by family members or by business entities that are owned, directly or indirectly, by the annuitants themselves or by their family members. Many of these transactions involve a variety of mechanisms to secure the payment of amounts due under the annuity contracts.

The Treasury Department and the IRS believe that neither the open transaction approach of *Lloyd* v. *Commissioner* nor the ratable recognition approach of Rev. Rul. 69–74 clearly reflects the income of the transferor of property in exchange for an annuity contract. Contrary to the premise underlying these authorities, an

annuity contract—whether secured or unsecured—may be valued at the time it is received in exchange for property. See generally section 7520 (requiring the use of tables to value any annuity contract for federal income tax purposes, except for purposes of any provision specified in regulations); § 1.1001–1(a) (''The fair market value of property is a question of fact, but only in rare and unusual circumstances will property be considered to have no fair market value.''). The Treasury Department and the IRS believe that the transferors should be taxed in a consistent manner regardless of whether they exchange property for an annuity or sell that property and use the proceeds to purchase an annuity.

Explanation of Provisions

These proposed amendments provide that, if an annuity contract is received in exchange for property (other than money), (i) the amount realized attributable to the annuity contract is the fair market value (as determined under section 7520) of the annuity contract at the time of the exchange; (ii) the entire amount of the gain or loss, if any, is recognized at the time of the exchange, regardless of the taxpayer's method of accounting; and (iii) for purposes of determining the initial investment in the annuity contract under section 72(c)(1), the aggregate amount of premiums or other consideration paid for the annuity contract equals the amount realized attributable to the annuity contract (the fair market value of the annuity contract). Thus, in situations where the fair market value of the property exchanged equals the fair market value of the annuity contract received, the investment in the annuity contract equals the fair market value of the property exchanged for the annuity contract.

In order to apply the proposed regulations to an exchange of property for an annuity contract, taxpayers will need to determine the fair market value of the annuity contract as determined under section 7520. In the case of an exchange of property for an annuity contract that is in part a sale and in part a gift, the proposed regulations apply the same rules that apply to any other such exchange under section 1001.

The proposed regulations provide that, for purposes of determining the investment in the annuity contract under section 72(c)(1), the aggregate amount of premiums or other consideration paid for the annuity contract is the portion of the amount realized on the exchange that is attributable to the annuity contract (which is the fair market value of the annuity contract at the time of the exchange). This rule is intended to ensure that no portion of the gain or loss on the exchange is duplicated or omitted by the application of section 72 in the years after the exchange. The annuitant's investment in the contract would be reduced in subsequent years under section 72(c)(1)(B) for amounts already received under the contract subsequent to the exchange and excluded from gross income when received as a return of the annuitant's investment in the contract.

The proposed regulations do not distinguish between secured and unsecured annuity contracts, or between annuity contracts issued by an insurance company subject to tax under subchapter L and those issued by a taxpayer that is not an insurance company. Instead, the proposed regulations provide a single set of rules that leave the transferor and transferee in the same position before tax as if the transferor had sold the property for cash and used the proceeds to purchase an annuity contract. The same rules would apply whether the exchange produces a gain or loss. The regulations do not, however, prevent the application of other provisions, such as section 267, to limit deductible losses in the case of some exchanges. The proposed regulations apply to exchanges of property for an annuity contract, regardless of whether the property is exchanged for a newly issued annuity contract or whether the property is exchanged for an already existing annuity contract.

Existing regulations in § 1.1011–2 govern the tax treatment of an exchange of property that constitutes a bargain sale to a charitable organization (including an exchange of property for a charitable gift annuity). Example 8 in section 2(c) of those regulations provides that any gain on such an exchange is reported ratably, rather than entirely in the year of the exchange. This notice of proposed rulemaking does not propose to change the existing regulations in § 1.1011–2. However, comments are requested as to whether a change should be made in the future to conform the tax treatment of exchanges governed by § 1.1011–2 to the tax treatment prescribed in these proposed regulations.

The Treasury Department and the IRS are aware that property is sometimes exchanged for an annuity contract, including a private annuity contract, for valid, non-tax reasons related to estate planning and succession planning for closely held businesses. The proposed regulations are not intended to frustrate these transactions, but will ensure that income from the transactions is accounted for in the appropriate periods. In section 453, Congress set forth rules permitting the deferral of income from a transaction that qualifies as an installment sale. Taxpayers retain the ability to structure transactions as installment sales within the meaning of section 453(b), provided the other requirements of section 453 are met. The Treasury Department and IRS request comments as to the circumstances, if any, in which an exchange of property for an annuity contract should be treated as an installment sale, and as to any changes to the regulations under section 453 that might be advisable with regard to those circumstances.

Proposed Effective Date

The Treasury Department and the IRS propose § 1.1001–1(j) to be effective generally for exchanges of property for an annuity contract after October 18, 2006. Thus, the regulations would not apply to amounts received after October 18, 2006 under annuity contracts that were received in exchange for property before that date. For a limited class of transactions, however, § 1.1001–1(j) is proposed to be effective for exchanges of property for an annuity contract after April 18, 2007.

The Treasury Department and the IRS propose § 1.72–6(e) to be effective generally for annuity contracts received in such exchanges after October 18, 2006. For a limited class of transactions, however, § 1.72–6(e) is proposed to be effective for annuity contracts received in exchange for property after April 18, 2007. The Treasury Department and the IRS also propose to declare Rev. Rul. 69–74 obsolete effective contemporaneously with the effective date of these regulations. Thus, the obsolescence would be effective April 18, 2007 for exchanges described in § 1.1001–1(j)(2)(ii) and § 1.72–6(e)(2)(ii), and effective October 18, 2006 for all other exchanges of property for an annuity contract.

In both regulations, the effective date is delayed for six months for transactions in which (i) the issuer of the annuity contract is an individual; (ii) the obligations under the annuity contract are not secured, either directly or indirectly; and (iii) the property transferred in the exchange is not subsequently sold or otherwise disposed of by the transferee during the two-year period beginning on the date of the exchange. The Treasury Department and the IRS believe that the later proposed effective date for these transactions provides ample notice of the proposed

rules for taxpayers currently planning transactions that present the least opportunity for abuse.

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 is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulation flexibility analysis is not required. This certification is based on the fact that typically only natural persons within the meaning of section 72(u) exchange property for an annuity contract. In addition, these regulations do not impose new reporting, recordkeeping, or other compliance requirements on taxpayers. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are timely submitted to the IRS. In addition to comments on the proposed regulations more generally, the Treasury Department and the IRS specifically request comments on (i) the clarity of the proposed regulations and how they can be made easier to understand; (ii) what guidance, if any, is needed in addition to Rev. Rul. 55–119, 1955–1 CB 352, see § 601.601(d)(2), on the treatment of the issuer of an annuity contract that is not taxed under the provisions of subchapter L of the Code; (iii) whether any changes to § 1.1011–2 (concerning a bargain sale to a charitable organization in exchange for an annuity contract), conforming those regulations to the proposed regulations, would be appropriate; (iv) circumstances (and corresponding changes to the regulations under section 453, if any) in which it might be appropriate to treat an exchange of property for an annuity contract as an installment sale; (v) circumstances, if any, in which the fair market value of an annuity contract for purposes of § 1.1001–1(j) should be determined other than by tables promulgated under the authority of section 7520; and (vi) additional transactions, if any, for which the six month delayed effective date would be appropriate. All comments will be available for public inspection and copying.

A public hearing has been scheduled for February 16, 2007, at 10 a.m., in the auditorium, Internal Revenue Service, New Carrollton Building, 5000 Ellin Road, Lanham, MD 20706. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area lobby more than 30 minutes before the hearing starts. For information about having your name placed on the access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments by January 16, 2007, and submit an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by that same date.

A period of 10 minutes will be allotted to each person making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is James Polfer, Office of the Associate Chief Counsel (Financial Institutions and Products), Internal Revenue Service.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendment to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX

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

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

Par. 2. In § 1.72–6, paragraph (e) is added to read as follows:

§ 1.72–6 Investment in the contract.

* * * * *

(e) *Certain annuity contracts received in exchange for property*—(1) *In general.* If an annuity contract is received in an exchange subject to § 1.1001–1(j), the aggregate amount of premiums or other consideration paid for the contract equals the amount realized attributable to the annuity contract, determined according to § 1.1001–1(j).

(2) *Effective date*—(i) *In general.* Except as provided in paragraph (e)(2)(ii), this paragraph (e) is applicable for annuity contracts received after October 18, 2006 in an exchange subject to § 1.1001–1(j).

(ii) This paragraph (e) is applicable for annuity contracts received after April 18, 2007 in an exchange subject to § 1.1001–1(j) if the following conditions are met—

(A) The issuer of the annuity contract is an individual;

(B) The obligations under the annuity contract are not secured, either directly or indirectly; and

(C) The property transferred in exchange for the annuity contract is not subsequently sold or otherwise disposed of by the transferee during the two-year period beginning on the date of the exchange. For purposes of this provision, a disposition includes without limitation a transfer to a trust (whether a grantor trust, a revocable trust, or any other trust) or to any other entity even if solely owned by the transferor.

Par. 3. In § 1.1001–1, paragraphs (h), (i) and (j) are added to read as follows:

§ 1.1001–1 Computation of gain or loss.

* * * * *

(h) [Reserved.]

(i) [Reserved.]

(j) *Certain annuity contracts received in exchange for property*—(1) *In general.* If an annuity contract (other than an annuity contract that either is a debt instrument subject to sections 1271 through 1275, or is received from a charitable organization in a bargain sale governed by § 1.1011–2) is received in exchange for property, receipt of the contract shall be treated as a receipt of property in an amount equal to the fair market value of the contract, whether or not the contract is the equivalent of cash. The amount realized attributable to the annuity contract is the fair market value of the annuity contract at the time of the exchange, determined under section 7520. For the timing of the recognition of gain or loss, if any, *see* § 1.451–1(a). In the case of a transfer in part a sale and in part a gift, *see* paragraph (e) of this section. In the case of an annuity contract that is a debt instrument subject to sections 1271 through 1275, *see* paragraph (g) of this section. In the case of a bargain sale to a charitable organization, *see* § 1.1011–2.

(2) *Effective date*—(i) *In general.* Except as provided in paragraph (j)(2)(ii), this paragraph (j) is effective for

exchanges of property for an annuity contract (other than an annuity contract that either is a debt instrument subject to sections 1271 through 1275, or is received from a charitable organization in a bargain sale governed by § 1.1011–2) after October 18, 2006.

(ii) This paragraph (j) is effective for exchanges of property for an annuity contract (other than an annuity contract that either is a debt instrument subject to sections 1271 through 1275, or is received from a charitable organization in a bargain sale governed by § 1.1011–2) after April 18, 2006 if the following conditions are met—

(A) The issuer of the annuity contract is an individual;

(B) The obligations under the annuity contract are not secured, either directly or indirectly; and

(C) The property transferred in exchange for the annuity contract is not subsequently sold or otherwise disposed of by the transferee during the two-year period beginning on the date of the exchange. For purposes of this provision, a disposition includes without limitation a transfer to a trust (whether a grantor trust, a revocable trust, or any other trust) or to any other entity even if solely owned by the transferor.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E6–17301 Filed 10–17–06; 8:45 am]

BILLING CODE 4830–01–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–35

[FMR Case 2004–102–1; Docket 2006–0001; Sequence 3]

RIN 3090–AH93

Federal Management Regulation; Disposition of Personal Property

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

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The General Services Administration is reopening the comment period for the subject proposed rule. The proposed rule pertains to amending the Federal Management Regulation (FMR) by revising coverage on personal property and moving it into Subchapter B of the FMR. A proposed rule was published in the **Federal Register** on September 12, 2006 (71 FR 53646).

DATES: Interested parties should submit comments in writing on or before November 17, 2006 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FMR case 2004–102–1 by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Search for any document by first selecting the proper document types and selecting ''General Services Administration'' as the agency of choice. At the ''Keyword'' prompt, type in the FMR case number (for example, FMR Case 2006–102–1) and click on the ''Submit'' button. You may also search for any document by clicking on the ''Advanced search/document search'' tab at the top of the screen, selecting from the agency field ''General Services Administration'', and typing the FMR case number in the keyword field. Select the ''Submit'' button.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FMR case 2004–102–1 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Holcombe, Office of Governmentwide Policy, Personal Property Management Policy, at (202) 501–3828, or e-mail at *robert.holcombe@gsa.gov*, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755, Room 4035, GS Building, Washington, DC, 20405. Please cite FMR case 2004–102–1.

Dated: October 12, 2006.

Russ H. Pentz,

Assistant Deputy Associate Administrator.

[FR Doc. E6–17340 Filed 10–17–06; 8:45 am]

BILLING CODE 6820–14–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 423

[CMS–4119–P]

RIN # 0938–AO58

Medicare Program; Medicare Part D Data

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would allow the Secretary to use the claims information that is now being collected for Part D payment purposes for other research, analysis, reporting, and public health functions. The Secretary needs to use this data because other publicly available data are not, in and of themselves, sufficient for the studies and operations that the Secretary needs to undertake as part of the Department of Health and Human Service's obligation to oversee the Medicare program, protect the public health, and respond to Congressional mandates.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on December 18, 2006.

ADDRESSES: In commenting, please refer to file code CMS–4119–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/eRulemaking.* Click on the link ''Submit electronic comments on CMS regulations with an open comment period.'' (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address *only:* Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4119–P, P.O. Box 8017, Baltimore, MD 21244–8017.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address *only:* Centers for Medicare &

Medicaid Services, Department of Health and Human Services, Attention: CMS–4119–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Alissa DeBoy, (410) 786–6041; Nancy DeLew, (202) 690–7351.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this proposed rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–4119–P and the specific ''issue identifier'' that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.cms.hhs.gov/eRulemaking*. Click on the link ''Electronic Comments on CMS Regulations'' on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

A. Introduction

Under the Social Security Act (the Act), the Secretary has the authority to include in Part D sponsor contracts any terms or conditions the Secretary deems necessary and appropriate, including requiring the organization to provide the Secretary with such information as the Secretary may find necessary and appropriate. (*See* section 1857(e)(1) of the Act as incorporated into Part D through section 1860D–12(b)(3)(D) of the Act.)

We propose to implement section 1860D–12(b)(3)(D) of the Act to allow the Secretary to collect the same claims information now collected under the authority of section 1860D–15 of the Act for research, internal analysis, oversight, and public health purposes. While the purposes underlying such collection are discussed in more detail under this proposed rule, they include evaluating the new prescription drug benefit, including its effectiveness and impact on health outcomes, performing Congressionally mandated or other demonstration projects and studies, reporting to Congress and the public regarding expenditures and other statistics involving the new Medicare prescription drug benefit, studying and reporting on the Medicare program as a whole, and creating a research resource for the evaluation of utilization and outcomes associated with the use of prescription drugs.

We note that because this proposed rule would apply to all Part D sponsors, it would apply to any entity offering a Part D plan, including both prescription drug plan sponsors and Medicare Advantage organizations offering qualified prescription drug coverage. We further note that the Part D prescription drug event payment data (hereinafter referred to as ''claims data'') will include data relating to any covered Part D drug, which per 42 CFR 423.100, includes not only drugs, but insulin, biologic products, certain medical supplies and vaccines.

B. Statutory Basis

On December 8, 2003, Congress enacted the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173). Title I of the MMA amended the Act to establish a new Part D in title XVIII of the Act and established a new voluntary prescription drug benefit program. As we stated in the preamble to the January 28, 2005 final rule (70 FR 4197), implementing the new prescription drug benefit, we believe that the addition of outpatient prescription drug coverage to the Medicare program is the most significant change to the Medicare program since its inception in 1965.

Unlike Parts A and B of the Medicare program, where Medicare acts as the payer and insurer and generally pays for items and services on a fee-for-service basis, the prescription drug benefit is based on a private market model. Under this model, CMS contracts with private entities—prescription drug plans (PDPs), Medicare Advantage (MA) plans, as well as other types of Medicare health plans—who then act as the payers and insurers for prescription drug benefits. These private entities generally are referred to as ''Part D sponsors'' in our rules. Section 1860D–12 of the Act contains the majority of provisions governing the contracts CMS enters into with the Part D sponsors. That section, entitled, ''Requirements for and contracts with prescription drug plan (PDP) sponsors,'' incorporates by reference many of the contract requirements that previously were applicable to Medicare+Choice (now Medicare Advantage) plans.

One of the incorporated provisions at section 1860D–12(b)(3)(D)of the Act is section 1857(e)(1) of the Act, which provides broad authority for the Secretary to add terms to its contracts with Part D sponsors, including terms that require the sponsor to provide the Secretary ''with such information * * * as the Secretary may find necessary and appropriate.'' We believe that the broad authority of section 1860D–12(b)(3)(D) of the Act authorizes us to collect much of the information CMS is already collecting in order to properly pay sponsors under the statute. However because, as discussed below, the statutory section governing CMS's payment of Part D sponsors (section 1860D–15 of the Act) contains provisions that might be viewed as limiting such collection, we are engaging in this rulemaking in order to resolve the statutory ambiguity, as well as to explain how we plan to implement the broad authority of section 1860D–12(b)(3)(D) of the Act.

Most of the payment provisions with respect to Part D sponsors are found in

section 1860D–15 of the Act.[1] Sections 1860D–15(d) and (f) of the Act authorize the Secretary to collect any information he needs to carry out that section; however, those subsections also state that ''information disclosed or obtained pursuant to [the provisions of section 1860D–15 of the Act] may be used by officers, employees, and contractors of the Department of Health and Human Services only for the purposes of, and to the extent necessary in, carrying out [section 1860D–15 of the Act].'' (sections 1860D–15(d)(2)(B) and (f)(2) of the Act).

In the January 28, 2005 Medicare prescription drug benefit final rule (70 FR 4399), we stated that the section 1860D–15 of the Act restriction applies only in cases where section 1860D–15 of the Act is the authority for collecting the information. Where information is collected under an independent authority (even if the collected information duplicates the data collected under section 1860D–15 of the Act) no restriction would apply. Thus, for example, we noted that quality improvement organizations (QIOs) have independent authority to collect Part D claims data in order to evaluate the quality of services provided by Part D sponsors and would not be barred from collecting such data despite the restrictions of section 1860D–15 of the Act. In the January 28, 2005 final rule (70 FR 4399) we stated the following:

[W]e interpret sections 1860D–15(d) and (f) of the Act as limiting the use of information collected under the authority of that section. If information is collected under some other authority, however, we do not believe that section 1860D–15 of the Act would limit its use-because the information would not be collected ''pursuant to the provisions'' of section 1860D–15 of the Act. QIOs have independent authority to collect data, and to fulfill their responsibilities. To the extent QIOs need access to data from the transactions between pharmacies and Part D sponsors, these data could be extracted from the claims data submitted to us.

Similar to the statutory provisions authorizing QIOs to collect the information they need to perform their statutory duties, section 1860D–12(b)(3)(D) of the Act recognizes that the Secretary will need to collect a broad array of data in order to properly carry out his responsibilities as Secretary of the Department of Health and Human Services. Thus, if the Secretary determines it is necessary and appropriate for him to collect Part D data in order to carry out responsibilities outside section 1860D–15 of the Act, then section 1860D–15 of the Act would not serve as an impediment to such collections.

We also do not believe that language in sections 1860D–12(b)(3)(D) and 1857(e)(1) of the Act noting that the authority to collect information exists only ''except as otherwise provided,'' and in a manner that is ''not inconsistent with this Part,'' would serve as a hindrance to the independent collection of Part D claims. Again, this is due to the clear language of section 1860D–15 of the Act, which, on its face, restricts the use of information only when such information is collected under the authority of that section. Thus, nothing in section 1860D–15 of the Act will conflict with or be inconsistent with claims information collected under the authority of section 1860D–12(b)(3)(D) of the Act.

Most likely Congress included the broad grant of authority in section 1860D–15 of the Act in order to ensure that the Secretary—without engaging in any rulemaking—would have the legislative authority to collect any necessary data in order to pay Part D sponsors correctly. However, we do not believe that the Congress intended to restrict the Secretary when the Secretary otherwise has independent authority to collect identical information to that collected under section 1860D–15 of the Act. For example, the Secretary will need to evaluate Part D claims information in order to determine how access to Part D drug benefits affects beneficiary utilization of services under Parts A and B of the Medicare program. When Congress enacted the MMA, one of the stated reasons was to ensure that ''by lowering the cost of critical prescription drugs, seniors will better be able to manage their health care, and ultimately live longer, healthier lives.'' Press Release, House Ways and Means Committee, Seniors' Wait for Affordable Rx Drugs Comes to an End. President Bush Signs Historic Medicare Bill into Law (December 8, 2003) (available at *http://waysandmeans.house.gov/news.asp*). In order to determine whether lowering the costs of prescription drugs actually reduces health expenditures or improves health outcomes for seniors, however, the Secretary will need to match individual level Parts A and B data with Part D claims data. In this way, the Secretary will be able to evaluate the effectiveness and efficiency of the Part D benefit and report to Congress and others on the progress of the program.

Similarly, we do not believe that section 1860D–15 of the Act was intended to prohibit the Secretary from reporting to both the public and to the Congress. For example, we are required to report to the Congress regarding whether mandated disease management demonstrations are budget neutral and whether beneficiaries in these demonstrations are on the appropriate medications. Part D claims data are needed for these budget neutrality calculations as well as quality measures assessing appropriate use of medications. We may also need to make reports under the Part D program, for example, the publication of statistics detailing aggregate Medicare and beneficiary spending by class of drug, average number of drugs used by beneficiaries, total Medicare program spending, and other similar statistics. In order to derive such statistics, we would need to collect Part D claims data. These examples demonstrate that in a wide variety of situations it will be ''necessary and appropriate'' for CMS to evaluate the same information collected under section 1860D–15 of the Act, even though such information would not be used to implement section 1860D–15 of the Act. In these situations, we believe the clear language of section 1860D–12(b)(3)(D) of the Act provides the authority to collect the necessary information, and nothing about such collection will be inconsistent or in conflict with any other part of the statute.

II. Provisions of the Proposed Rule

A. Information To Be Collected

[If you choose to comment on issues in this section, please include the caption ''Information to be collected'' at the beginning of your comments.]

We would be collecting the same claims information collected under section 1860D–15 of the Act. We note that although section 1860D–12(b)(3)(D) of the Act would permit us to independently collect claims data from Part D sponsors, in order to ensure that Part D sponsors would not have to submit the claims information twice, we propose to access the claims data submitted under section 1860D–15 of the Act. This access avoids Part D sponsors engaging in duplicative efforts. Thus throughout this preamble, we may refer to ''accessing'' rather than ''collecting'' Part D data. The claims data for 2006 includes 37 data elements. We refer readers to the Prescription Drug Event data instructions which can be accessed at *http://www.cms.hhs.gov/DrugCoverageClaimsData/01_PDEGuidance.asp#TopOfPage* for a full description of this information. These instructions define each data element and its specific potential use for

[1] We note that there are other provisions outside of section 1860D–15 that also contain payment provisions. For example, section 1860D–14 discusses how CMS pays low-income subsidy.

CMS's payment process. Generally stated, these data elements include the following:

- Identification of the Part D sponsor and Part D plan through contract number and plan benefit package identification number.
- Health insurance claim number, which identifies the particular beneficiary receiving the prescription.
- Patient date of birth and gender.
- Date of service.
- Date paid by the plan.
- Identification of pharmacy where the prescription was filled.
- Identification of prescribing health care professional.
- Identification of dispensed product using national drug code (NDC) number.
- Indication of whether drug was compounded or mixed.
- Indication of prescriber's instruction regarding substitution of generic equivalents or order to ''dispense as written.''
- Quantity dispensed (for example, number of tablets, grams, milliliters, or other unit).
- Days supply.
- Fill number.
- Dispensing status and whether the full quantity is dispensed at one time, or the quantity is partially filled.
- Identification of coverage status, such as whether the product dispensed is covered under the plan benefit package or under Part D or both. This code also identifies whether the drug is being covered as part of a Part D supplemental benefit.
- Indication of whether unique pricing rules apply, for example because of an out-of-network or Medicare as Secondary Payer services.
- Indication of whether beneficiary has reached the catastrophic coverage threshold—which triggers reduced beneficiary cost-sharing and reinsurance payments.
- Ingredient cost of the product dispensed.
- Dispensing fee paid to pharmacy.
- Sales tax.
- Amount paid on the claim that is both below and above the catastrophic coverage threshold.
- Amount paid by patient and not reimbursed by a third party (such as copayments, coinsurance, or deductibles).
- Amount of third party payment that would count toward a beneficiary's ''out of pocket'' costs in meeting the catastrophic coverage threshold, such as payments on behalf of a beneficiary by a qualifying State Pharmacy Assistance Program (SPAP).
- Low income cost sharing subsidy amount (if any).
- Reduction in patient liability due to other payers paying on behalf of the beneficiary. This would exclude payers whose payments count toward a beneficiary's out of pocket costs, such as SPAPs.
- Amount paid by the plan for standard benefits, such as amounts paid for supplemental Part D benefits.

B. Purpose of CMS Collecting Information

[If you choose to comment on issues in this section, please include the caption ''Purpose of CMS Collecting Information'' at the beginning of your comments.]

We need to use Medicare Part D prescription drug related data for a wide variety of statutory and other purposes including—

- Reporting to the Congress and the public on the overall statistics associated with the operation of the Medicare prescription drug benefit;
- Conducting evaluations of the Medicare program;
- Making legislative proposals with respect to the programs we administer, including the Medicare, Medicaid, and the State Children's Health Insurance Program; and
- Conducting demonstration projects and making recommendations for improving the economy, efficiency, or effectiveness of the Medicare program.

When the Congress passed the MMA in December 2003, allowing coverage of outpatient prescription drugs under the new Medicare Part D benefit, this addition, we believe, was the most fundamental change to the Medicare program since its inception in 1965. With this fundamental change to the program, it is critical that the Secretary maintain the ability to evaluate and oversee the progress of the new benefit and how it affects other parts of the Medicare, Medicaid, and State Children's Health Insurance programs.

We have discussed in a variety of public settings, including an open door forum on this topic in the summer of 2005, the critical importance of the new Medicare Part D prescription drug event data—hereafter referred to as ''claims'' data—for studies on the impact of drug coverage on Medicare beneficiaries, spending for other Medicare health care services, efforts to improve the quality of health care services for Medicare beneficiaries with chronic illnesses, efforts to address health disparities by understanding how drugs are being used and how well they work in minority populations and in other populations which are often not studied in clinical trials (for example, older patients, patients with multiple co-morbid diseases, people with a disability), providing protection against adverse drug events through effective post-market surveillance on the safety of drugs for Medicare beneficiaries, and other studies to improve public health. Part D claims data must be linked at the individual beneficiary level to Parts A and B claims data to facilitate these studies. Individually identifiable data are required to link data across files, over time and to conduct multivariate analyses. As we discuss in greater detail in section II.C.2 of this preamble, CMS is developing a chronic care database that will link these Medicare Parts A, B, and D claims at the beneficiary level. This database will be an important new tool to facilitate our research, on a wide variety of topics that focus on improving the quality of and reducing the cost of health care services.

As discussed in greater detail in section II.C. of this preamble, we believe that when information is collected under the auspices of section 1860D–12(b)(3)(D) of the Act, the restrictions of section 1860D–15 of the Act would not apply to such collections. Thus, any information collected for Part D purposes under this proposed rule would no longer be subject to the section 1860D–15 of Act limitations and could be shared outside of CMS as appropriate. Thus, for example, to the extent otherwise permitted by law, we would be able to share the data we collect under section 1860D–12(b)(3)(D) of the Act with entities outside of CMS including, for example, the Food and Drug Administration (in order to oversee the safety and effectiveness of prescription drugs and conduct post-market surveillance), as well as the Agency for Healthcare Quality and Research (AHRQ), in order to analyze comparative clinical effectiveness. Moreover, when we share such data, we do not believe any restrictions included in section 1860D–15 of the Act would apply.

In section II.C. of this preamble, we provide a detailed explanation of a number of purposes for which the Part D data collected under the section 1860D–12(b)(3)(D) authority would be used. We also request comments on whether there should be any limitations on data when shared for purposes other than fulfilling CMS's responsibility to administer the Part D program.

1. Public Reporting (Proposed § 423.505(b)(8) and (f)(3)(i))

We believe we need the Part D claims information in order to report to the Congress and the public on overall statistics associated with the Part D program. For example, we need to preserve the ability to report on the

performance of the Part D benefit program. We note that Congress specifically amended title XVIII of the Act to address reporting on all aspects of that title, including Part D.[2] We anticipate we may wish to report statistics on issues such as the experience of Medicaid beneficiaries as their pharmacy coverage changes from the Medicaid to the Medicare program. In order to analyze this information, we will need to have access to identifying beneficiary information (such as HIC number), information about the drug dispensed (including NDC, quantity and days supply), information about the amount paid by the beneficiary (including amounts paid on the claim, reimbursed by third parties, counting toward TROOP, low-income cost sharing subsidy, amount paid for standard benefits, and amount paid for non standard benefits). We anticipate potentially using this information to report statistics to Congress or the public or both with respect to the drug utilization of this unique population and whether they continue to receive the same mix of prescriptions as previously. We might also use such information to evaluate and report on this population's cost-sharing and whether there were any changes in their out-of-pocket costs vis-a-vis Medicaid coverage of prescription drugs.

Another example of an issue on which we may want to report would include Medicare beneficiary utilization under the new drug benefit by class of drug. For example, we may want to report statistics on what classes of drugs are most utilized by the Medicare population, and whether there has been variation in such utilization across gender, age, and year. This would require access to such information as HIC number, date of birth and gender, date of service, and information about the drug itself (such as NDC, quantity and supply).

We may also want to include in its national program statistics publications information about the Part D program that would require drug claims data. Such statistics include aggregate Medicare and beneficiary spending by class of drug, the total number of prescriptions by class of drug, average beneficiary cost-sharing amounts, catastrophic coverage utilization, geographic variation in utilization and pricing, third party payers paying on behalf of beneficiaries, whether drugs being dispensed are covered by plans, the average number of drugs used by beneficiaries, and other similar statistics. In order for us to be able to produce these types of program statistics, the following claims information are necessary:

- Ingredient cost of the product dispensed.
- Dispensing fee paid.
- Sales tax.
- Amount paid on the claim that is both below and above the catastrophic coverage threshold.
- Amount paid by a patient and not reimbursed by a third party.
- Amount of third party payment that would count toward a beneficiary's out-of-pocket costs in meeting the catastrophic threshold.
- Low income cost sharing subsidy amount, if any.
- Reduction in patient liability due to other payers paying on behalf of the beneficiary.
- Amount paid by the plan for standard benefits.
- Amount paid by the plan for nonstandard benefits.
- Identification of coverage status.
- Identification of dispensed product using the national drug code number.
- Identification of whether the drug was compounded or mixed.
- Identification of prescriber's instruction regarding substitution of generic equivalents or order to ''dispense as written''.
- Quantity dispensed.
- Days supply.
- Fill number.
- Dispensing status and whether the full quantity is dispensed at one time, or the quantity is partially filled; (for example, to calculate utilization by drug classes).
- Health insurance claim number—

++ Patient date of birth and gender,

++ Identification of whether unique pricing rules apply; and

++ Identification of whether a beneficiary has triggered the catastrophic threshold (for example, to calculate average beneficiary cost-sharing, amounts and average number of drugs purchased).

2. Evaluations of the Medicare Program (Proposed § 423.505(b)(8) and (f)(3)(ii))

We also anticipate that we would need to collect prescription drug claims information in order to conduct evaluations of the Medicare prescription drug program, including evaluations and oversight of the plans themselves. For example, we anticipate that in some cases, in order to evaluate the effectiveness of a plan's utilization management techniques we may need access to the claims information for a particular plan. For example, we have already announced on our Web site in frequently asked question 4483, (*http://questions.cms.hhs.gov/*), that in certain cases, plans could cover over-the-counter medications as part of a cost-reduction strategy. We stated that in certain cases nonprescription drugs (for example, Prilosec OTC® and Claritin®) were available by prescription when first marketed. Once off-prescription, these products may offer significantly less expensive alternatives to branded prescription medications, and work just as well for most patients. Therefore stated that plans could provide such over-the-counter drugs as part of a cost-effective drug utilization management (for example, step therapy) program. In cases where a plan offered coverage of such over-the-counter drugs, we wish to preserve the ability to monitor whether: (1) The over-the-counter drugs are in fact being accessed and (2) whether it appears the step-therapy is saving money. Such evaluation, we believe, would require access to information on the claim identifying the Part D sponsor and plan, information with respect to the drug prescribed, as well as information about beneficiary and plan payment. In this way we would be able to compare the amount spent on the over-the-counter drug against what would have been spent if a beneficiary had utilized a prescription drug on the plan's formulary. We would likely need to review alternatives to the nonprescription drug and determine the average plan payments for such nonprescription drugs. We believe we would need to aggregate such information to determine whether the plan decreased its overall spending by offering the step-therapy protocol.

Furthermore, in order for us to evaluate the Medicare program overall, it is necessary to evaluate how the prescription drug benefit interacts with benefits provided under Parts A, B, and C, as well as Medicaid and the SCHIP program. It will be important to determine how the Part D benefit affects these programs. For example, it will be important to determine if the provision of the Part D benefit decreases spending under Medicare Parts A and B because patients are more readily able to obtain necessary medications while living in the community, which may help them comply with drug regimens and avoid more expensive inpatient care. Part D data could be used to determine the impact of the Part D benefit on reducing medical complications and as a result

[2] Section 101(e) of the MMA specifically extended the study authority in section 1875(b) to include the prescription drug program under Title XVIII. Section 1875 now states in pertinent part that the Secretary ''shall make a continuing study of the operation and administration of this title * * * and shall transmit to the Congress annually a report concerning the operation of such programs.''

reducing costs incurred in other parts of the Medicare program, for example, by reducing hospitalizations and procedures. In order to evaluate the effect of Part D on Part C and other programs' spending, we would likely need to evaluate aggregated and nonaggregated claims data, including elements relating to health insurance claim number, date of service, date of birth, gender, the drug dispensed, its quantity, whether it was compounded or mixed and other information relating to the drug coverage received by the beneficiary.

3. Legislative Proposals

We also believe that we would need to collect claims data to support legislative proposals offered to Congress relating to programs administered by CMS, including the Medicare, Medicaid and State Children's Health Insurance programs. Claims information could be used to derive statistics that would illustrate why certain changes to the Medicare statute should be considered, or why certain research and demonstration projects should be funded. For example, if we were to develop a proposal to move coverage of some drugs now covered under Part B to Part D or vice versa, we would need access to claims data to derive statistics to assess the cost impact of such a proposal.

Thus, we would likely need to access claims data relating to the drug dispensed as well as the cost incurred under Part D. To analyze the cost incurred under Part D, we would need to see the amount paid by the plan (for example, ingredient cost, dispensing fee and sales tax) as well as whether we were required to pay reinsurance on the claim (for example, amount incurred above and below catastrophic), whether we paid a low income subsidy for the claim, the amount of beneficiary cost sharing, whether the drug was part of a basic supplemental benefit, and whether the drug was covered by the plan. This would allow us to assess costs involved with moving coverage from one part of the program to another.

4. Demonstration Projects and Research Studies

We would also need the various elements of the Part D claims data to conduct demonstration projects and make recommendations for improving the economy, efficiency, or effectiveness of the Medicare program. Conducting demonstration projects and making recommendations for improving the Medicare program based on the evaluation of the effect of prescription drug coverage on health outcomes, safety or Medicare spending should positively affect patient care and provider satisfaction, as well as aid us in administering the various programs under our charge. Below, we describe the categories of data elements on the prescription drug claims and explain why our studies and projects require collection of such elements. It is also important to note that this proposed rule would permit retrospective studies of the administrative records (prescription drug event data) of Part D services for analysis after the services have already been provided. As such, research using Part D claims data is not comparable to clinical trials which are more prospective in nature and involve patients who may have access to certain drugs and other patients who may not have access to those drugs. We note that while we currently have studies underway that will require these collections, we anticipate that other similar studies will be conducted in the future that would also require collections of the data elements included on the Part D claims.

An illustrative list of the studies currently underway is attached to this proposed rule as Appendix A. The categories of these elements are as follows:

(a) Drug Plan Identifiers (Such as the Part D Sponsor and Benefit Package Identifier)

In our follow-up analysis on beneficiaries who participated in the replacement drug demonstration (section 641 of the MMA), we will be evaluating how enrollment in Part D affects the cost sharing and utilization of these beneficiaries. We would need plan identifiers in order to compare how utilization and cost sharing of this population varies plan by plan and to analyze such variation according to the design of the plan selected. Without plan identifiers, we could not tie particular cost sharing or utilization to a plan and determine whether certain plan design features minimized beneficiary cost-sharing. Moreover, in evaluating other managed care and fee for service demonstrations, we will sometimes need plan identifiers in order to compare enrollees in demonstration plans to enrollees in other MA plans and fee-for-service beneficiaries in the same geographic area. Drug plan identifiers will assist in matching beneficiaries to specific Part D prescription plan coverage.

(b) Beneficiary Identifiers (Such as Health Insurance Claim Number, Date of Birth, and Gender)

Our current and future research, demonstration and evaluation projects will require collection of beneficiary identifiers in order to link Part D claims with Parts A and B claims at the beneficiary level. For example, in order to link Parts A and B data with Part D claims data, we would need to know the beneficiary's HIC number, name, and date of birth, in order to match claims appropriately. Once the data are linked they will be used in studies that evaluate drug utilization and its impact on other health care services, studies that measure the impact of the new drug benefit on improvements to beneficiary access to needed medications, and studies that link beneficiary characteristics, for example, age, race, sex, with drug data. For example, in the Medicare chronic condition data warehouse, we will use beneficiary identifiers such as HIC number, name, age, race and sex, in order to develop the public database under section 723 of the MMA which links data at the beneficiary level. The purpose of the database is to permit studies of chronic illness in the Medicare population to improve quality of health care and reduce the cost of health care services. Similarly, in all of our demonstration projects that use Part D claims data as part of the budget neutrality test, beneficiary identifiers are needed to link Parts A, B, and D claims data to examine the total cost of the demonstration intervention group compared to the control group.

(c) Information About the Drug Dispensed (Such as NDC Code, Days Supply, Quantity, Generic Identification, Compounding, Refills, and Dispensing Status)

We are engaged in a number of projects and studies which will require collection of information with respect to the specific drug that is dispensed to enrollees. For example, in the mandated chiropractic demonstration (section 651 of the MMA), we will need to collect information on the drug dispensed to determine whether the use of chiropractic services reduces the use of pain medication. The purpose of the demonstration is to test whether the expanded coverage of chiropractic services results in offsetting decreases in other covered services such as pain medications, since the demonstration is required to be budget neutral. Therefore, we will need to study the use of pain medications in the demonstration and control groups to determine if the

demonstration appears to be causing a reduction in the use of pain medications.

We will also use drug dispensed in the Chronic Condition Warehouse (section 723 of the MMA) to refine identification of beneficiaries with chronic conditions (for example, insulin use and diabetes), to facilitate analysis of medication usage for beneficiaries with chronic illness, and to analyze the effectiveness of different treatment modalities. We also anticipate that we will engage in future studies and analyses that measure and examine quality of services or patient outcomes by utilization of certain types of medication. For example, we may conduct a study to determine whether access to beta blockers reduces the risk of heart attacks.

In addition, we may perform studies that examine medication adherence and persistence patterns, which in turn can be used as control factors in outcomes research or to examine, for example, how specific medication therapy management programs under Part D affected medication adherence and persistence.

(d) Prescriber Identification

We need to know who prescribed the drug for studies that assess appropriate prescribing practices such as those that would link physician payment to quality measures. We are exploring value-based purchasing initiatives, in which we may collect data on the extent to which physicians are appropriately prescribing needed medications.

(e) Payment Amounts

We need to know payment amounts, including dispensing fee, amount paid below and above the catastrophic threshold, amount paid by patient and other third parties, sales tax, and low income subsidies for a variety of studies that assess the impact of the drug benefit on beneficiary cost-sharing, Medicare program payments, and total drug spending. In our demonstration evaluations, including disease management, physician group practice, chiropractor, and follow-up on the Medicare replacement drug demonstration, we will analyze the impact of the demonstration interventions on drug spending and utilization as well as total Medicare spending. Because these analyses often disaggregate the treatment group beneficiaries into categories based on characteristics identified as the analysis is underway (for example, source of referral into demonstration, disease, length of time in demonstration, interval between hospitalization and entry into demonstration, *etc.*), claims detail needs to be retained at the patient level so they can be included in any group or subgroup analysis into which a particular beneficiary falls in order to determine aggregate cost statistics for the particular grouping.

We propose to revise § 423.505(b)(8) by clarifying that Part D plan sponsors must comply with the disclosure and reporting requirements set forth by § 423.505(f). Furthermore, we propose to add a new § 423.505(f)(3) which would specify that, as part of the existing information disclosure, we would access the drug claims and related information that is already submitted to CMS for purposes the Secretary deems necessary and appropriate. These purposes would include, but not be limited to—

- Reporting to the Congress and the public or both on overall statistics associated with the operation of the Medicare prescription drug program;
- Conducting evaluations of the overall Medicare program, including the interaction between prescription drug coverage under Part D of title XVIII of the Act and the services and utilization under Parts A, B, and C of title XVIII of the Act, titles XIX, and XXI of the Act;
- Making legislative proposals to the Congress regarding Federal health care programs and related programs;
- Conducting demonstration projects and making recommendations for improving the economy, efficiency, or effectiveness of the Medicare program.

C. Sharing Data With Entities Outside of CMS (Proposed § 423.505(f)(5))

[If you choose to comment on issues in this section, please include the caption ''Sharing Data with Entities Outside of CMS'' at the beginning of your comments.]

In addition to collecting claims data for use in administering the Medicare Part D program under the authority of section 1860D–12(b)(3)(D) of the Act, CMS also believes that it is in the interest of public health to share some of the information collected under that authority with entities outside of CMS. As stated above, when information is collected under the authority of section 1860D–12(b)(3)(D) of the Act, we do not believe that the statutory language in section 1860D–15(d) and (f) of the Act (requiring the information collected under the authority of that section to be used only in implementing such section) would apply, since any initial collection would be effectuated outside of section 1860D–15 of the Act. Therefore, we are proposing to add § 423.505(f)(5) that would specify that we could use and share the claims information we collect under § 423.505(f) with both outside entities and other government agencies, without regard to any restriction included in § 423.322(b).

1. Other Government Agencies

In particular, Department of Health and Human Services' public health agencies such as NIH, FDA, and AHRQ have researchers that would also need to use Medicare Part D prescription drug related data for studies to improve public health consistent with the missions of these agencies. These studies will assess outcomes, and investigate clinical effectiveness, appropriateness of health care items and services (including prescription drugs), and develop strategies for improving the efficiency and effectiveness of clinical care. In addition, we believe that oversight agencies, such as the OIG, GAO, and CBO would need access to both aggregated and nonaggregated claims data in order to conduct evaluations of the Part D program. The NIH would need access to Medicare Part D data, linked to data from Medicare Parts A and B, in order to address its mission of conducting and supporting research regarding the cause, diagnosis, prevention, and cure of human diseases in order to improve the health of the nation. A wealth of information about diseases and their treatments can potentially be obtained from observational studies of therapeutic drug usage in Medicare patients. Because drug usages can be used as a surrogate measure for the existence and severity of diseases, Medicare Part D data could be used to investigate the incidence and prevalence of particular diseases, disease progression, and the health outcomes of people with the diseases, trends in disease and their treatments, and even the relative effectiveness of alternative therapeutic approaches. Moreover, matching Part D claims data with the Surveillance Epidemiology and End Results (SEER) cancer registry would enable additional studies of cancer treatment and outcomes. Given the large number of patients involved, studies could also be designed to identify comorbidities that would be undetectable in conventional, prospective cohort studies. In addition, studies that correlate drug prescribing patterns with geography or patient demographics or examine trends over time could be used to identify differences and possible remediable problems with the health care system, to assess the magnitude of health disparities related to the delivery of care and indirectly assess the impact of new medical findings and other influences

on prescribing and other health care practices.

We also propose to share the information collected under the authority of section 1860D–12(b)(3)(D) of the Act with the FDA. The FDA's mission includes a mandate to ensure the safety and efficacy of drugs for the American people. Patients age 65 and older are more likely to experience serious or fatal adverse drug events than younger individuals because of their generally poorer health and because they typically take multiple medications for chronic conditions, which increases their opportunity for experiencing adverse drug effects. Part D data could be used to monitor patterns of drug use in the elderly and the disabled with the goal of identifying unsafe or suboptimal patterns of use, either with respect to the particular types of drugs being used or with respect to the dose or duration of use of these drug products. Additionally, Part D data could be used to identify rare but serious complications that certain patients may have with drugs more quickly and effectively than is achieved with the current surveillance systems. Formal epidemiologic studies could also be performed, to examine the nature and magnitude of risk conferred by particular medications, to identify risk factors for adverse event occurrence, or to assess the effect of risk management programs intended to reduce prescription drug risks.

A third agency we believe would need access to the Part D claims data is the Agency for Healthcare Research and Quality (AHRQ). AHRQ's mission to conduct health services and outcomes studies in assessing the effectiveness of health care items and services, improving the quality of health care, promoting efficiency and patient safety, and reducing medical error will be enhanced by access to Medicare Part D claims data. Section 1013 of the MMA requires AHRQ to conduct research, demonstrations, and evaluations designed to improve the quality, effectiveness, and efficiency of Medicare, Medicaid, and the State Children's Health Insurance Program. To implement section 1013 of MMA, AHRQ has established a new research initiative called the Effective Health Care (EHC) program. The EHC program supports research on the outcomes, comparative clinical effectiveness, and appropriateness of pharmaceuticals, devices, and health care services. Included in the EHC program is a research network of 13 centers with over 60 affiliated health scientists and the capacity to—(1) scientifically analyze administrative, survey, and clinical databases; (2) develop and apply new scientific methods, instruments, and methodologies; and (3) operate and analyze computerized surveillance and monitoring systems. The availability of Medicare Part D data, linked to data from Medicare Parts A and B, would greatly enhance the capacity of the EHC program to carry out research and program evaluations designed to improve the quality of CMS programs as mandated in section 1013 of the MMA.

Other agencies within DHHS, such as the Centers for Disease Control and Prevention, the Health Resources and Services Administration (HRSA), or the Office of the Assistant Secretary for Planning and Evaluation, may also need the prescription drug data to perform evaluations or assess policies.

We believe oversight agencies may also require access to the Part D claims data. These agencies would include the Office of the Inspector General (OIG), the Government Accountability Office (GAO), the Congressional Budget Office (CBO), and the Medicare Payment Advisory Commission (MedPAC). We believe these agencies may require access to data in order to evaluate the cost-effectiveness of various policies under the Part D program, to evaluate spending for various classes of drugs under such program, to analyze brand-name versus generic prescribing trends, and to conduct other oversight activities that are not specifically related to payment. For these reasons, we believe it would be appropriate to share some Part D data with these oversight agencies.

Given these necessities, we propose to allow broad access for other agencies to our Part D claims data linked to our other claims data files. Other agencies, including the agencies listed above, would enter into a data use agreement, similar to what is used today (and described in greater detail in section II.C.2). This would allow the sharing of event level cost data, however, through a data use agreement we would protect confidentiality of beneficiary information and ensure that the use of Part D claims data serves a legitimate research purpose. We would also ensure that any system of records with respect to claims data is updated to reflect the most current uses of such data. We request comments on this proposed rule that would help us in our efforts to improve knowledge relevant to the public health. Specifically, we request guidance on how we can best serve the needs of other agencies through the sharing of information it collects under section 1860D–12(b)(3)(D) of the Act while at the same addressing the legitimate concerns of the public and of Part D plans that we appropriately guard against the potential misuse of data in ways that would undermine protections put in place to ensure confidentiality of beneficiary information, and the nondisclosure of proprietary data submitted by Part D plans.

2. External Researchers

External researchers, such as those based in universities, regularly request and analyze Medicare data for their research studies, many of which are designed to address questions of clinical importance. We believe researchers who study a broad range of topics need access to the Part D claims linked to Parts A and B claims data as well. The research questions that have been previously addressed through analyses of Parts A and B claims have contributed to very significant improvements in the public health, have been critical in assessing the quality of care and costs of care for patients in the Medicare program, and have in many cases spurred other types of research. As such, we believe that a data source that includes Parts A and B claims as well as their attendant Part D claims would be used in a similarly constructive manner, such that greater knowledge on a range of topics, both clinical and economic, will be generated. This knowledge is expected to contribute positively to the evaluation and functioning of the Medicare program, and to improve the clinical care of beneficiaries.

We will specifically address the needs of a segment of external researchers as part of our implementation of section 723 of the MMA, which requires the Secretary to develop a plan to ''improve the quality of care and reduce the cost of care for chronically ill Medicare beneficiaries.'' Congress specifically stated that the plan should provide for the collection of data in a data warehouse (*see* section 723(b)(3) of the MMA). We will implement section 723 of the MMA by populating a chronic care condition data warehouse (CCW) which would be accessible by private researchers in order for such researchers to conduct studies related to improving quality and reducing costs of care for chronically ill Medicare beneficiaries. The CCW will include a beneficiary sample and will include Part D claims, in order to allow researchers to analyze prescription drug information. In this way, researchers would be able to receive a complete picture of a beneficiary's care, and determine whether the treatment of chronically ill beneficiaries (including Parts A, B and D treatment) is as effective and efficient as possible.

In addition to the section 723 of the MMA data warehouse, we are planning to make available Medicare Part D claims data linked to other Medicare claims files to external researchers on the same terms as other Medicare Parts A and B data are released today, with appropriate protections for beneficiary confidentiality. These data would be disseminated under our standard data use agreement protocols. This means that each data request would be evaluated to determine whether—

- A legitimate research purpose is presented by a responsible party,
- The minimum data needed to conduct the study will be released, and
- The confidentiality of beneficiary information is protected.

See our Agreement for Use of Centers for Medicare and Medicaid Services Data Containing Individual Specific Information at *http://www.resdac.umn.edu/docs/CMS-R-02352-v2-locked.doc*. In addition, we would ensure that our system of records for claims data would permit these usages of the data.

We request comments on the proposed use of the data for research purposes that would help CMS in its efforts to improve knowledge relevant to public health. We also ask for comments on whether we should consider additional regulatory limitations for external researchers beyond our existing data use agreement protocols in order to further guard against the potential misuse of data for non-research purposes, commercial purposes, or to ensure that proprietary plan data or confidential beneficiary data is not released.

D. Beneficiary Access to Part D Data

[If you choose to comment on issues in this section, please include the caption ''Beneficiary Access to Part D Data'' at the beginning of your comments.]

We are considering the use of Part D claims data for projects involving the development of personalized beneficiary medication history record that would be accessible by Medicare beneficiaries. We are requesting comments on this proposed use of Part D data collected under the authority of section 1860D–12(b)(3)(D) of the Act.

E. Applicability

[If you choose to comment on issues in this section, please include the caption ''Applicability'' at the beginning of your comments.]

The proposed revision does not affect the applicability of HIPAA to the Department or any other appropriate parties, nor does it affect the applicability of the Privacy Act (5 U.S.C. 552a and b) or the Trade Secrets Act (18 U.S.C. 1905).

F. Limitations

[If you choose to comment on issues in this section, please include the caption ''Limitations'' at the beginning of your comments.]

This proposed rule in no way affects or limits our already existing ability to collect data that is not identical to that collected under section 1860D–15 of the Act, such as enrollment, formulary, price comparison, quality assurance and utilization review data. Much of that data is already collected under other authorities in the statute. For example, section 1860D–1(c)(1) of the Act allows for data collection, such as price comparison data, to facilitate providing information to beneficiaries in order to allow informed decisions among the available choices for Part D coverage (*see* also § 423.48). Similarly, section 1860D–4(c) of the Act authorizes data collection to evaluate sponsors' utilization management, quality assurance, medication therapy management, and fraud, waste and abuse programs (*see* § 423.153(b)(3), (c)(5), and (d)(6)). Even in cases where data collection is not specifically mandated by statute, to the extent the collection is not identical to the data collected under section 1860D–15 of the Act, we do not believe it is necessary to resolve any statutory ambiguity, because the section 1860D–15 of the Act rules on using such information would not apply. Finally, this proposed rule does not address uses already permitted under section 1860D–15 of the Act, such as OIG or others conducting audits and evaluations necessary to ensure accurate and correct payment and to otherwise oversee Medicare reimbursement under Part D, price variation studies, risk score refinement studies including the mandated geographic variation in price and utilization study, the reinsurance demonstration evaluation, or other such uses.

III. Collection of Information Requirements

This document does not impose new information collection requirements on Medicare Part D plans. Medicare Part D sponsors are already required to submit Medicare Part D claims information by virtue of section 1860D–15 of the Act.

Consequently, since there are no new information collection requirements on Medicare Part D plans, this document will not require a review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). Neither plan sponsors nor pharmacies are required to perform any new task or purchase any new equipment or increase their labor force. This proposed rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined that this rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. This proposed rule impacts Part D sponsors, not small rural hospitals.

Therefore we are not preparing an analysis for section 1102(b) of the Act, because we have determined that this proposed rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $120 million. This proposed rule will have no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation does not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 423

Administrative practice and procedure, Medicare, Prescription Drugs, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR Chapter IV part 423 as follows:

PART 423—VOLUNTARY MEDICARE PRESCRIPTION DRUG BENEFIT

1. The authority citation for part 423 continues to read as follows:

Authority: Secs. 1102, 1860D–1 through 1860D–42, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395w–101 through 1395w–152 and 1395hh).

Subpart K—Application Procedures and Contracts with PDP Sponsors

2. Section 423.505 is amended by—

A. Revising paragraph (b)(8).

B. Redesignating paragraph (f)(3) as (f)(4).

C. Adding new paragraphs (f)(3) and (f)(5).

The revision and additions read as follows:

§ 423.505 Contract provisions.

* * * * *

(b) * * *

(8) Comply with the disclosure and reporting requirements in § 423.505(f), § 423.514, and § 423.329(b) for submitting current and prior drug claims and related information to CMS for its use in risk adjustment calculations and for the purposes of implementing § 423.505(f), § 423.514, and § 423.329(b).

* * * * *

(f) * * *

(3) Drug claims and related information, as the Secretary deems necessary and appropriate for purposes including but not limited to—

(i) Reporting to Congress and the public on overall statistics associated with the operation of the Medicare prescription drug program;

(ii) Conducting evaluations of the overall Medicare program, including the interaction between prescription drug coverage under Part D of Title XVIII of the Social Security Act and the services and utilization under Parts A, B, and C of title XVIII of the Act and titles XIX and XXI of the Act;

(iii) Making legislative proposals to the Congress regarding Federal health care programs and related programs; and

(iv) Conducting demonstration projects and making recommendations for improving the economy, efficiency, or effectiveness of the Medicare program.

* * * * *

(5) CMS may use the information collected under this subsection and share it with other government agencies and outside entities, in accordance with applicable Federal law. Any restriction set forth by § 423.322(b) must not be construed to limit the Secretary's authority for these purposes.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program).

Dated: July 11, 2006.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: August 21, 2006.

Michael O. Leavitt,

Secretary.

Editorial Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix A—Current CMS Studies

1. Effect of Part B vs. Part D Drug Coverage

On January 1, 2005, the Secretary reported to Congress on his recommendations for providing benefits under Part D for outpatient prescription drugs which are currently covered under Part B. The report was mandated in section 101(c) of the MMA. The study concluded that, while it would not be desirable to move coverage of separately billable Part B drugs to Part D for most categories of Part B drugs, it may be worth considering for a limited number of drugs. The report recommended that the decision with respect to changing coverage for this limited number of drugs be based upon experience with the Medicare Replacement Drug Demonstration (which provided Medicare coverage for certain drugs between enactment of MMA in 2003 and the start of the Part D drug benefit in 2006) and at least 2 years of experience with the Part D program.

This follow-on study would further examine the relationship between Part B and Part D drug coverage using Part B and Part D claims and would include an assessment of the impact of such a change on beneficiaries, Part D sponsors and the Federal budget.

2. Dual Eligible Drug Coverage Transition From Medicaid to Medicare

We will analyze Part D claims and other data for changes in dual eligibles' drug use and costs and the impact of the change in drug coverage on other Medicare and Medicaid services. Baseline drug data from Medicaid will allow person-level studies that analyze pharmacy use linked to all other Medicare (Parts A, B, and D claims) and Medicaid benefits before and after MMA implementation. The study will examine Medicare and Medicaid interactions with pharmacy services for specific subpopulations including people with disabilities and chronic diseases in community or institutional settings.

3. Evaluation of Disease Management Interventions

CMS has several projects underway to evaluate the impact of Congressionally mandated disease management interventions (for example, sections 649 and 721 of the MMA, and earlier legislation) on beneficiary health outcomes, satisfaction, and Medicare expenditures. Part D claims data will be used to estimate the effects of these programs on adherence to evidence based medicine, such as the percent of patients who are on the appropriate medications for their condition. Part D claims data will be used to measure the cost/utilization differences between control and intervention groups in these programs, and to assess the costs of their medications. A very important aspect of disease management interventions is to reduce adverse drug interactions. Access to Part D claims data would allow us to assess whether the disease management intervention has any impact on polypharmacy.[3] All of these are factors which disease management programs are expected to influence. Part D data claims data

[3] ''Polypharmacy'' is defined most simply as ''excessive or unnecessary use of prescription or nonprescription medications.'' From Critical Thinking: Administering Medications to Elderly Patients (2007) citing Jones, 1997.

will also be used in budget neutrality calculations.

4. Medicare Health Care Quality Demonstration

Section 646 of the MMA mandates a 5-year demonstration program under which we will test major changes to improve quality of care while increasing efficiency across an entire health care system. Broadly stated, the goals of the Medicare Health Care Quality demonstration are to improve patient safety; enhance quality; increase efficiency; and reduce scientific uncertainty and the unwarranted variation in medical practice that results in both lower quality and higher costs. Projects approved under this demonstration will be expected to achieve significant improvements in safety, effectiveness, efficiency, patient-centeredness, timeliness and equity: the six aims for improvement in quality identified by the Institute of Medicine in its Crossing the Quality Chasm report.

Each factor to be addressed in the evaluation of this demonstration can be directly or indirectly related to prescription drug use, hence the need for Part D claims and other data. For example, research on patient safety has illuminated the way that prescription drug errors represent a nexus that ties together the benefits of health information technology and the need to reduce care fragmentation, and improve care coordination.

5. Expanded Coverage for Chiropractic Services Evaluation

Section 651 of the MMA mandated a budget neutral chiropractor demonstration. Achievement of budget neutrality for the expanded coverage of chiropractic services under the demonstration is likely to depend on the abilities of these services to substitute for the use of ambulatory services by allopathic physicians (for example, primary care physicians, orthopedic surgeons, and, possibly, neurologists) and to reduce the need for medications. Prevention of the need for surgical procedures and associated hospitalizations is also possible, but is likely to be infrequent over the course of a 2-year demonstration.

Information on medication consumption under Part D will be a key component of the evaluation. For example, use of pain medications may be reduced by chiropractic services in patients with back pain, extremity pain due to arthritis, and in patients with migraine headaches. Reduction in the use of pain medications may, in turn, have beneficial effects on the need for treatment of complications associated with these medications.

6. Adult Medical Day Care Evaluation

Section 703 of the MMA mandated an adult medical day care demonstration. In the evaluation, we will compare patient outcomes and costs of furnishing care for beneficiaries receiving some of their home health services in an adult day care setting, with outcomes and costs for beneficiaries receiving these services principally at home under current rules. Drug claims will be used to help identify matched comparison groups and to explore differences between beneficiaries who elect to enroll in the demonstration and those who decline to enroll or are excluded.

7. Follow-Up of Medicare Beneficiaries Enrolled in the Medicare Replacement Drug Demonstration

Section 641 of the MMA mandated the Medicare Replacement Drug Demonstration that served as a bridge to the implementation of a full-scale Medicare prescription drug benefit. It targeted vulnerable beneficiaries with disabling or life threatening conditions. Many of the covered drugs were expensive ''specialty'' biologics, costing more than $20,000 per year. A review of benefit designs under Part D suggests specialty drugs are commonly being placed on fourth and fifth tiers with relatively high levels of patient cost sharing. Plan-level information from Part D coupled with individual drug claims data will allow us to examine levels of plan uptake among demonstration participants, the features of plan design selected, and the effect of Part D on patient cost-sharing for this vulnerable population.

8. Value-Based Purchasing Initiatives

Many evidence-based guidelines underscore the importance of pharmacologic therapy to providing high-quality patient care. Yet, under prescribing of drugs with a known beneficial effect remains a common problem (for example, beta-blockers for treatment of hypertensive patients with a history of myocardial infarction). As Medicare moves toward value-based purchasing, it will be critical to design a payment system that provides incentives for physicians to appropriately prescribe proven pharmacologic therapies. This will require individual Part D claims linkable to a physician's practice.

9. Medicare Physician Group Practice Demonstration

Section 412 of the Benefits Improvement and Protection Act mandated the Medicare Physician Group Practice Demonstration. This demonstration is a shared savings model that rewards physician groups for improving the quality and efficiency of health care services delivered to Medicare FFS beneficiaries. The financial model includes all Part A and Part B spending for beneficiaries assigned to the physician group as well as for the comparison population. Part D claims data will be used for budget neutrality calculations. Physician groups can also use the Part D claims data to improve quality by managing medications for their Medicare patients.

10. Chronic Care Data Warehouse

Section 723 of the MMA mandates development of recommendations for improving the quality of care for chronically ill Medicare beneficiaries. To implement this sector we are developing a chronic care warehouse to be made available to researchers who want to study chronic illnesses in the Medicare population. The CCW consolidates beneficiary level Medicare enrollment and utilization data with MDS and OASIS assessment data to facilitate the study of the Medicare population with chronic conditions. Congress specifically directed us to identify any new data needs and develop a methodology to address these data needs. The absence of drug data is a significant gap in data available to study chronically ill Medicare beneficiaries. Integrating Part D enrollment information and drug claims data into the CCW will address this data need and greatly enhance the analytic power and utility of the CCW.

[FR Doc. 06–8750 Filed 10–13–06; 4:05 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1901; MB Docket No. 06–11; RM–11304]

Radio Broadcasting Services; Crowell, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: At the petitioner's request, the Audio Division has dismissed the proposal of Jeraldine Anderson (''Anderson'') to allot Channel 250A at Crowell, Texas. Anderson had filed a petition for rule making proposing the allotment of Channel 250A at Crowell, Texas, as the community's second local FM transmission service. The Audio Division further dismissed the counterproposal submitted in the proceeding by Linda Crawford (''Crawford''), upon Crawford's request to withdraw that proposal. Finally, the Audio Division dismissed the counterproposal submitted in the proceeding by LKCM Radio Group, L.P., licensee of FM Station KFWR, Mineral Wells, Texas; Fort Worth Media Group GP, LLC, licensee of FM Station KYBE, Frederick, Oklahoma; and LKCM Radio Licenses, LP, the proposed assignee of KFWR and KYBE (collectively, ''Joint Parties''). The Joint Parties' counterproposal was dismissed for failure to meet the Commission's minimum distance separation requirements with respect to FM Station KRZB, Channel 248C2, Archer City, Texas.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 06–11, RM–11304, adopted September 20, 2006, and released September 22, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center,

Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* This document is not subject to the Congressional Review Act. The Commission is, therefore, not required to send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A), because the proposed rule was dismissed.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau

[FR Doc. E6–17348 Filed 10–17–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1885; MB Docket No. 05–230; RM–11032]

Radio Broadcasting Services; Auxvasse, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: The Audio Division dismisses a Petition for Rule Making filed by Charles Crawford, requesting the allotment of Channel 235A at Auxvasse, Missouri, as its first local service. Charles Crawford, or no other party, filed comments supporting the allotment of Channel 235A at Auxvasse, Missouri. It is the Commission's policy to refrain from making a new allotment to a community absent an expression of interest.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 05–230, adopted September 20, 2006, and released September 22, 2006. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the proposed rule was dismissed.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–17350 Filed 10–17–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1887; MB Docket No. 04–81; RM–10876]

Radio Broadcasting Services; Patagonia, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: The Audio Division denies a Petition for Rule Making filed by Calvary Chapel of Tucson, Inc., requesting the reservation of vacant Channel 251A at Patagonia, Arizona for noncommercial educational use.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 04–81, adopted September 20, 2006, and released September 22, 2006. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* This document is not subject to the Congressional Review Act. (The Commission is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the proposed rule was denied.)

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–17347 Filed 10–17–06; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 71, No. 201
Wednesday, October 18, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 12, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Housing Service

Title: 7 CFR 1951–F, Analyzing Credit Needs and Graduation of Borrower.

OMB Control Number: 0575–0093.

Summary of Collection: Section 333 of the Consolidated Farm and Rural Development Act and Section 502 of the Housing Act of 1949, require the Rural Housing Service (RHS), the Rural Business-Cooperative Service (RBS), and the Farm Service Agency (FSA) to graduate their direct loan borrowers to other credit when they are able to do so. Graduation is an integral part of Agency lending, as Government loans beyond a borrower's need for subsidized rates of non-market terms. The notes, security instruments, or loan agreements of most borrowers require borrowers to refinance their Agency loans when other credit becomes available at reasonable rates and terns. If the borrower finds other credit is not available at reasonable rates and terms, the Agency will continue to review the borrower for possible graduation at periodic intervals. Information will be collected from the borrowers concerning their loans.

Need and Use of the Information: The information submitted by FSA, RBS, or RHS borrowers to Agency offices is used to graduate direct borrowers to private credit with or without the use of Agency loan guarantees. The data collected will include financial information such as income, farm operating expenses, asset values, and liabilities.

Description of Respondents: Farms; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 18,383.

Frequency of Responses: Reporting: Quarterly.

Total Burden Hours: 38,322.

Rural Housing Service

Title: USDA Rural Development—Centralized Servicing Center—Loan Servicing Satisfaction Survey.

OMB Control Number: 0575–0187.

Summary of Collection: The Rural Housing Service (RHS) provides insured loans to low and moderate-income applicants located in rural geographic areas to assist them in obtaining decent, sanitary and safe dwellings. RHS Centralized Servicing Center (CSC) has been in operation since October 1996. The CSC was established to achieve a high level of customer service and operating efficiency that provides its borrowers with convenient access to their loan account information. RHS has developed a survey to measure the results and overall effectiveness of customer services provided.

Need and Use of the Information: RHS will use the outcome of the Customer Satisfaction Survey to determine the general satisfaction level among its customers throughout the nation, highlight areas that need improvement and provide a benchmark for future surveys and improvement in customer service. The survey is administered as part of CSC's on going service quality improvement program.

Description of Respondents: Individual or households.

Number of Respondents: 6,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 960.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–17299 Filed 10–17–06; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 13, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk

Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Highly Erodible Land Conservation and Wetland Conservation (7 CFR Part 12).

OMB Control Number: 0560–0185.

Summary of Collection: The Food Security Act of 1985 as amended by the Federal Agriculture Conservation and Trade Act of 1990 and the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act), and the Agricultural Assistance Act of 2003 (the 2003 Act) provides that any person who produces an agricultural commodity on a field that is predominately highly erodible, converts wetland, or plants an agricultural commodity on converted wetland after December 23, 1985, shall be ineligible for certain program benefits. These provisions are an attempt to preserve the nation's wetland and to reduce the rate at which the conversion of highly erodible land occurs which contributes to the national erosion problem. In order to ensure that persons who request benefits subject to the conservation restrictions get technical assistance needed and are informed regarding the compliance requirements on their land, the Farm Service Agency (FSA) collects information using several forms from producers with regard to their financial activities on their land that could affect their eligibility for requested USDA benefits.

Need and Use of the Information: Information must be collected from producers to certify that they intend to comply with the conservation requirements on their land to maintain their eligibility. Additional information may be collected if producers request that certain activities be exempt from provisions of the statute in order to evaluate whether the exempted conditions will be met. The collection of information allows the FSA county employees to perform the necessary compliance checks and fulfill USDA's objectives towards preserving wetlands and reducing erosion.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, local or tribal government.

Number of Respondents: 262,788.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 262,346.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–17332 Filed 10–17–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration; Solicitation of Nominations for Members of the Grain Inspection Advisory Committee

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice to solicit nominees.

SUMMARY: We are seeking nominations for people to serve on GIPSA's Grain Inspection Advisory Committee. The Grain Inspection Advisory Committee meets twice annually to advise GIPSA on the programs and services we deliver under the U.S. Grain Standards Act. Recommendations by the committee help us to better meet the needs of our customers who operate in a dynamic and changing marketplace.

DATES: We will consider nominations (form AD–755) we receive by December 18, 2006.

ADDRESSES: We invite you to submit nominations for the Grain Inspection Advisory Committee. You may submit nominations (completed AD–755) by any of the following methods:

- E-Mail: Send form AD–755 via electronic mail to *Terri.L.Henry@usda.gov.*
- Mail: Send hardcopy of form AD–755 to Terri Henry, GIPSA, USDA, 1400 Independence Ave., SW., Room 1647-S, Stop 3604, Washington, DC 20250–3604.
- Fax: Send form AD–755 by facsimile transmission to: (202) 690–2755.
- Hand Delivery or Courier: Deliver form AD–755 to: Terri Henry, GIPSA, USDA, 1400 Independence Ave., SW., Room 1647–S, Stop 3604, Washington, DC 20250–3604.
- Federal eRulemaking Portal: Go to *http://www.regulation.gov.* Follow the on-line instructions for submitting comments. You may send a completed AD–755 through this Web site.

FOR FURTHER INFORMATION CONTACT: Terri L. Henry, (202) 205–8281 or by e-mail at *Terri.L.Henry@usda.gov.*

SUPPLEMENTARY INFORMATION: As required by section 21 of the United States Grain Standards Act (USGSA) as amended, (7 U.S.C. 87j), the Secretary of Agriculture established the Grain Inspection Advisory Committee (Advisory Committee) on September 29, 1981, to provide advice to the Administrator on implementation of USGSA. Currently, the authority for the Advisory Committee expires September 30, 2015. As specified in USGSA, each member's term is 3 years, and no member may serve successive terms.

As required by USGSA, the Advisory Committee presently consists of 15 members, appointed by the Secretary, who represent the interests of grain producers, processors, handlers, merchandisers, consumers, and exporters, including scientists with expertise in research related to the policies in section 2 of USGSA (7 U.S.C. 74). Members of the Advisory Committee serve without compensation. USDA reimburses members for travel expenses, including per diem in lieu of subsistence, for travel away from their homes or regular places of business in performance of Advisory Committee service, (see 5 U.S.C. 5703). Alternatively, travel expenses may be paid by Committee members.

A list of current Advisory Committee members and other relevant information is available on the GIPSA Web site. Go to *http://www.gipsa.usda.gov* and under the section ''I Want To * * *'', click on ''Learn about the Advisory Committee.''

We are seeking nominations for people to serve on the Advisory Committee to replace the five members and the five alternate members whose terms will expire in March 2007.

If you are interested in serving on the Advisory Committee or nominating someone else to serve, contact: GIPSA, by telephone (tel: 202–205–8281), fax (fax: 202–690–2755), or electronic mail (e-mail: *Terri.L.Henry@usda.gov*) and request Form AD–755. Form AD–755 may also be obtained via the Internet on GIPSA's Web site. Go to *http://www.gipsa.usda.gov* and under the section ''I Want To * * *'', click on ''Learn about the Advisory Committee''

then click on Form AD–755. Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. To ensure that recommendations of the Committee take into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The final selection of Advisory Committee members and alternates will be made by the Secretary.

Authority: 5 U.S.C. Appendix, Section 9.

James E. Link,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E6–17333 Filed 10–17–06; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval to Conduct an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–113) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intention of the National Agricultural Statistics Service (NASS) to seek approval to conduct a new information collection, the Generic Clearance for Survey Research Studies.

DATES: Comments on this notice must be received by December 18, 2006 to be assured of consideration.

ADDRESSES: Comments may be sent to Ginny McBride, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, D.C. 20250–2024 or to *gmcbride@nass.usda.gov* or faxed to (202) 720–6396.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance to Conduct Survey Research Studies.

OMB Control Number: 0535—NEW.

Type of Request: Intent to Seek Approval to Conduct an Information Collection.

Abstract: The National Agricultural Statistics Service (NASS) of the United States Department of Agriculture (USDA) will request approval from the Office of Management and Budget (OMB) for generic clearance that will allow NASS to rigorously develop, test, and evaluate its survey instruments and methodologies. The primary objectives of the National Agricultural Statistics Service are to prepare and issue State and national estimates of crop production, livestock production, economic statistics, and environmental statistics related to agriculture and to conduct the Census of Agriculture. This request is part of an on-going initiative to improve NASS surveys as recommended by both its own guidelines, as well as those of OMB.

In the last decade, state-of-the art techniques have been increasingly instituted by NASS and other Federal agencies and are now routinely used to improve the quality and timeliness of survey data and analyses, while simultaneously reducing respondents' cognitive workload and burden. The purpose of this generic clearance is to allow NASS to continue to adopt and use these state-of-the-art techniques to improve its current data collections on agriculture. They will also be used to aid in the development of new surveys.

NASS envisions using the following kinds of survey improvement techniques, as appropriate to the individual project under investigation: Focus groups, cognitive and usability laboratory and field techniques, exploratory interviews, behavior coding, respondent debriefing, pilot surveys, and split-panel tests.

Following standard OMB requirements NASS will apply to OMB individually for each survey improvement project it undertakes under this generic clearance and provide OMB with a copy of the questionnaire (if one is used), and all other materials describing the project.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for these collections of information is estimated to average 30 minutes per response.

Respondents: Farms, agri-businesses, and households.

Estimated Number of Respondents: 1,000.

Frequency of Responses: On occasion.

Estimated Total Annual Burden: 500 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, NASS Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, September 28, 2006.

R. Ronald Bosecker,

NASS Administrator.

[FR Doc. E6–17302 Filed 10–17–06; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904; Binational Panel Reviews: Notice of Withdrawal of Extraordinary Challenge Committee Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Withdrawal of Extraordinary Challenge Committee.

Review of the final affirmative countervailing duty determination filed on April 27, 2006, concerning the decisions of the binational panel that reviewed the final determination and remand determinations made by the United States Department of Commerce in the Matter of Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty

Determination, Secretariat File No. USA–CDA–2002–1904–03.

SUMMARY: Pursuant to the negotiated settlement between the United States and the Canadian Governments, the Extraordinary Challenge Committee review of the above noted case is terminated as of October 12, 2006. No Committee has been appointed to this panel review.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Extraordinary Challenge Committees* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested pursuant to these Rules and terminated in accordance with the settlement agreement.

Dated: October 13, 2006.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E6–17352 Filed 10–17–06; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100506D]

Notice of Intent to Prepare an Environmental Impact Statement for the Establishment of Annual Quotas for the Subsistence Harvest of Bowhead Whales by Alaska Natives

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

ACTION: Notice of intent to prepare an environmental impact statement (EIS); announcement of public scoping period; request for written comments.

SUMMARY: NMFS announces its intent to prepare an EIS pursuant to the National Environmental Policy Act of 1969 (NEPA), in order to assess the impacts of issuing annual quotas for the subsistence harvest of bowhead whales by Alaska Natives from 2008 through 2017. Publication of this notice begins the official scoping period that will help identify issues and alternatives to be considered in the EIS. The scoping process will end December 15, 2006.

ADDRESSES: To request inclusion on a mailing list of persons interested in the EIS, please contact Steve Davis, NMFS, 222W 7th Avenue, Box 43, Anchorage, AK 99513. Comments on this notice and the scoping process for this action may be submitted by:

- Mail: P.O. Box 21668, Juneau, AK 99802–1668.
- Hand Delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK
- FAX: 907–586–7557
- Email: *bowhead-EIS@noaa.gov*.

Include in the subject line the following document identifier: Bowhead Whale Quota EIS (Email comments, with or without attachments, are limited to five (5) megabytes).

FOR FURTHER INFORMATION CONTACT: Steve Davis or Brad Smith, NMFS Alaska Region, Anchorage Field Office, (907) 271–5006.

SUPPLEMENTARY INFORMATION: NMFS is initiating this EIS process in order to comprehensively assess impacts of the subsistence harvest of Western Arctic bowhead whales by Alaska Natives from 2008 through 2017.

Background

Eskimos have hunted bowhead whales for over 2,000 years as the whales migrate in the spring and fall along the coast line of Alaska. Their traditional subsistence hunts for these whales have been regulated by a quota system under the authority of the International Whaling Commission (IWC) since 1977. Alaska Native subsistence hunters, from 10 northern Alaskan communities, take less than one percent of the stock of bowhead whales per year. Since 1977, the number of strikes has ranged between 14 and 72 animals per year, depending in part on changes in IWC management strategy due to higher estimates of bowhead whale abundance in recent years, as well as hunter efficiency. The IWC sets an overall aboriginal subsistence harvest for this relevant stock, based on the request of Contracting Governments on behalf of the aboriginal hunters. In the case of Alaska Eskimo and Russian Native subsistence hunts, the United States and the Russian Federation make a joint request for a subsistence quota for bowhead whales to the IWC.

NMFS must annually publish aboriginal subsistence whale hunting quotas and any other limitations on such hunting in the **Federal Register** (50 CFR 230.6). The subsistence hunt is directly managed by the Alaska Eskimo Whaling Commission (AEWC). In order to comprehensively assess the effects of these annual quotas, NMFS is proposing to set the term of this analysis to extend over a 10-year period, beginning in 2008.

Alternatives

NMFS preliminarily anticipates four alternatives:

Alternative 1: Grant the AEWC annual quotas amounting to 510 landed whales over 10 years (2008 through 2017), with an annual strike quota of 67 bowhead whales per year, where no unused strikes are added to the quota for any one year.

Alternative 2: Grant the AEWC annual quotas amounting to 510 landed whales over 10 years (2008 through 2017), with an annual strike quota of 67 bowhead whales per year, where no more than 15 unused strikes are added to the strike quota for any one year.

Alternative 3: Grant the AEWC annual quotas amounting to 510 landed whales over 10 years (2008 through 2017), with an annual strike quota of 67 bowhead whales per year, where, for unused strikes, up to 50 percent of the annual strike limit is added to the strike quota for any one year.

Alternative 4 (no action): Do not grant the AEWC any annual quotas.

Major issues to be addressed in this EIS include: the impact of subsistence removals on the Western Arctic stock of bowhead whales; the impacts of these harvest levels on the traditional and cultural values of Alaska Natives, and the cumulative effects of the action when considered along with past, present, and future actions potentially affecting bowhead whales.

Public Involvement

We begin this NEPA process by soliciting input from the public and interested parties on the type of impacts to be considered in the EIS, the range of alternatives to be assessed, and any other pertinent information. Specifically, this scoping process is intended to accomplish the following objectives:

1. Invite affected Federal, state, and local agencies, Alaska Natives, and other interested persons to participate in the EIS process.

2. Determine the potential significant environmental issues to be analyzed in the EIS.

3. Identify and eliminate issues determined to be insignificant or addressed in other documents.

4. Allocate assignments among the lead agency and cooperating agencies regarding preparation of the EIS, including impact analysis and identification of mitigation measures.

5. Identify related environmental documents being prepared.

6. Identify other environmental review and consultation requirements.

The official scoping period is from the date of this notice until December 15, 2006.

Please visit NMFS Alaska Region web page at *http://www.fakr.noaa.gov* for more information on this EIS. NMFS estimates the draft EIS will be available in April 2007.

Authority

The preparation of the EIS for the subsistence harvest of Western Arctic bowhead whales by Alaska Natives will be conducted under the authority and in accordance with the requirements of NEPA, Council on Environmental Quality Regulations (40 CFR parts 1500–1508), other applicable Federal laws and regulations, and policies and procedures of NMFS for compliance with those regulations.

Dated: October 12, 2006.

Samuel D. Rauch III,

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

[FR Doc. E6–17370 Filed 10–17–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101106H]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Receipt of application for research permit and request for comment.

SUMMARY: Notice is hereby given that NMFS has received an application for a permit for scientific research from Tenera Environmental in Lafayette, CA. (Permit 1583). This notice is relevant to federally endangered Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*), threatened Central Valley steelhead (*O. mykiss*), and threatened Southern Distinct Population Segment of North American green sturgeon (*Acipenser medirostris*). This document serves to notify the public of the availability of the permit applications for review and comment.

DATES: Written comments on the permit applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific Standard Time on November 17, 2006.

ADDRESSES: Written comments on the permit application should be sent to the appropriate office as indicated below. Comments may also be sent via e-mail to *FRNpermit.sac@noaa.gov* or fax to the number indicated for the request. The application and related documents are available for review by appointment: Protected Resources Division, NMFS, 650 Capitol Mall, Suite 8–300, Sacramento, CA 95814 (ph: 916–930–3615, fax: 916–930–3629).

FOR FURTHER INFORMATION CONTACT: Russell Bellmer, Ph.D. at phone number 916–930–3615, or e-mail: *FRNpermit.sac@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

This notice is relevant to federally endangered Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*), threatened Central Valley steelhead (*O. mykiss*), and threatened Southern Distinct Population Segment of North American green sturgeon (*Acipenser medirostris*).

Applications Received

Tenera Environmental requests a one-year permit 1583 for an estimated take of 32 juvenile winter-run Chinook Salmon, 85 juvenile spring-run Chinook Salmon, and 6 juvenile Central Valley steelhead to fulfill the requirements of U.S. Environmental Protection Agency and provide current impingement data as requested by National Marine Fisheries Service, U.S. Fish and Wildlife Service, and California Department Fish and Game. Tenera Environmental requests authorization for an estimated total take of 123 juveniles (with 100 percent incidental mortality) resulting from rinsing all impinged material from the traveling screens into the screenwash sluiceways and directed by water flow and gravity into a collection container. Sampling will occur once every four hours for one 24–hour collection period per week for 12 consecutive months (312 samples) at the Contra Costa Power Plant (lat. 38° 01′12″ N., long. 121° 45′36″ W.) and Pittsburg Power Plant (lat. 38° 02′28″ N., long. 121° 53′38″ W.) located in the Suisun Bay of San Francisco Bay Delta. If any listed species are collected alive they will be immediately returned into Suisun Bay.

Individuals are measured and identified to species or race. Tenera Environmental will take a total of six juveniles of the threatened Southern Distinct Population Segment of North American green sturgeon (with 100 percent incidental mortality) resulting from capture and release of the fish.

Dated: October 12, 2006.

Maria Boroja,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–17383 Filed 10–17–06; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Thursday, October 26, 2006, 10 a.m.

PLACE: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED: *Portable Generators:*

Advance Notice of Proposed Rulemaking (ANPR).

The staff will brief the Commission on issues related to an advance notice of proposed rulemaking for portable generators.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: October 16, 2006.

Todd A. Stevenson,

Secretary.

[FR Doc. 06–8786 Filed 10–16–06; 2:45pm]

BILLING CODE 6355–01–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 November 17, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

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: October 13, 2006.

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: IDEA Part C State Performance Plan (SPP) and Annual Performance Report (APR).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions; Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 14,000.

Abstract: The Individuals with Disabilities Education Improvement Act of 2004, signed on December 3, 2004, became Pub. L 108–446. In accordance with 20 U.S.C. 1416(b)(1) and 20 U.S.C. 1442, not later than 1 year after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, each Lead Agency must have in place a performance plan that evaluates the Lead Agency's efforts to implement the requirements and purposes of Part C and describe how the Lead Agency will improve such implementation. This plan is called the Part C State Performance Plan (Part C—SPP). In accordance with 20 U.S.C. 1416(b)(2)(C)(ii) and 20 U.S.C. 1442 the Lead Agency shall report annually to the public on the performance of each Part C program located in the State on the targets in the Lead Agency's performance plan. The Lead Agency shall report annually to the Secretary on the performance of the State under the Lead Agency's performance plan. This report is called the Part C Annual Performance Report (Part C—APR).

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 3167. 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. E6–17334 Filed 10–17–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

The Historically Black Colleges and Universities Capital Financing Advisory Board; Notice of an Open Meeting

AGENCY: The Historically Black Colleges and Universities Capital Financing Board, Department of Education.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the Historically Black Colleges and Universities Capital Financing Advisory Board. The notice also describes the functions of the Board. Notice of this meeting is required by Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend. This notice is appearing less than 15 days prior to the meeting because of scheduling difficulties in obtaining a quorum for the meeting.

FOR FURTHER INFORMATION CONTACT: Steven Pappas, Executive Director, Historically Black Colleges and Universities Capital Financing Program, 1990 K Street, NW., Washington, DC 20006; telephone: (202) 502–7566; fax: (202) 502–7852; e-mail: *Steven.Pappas@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal

Information Relay Service at 1–800–877–8339, between 8 a.m. and 8 p.m., eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Historically Black Colleges and Universities Capital Financing Advisory Board (Board) is authorized by Title III, Part D, Section 347 of the Higher Education Act of 1965, as amended in 1998 (20 U.S.C. 1066f). The Board is established within the Department of Education to provide advice and counsel to the Secretary and the designated bonding authority as to the most effective and efficient means of implementing construction financing on Historically Black College and University campuses and to advise Congress regarding the progress made in implementing the program. Specifically, the Board will provide advice as to the capital needs of Historically Black Colleges and Universities, how those needs can be met through the program, and what additional steps might be taken to improve the operation and implementation of the construction financing program.

The meeting will be held from 10 a.m. to 3 p.m., Friday, October 27, 2006, at the Gallery Lounge, Blackburn Center, Howard University, 2400 Sixth Street, NW., Washington, DC 20059. The purpose of this meeting is to review current program activities and to make recommendations to the Secretary on the current capital needs of Historically Black Colleges and Universities.

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.*, interpreting services, assistance listening devices, or materials in alternative format) should notify Paula Hill at (202) 502–7795, no later than October 23, 2006. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Records are kept of all Board proceedings and are available for public inspection at the Office of the Historically Black Colleges and Universities Capital Financing Advisory Board (Board), 1990 K Street, NW., Washington, DC 20006, from the hours of 9 a.m. to 5 p.m., Monday through Friday.

Dated: October 13, 2006.

James F. Manning,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. E6–17387 Filed 10–17–06; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–2006–0099; FRL–8099–5]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On September 1, 2006, EPA issued a Notice of Receipt of Requests for Amendments by Registrants to Delete Uses in Certain Pesticide Registrations. Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request in the **Federal Register**. The September 1 Notice inadvertently included a request to delete Guar (edible) Gums from EPA Registrations 47870–1, Propylene Oxide, 47870–2, Propylene Oxide Technical, and 47870–3, Propoxide 892. A request to delete Guar (edible) Gums from these three registrations was previously published on May 24, 2006. The terms of the May 24, 2006 **Federal Register** notice are controlling with respect to these three registrations.

DATES: Because this technical correction removes three use deletion requests, the effective date for the remaining use deletions remains unchanged from the September 1 Notice. The remaining deletions are effective February 28, 2007, unless the Agency receives a written withdrawal request on or before February 28, 2007. The Agency will consider a withdrawal request postmarked no later than February 28, 2007.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant on or before February 28, 2007.

ADDRESSES: Submit your withdrawal request, identified by docket identification (ID) number EPA–HQ–OPP–2006–0099, by one of the following methods:

- *Mail*: Attention: John Jamula, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: John Jamula, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6426; e-mail address: *jamula.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0099. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. What Action is the Agency Taking?

This Notice corrects an error that was contained in a September 1 notice of receipt of request for amendments by registrants to delete uses in certain

pesticide registrations (See *http://www.epa.gov/fedrgstr/EPA-PEST/2006/September/Day-01/p7312.htm*). The September 1 Notice inadvertently included a request to delete Guar (edible) Gums from EPA Registrations 47870–1, Propylene Oxide, 47870–2, Propylene Oxide Technical, and 47870–3, Propoxide 892. A request to delete Guar (edible) Gums from these three registrations was previously published on May 24, 2006. The terms of the May 24, 2006 **Federal Register** notice are controlling with respect to these three registrations. (See *http://www.epa.gov/fedrgstr/EPA-PEST/2006/May/Day-24/p7832.htm*).

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 4, 2006.

Robert Forrest,

Acting Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. E6–17227 Filed 10–17–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0697; FRL–8091–8]

Pesticide Product; Registration Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Comments must be received on or before November 17, 2006

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0697, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0697. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Daniel Peacock, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5407; e-mail address: *peacock.dan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA received an application as follows to register a pesticide product containing a new active ingredient not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

Product Containing an Active Ingredient not Included in any Previously Registered Product

File Symbol: 47629–RE. *Applicant*: Woodstream Corporation, 69 North Locust Street, Lititz, PA 17543. *Product name*: Difenacoum Technical. *Type of product*: Rodenticide. *Active ingredient*: Difenacoum at 99.0%. *Proposal classification/Use*: Classification is not applicable. For manufacture into end-use products of 0.005% active ingredient; to control Norway rats, roof rats, and house mice in and around structures and inside of transport vehicles.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: October 3, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–17228 Filed 10–17–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0820; FRL–8097–9]

Notice of Filing of a Pesticide Petition for Establishment or Amendment to Regulations for Residues of Coumaphos in or on Honey and Honey Comb

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment or amendment of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before November 17, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0820 and pesticide petition number (PP) 2E6504, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0820. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number (703) 305–6463; e-mail address: *madden.barbara@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

EPA is printing a summary of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerance

PP 2E6504. Interregional Research Project #4 (IR-4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540, proposes to establish a tolerance for residues of the insecticide coumaphos (O,O-diethyl O-3-chloro-4-methyl-2-oxo-2H-1-benzopyran-7-yl phosphorothioate and its oxygen analog (O,O-diethyl O-3-chloro-4-methyl-2-oxo-2H-1-benzopyran-7-yl phosphate) in or on food commodities honey at 0.1 parts per million (ppm) and honeycomb at 100 ppm. Two different liquid chromatography/mass spectrometry/mass spectrometry (LC/MS/MS) analytical methods are used to measure and evaluate the chemical residue(s).

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 5, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–17100 Filed 10–17–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0800; FRL–8096–1]

Experimental Use Permit; Receipt of Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 352–EUP–RTN from E.I. DuPont de Nemours and Company, DuPont Crop Protection requesting an experimental use permit (EUP) for the end use formulations of chloantraniliprole (DuPont Coragen SC and Altacor WG). The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments must be received on or before November 17, 2006

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0800, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0800. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information

claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Kable Bo Davis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 306–0415; e-mail address: *davis.kable@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to agricultural producers, food manufacturers, pesticide manufacturers, or those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

E.I. DuPont de Nemours and Company, DuPont Crop Protection, is requesting an EUP for chloantraniliprole, a new active ingredient. The proposed EUP program would be initiated on March 1, 2007 and finalized on February 28, 2009. The amount of pesticide product proposed for use is 205 lbs active ingredient, which equals 123 gallons of Coragen SC formulation, and 134 lbs active ingredient, which equals 382 lbs of Altacor WG formulation. The total acreage of specified vegetable and fruit crops for each year is 1,300 acres. The crops on or in which the pesticide is to be used includes apples, celery, cucumbers, head lettuce, leaf lettuce, pears, peppers, spinach, squash, tomatoes, and watermelon. The states in which the proposed program will be conducted include: Arizona, California, Florida, Georgia, Michigan, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Texas, Virginia, Washington, and West Virginia. Records of all application parameters, crop stages at application and evaluation, pest control efficacy evaluations, and crop response evaluations will be reported for each EUP field trial site.

III. What Action is the Agency Taking?

Following the review of the E.I. DuPont de Nemours and Company, DuPont Crop Protection application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

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

The specific legal authority for EPA to take this action is under FIFRA section 5.

List of Subjects

Environmental protection, Experimental use permits.

Dated: October 5, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–17101 Filed 10–17–06; 8:45 am]

BILLING CODE 6560–50–S

COUNCIL ON ENVIRONMENTAL QUALITY

The National Environmental Policy Act—Guidance on Categorical Exclusions

AGENCY: Council on Environmental Quality.

ACTION: Notice extending comment period.

SUMMARY: By **Federal Register** notice of September 19, 2006 (71 FR 54816–54820), the Council on Environmental Quality (CEQ) notified interested parties it was proposing guidance to Federal agencies for establishing and for using categorical exclusions in meeting their responsibilities under the National Environmental Policy Act (NEPA). CEQ invited comments on the proposed guidance, ''Establishing, Revising, and Using Categorical Exclusions under the National Environmental Policy Act.'' Interested parties have requested that CEQ extend the public comment. The deadline for comments was October 27, 2006. By this notice, CEQ is extending the public comment period to December 1, 2006. Although the time for comments has been extended, CEQ requests that interested parties provide comments as soon as possible.

DATES: Written comments should be submitted on or before December 1, 2006.

ADDRESSES: Electronic or facsimile comments on the proposed guidance are preferred because federal offices experience intermittent mail delays from security screening. Electronic comments can be sent to NEPA Modernization (CE) at *hgreczmiel@ceq.eop.gov.* Written comments may be faxed to NEPA Modernization (CE) at (202) 456–0753. Written comments may also be submitted to NEPA Modernization (CE), Attn: Associate Director for NEPA Oversight, 722 Jackson Place NW., Washington DC 20503.

FOR FURTHER INFORMATION CONTACT: Horst Greczmiel, 202–395–5750.

SUPPLEMENTARY INFORMATION: On September 19, 2006, CEQ published notice in the **Federal Register** requesting public comment on proposed guidance to Federal agencies for establishing and for using categorical exclusions in meeting their responsibilities under the National Environmental Policy Act (NEPA).

The Council on Environmental Quality (CEQ) established a National Environmental Policy Act (NEPA) Task Force and is now implementing recommendations designed to modernize the implementation of NEPA and make the NEPA process more effective and efficient. Additional information is available on the task force Web site at *http://ceq.eh.doe.gov/ntf.*

The proposed guidance, ''Establishing, Revising, and Using Categorical Exclusions under the National Environmental Policy Act,'' was developed to assist agencies with developing and using categorical exclusions for actions that do not have significant effects on the human environment and eliminate the need for unnecessary paperwork and effort under NEPA for categories of actions that normally do not warrant preparation of an environmental impact statement (EIS) or environmental assessment (EA). Developing and using appropriate categorical exclusions promotes the cost-effective use of agency NEPA related resources.

Interested parties have requested that CEQ extend the public comment period. The Council believes that by extending the comment period we will receive more in-depth comments on the proposed guidance published in the **Federal Register** notice of September 19, 2006 (67 FR 45510–45512) and also available at *http://www.NEPA.gov* in the Current Developments section. Therefore, the comment period is being extended.

Public comments are requested by December 1, 2006.

Dated: October 13, 2006.

James L. Connaughton,

Chairman, Council on Environmental Quality.

[FR Doc. E6–17359 Filed 10–17–06; 8:45 am]

BILLING CODE 3125–W7–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

October 6, 2006.

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(s), as required by the Paperwork Reduction Act (PRA) 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 November 17, 2006. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1-B441, 445 12th Street, SW., DC 20554 or via the Internet to *PRA@fcc.gov*. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060-XXXX.

Title: Prepaid Calling Card Service Provider Certification, WC Docket No. 05–68.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 787 respondents; 3,148 responses.

Estimated Time Per Response: 20 hours for quarterly reporting; 5 hours for certification.

Frequency of Response: Quarterly reporting requirement, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 78,700 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as a new collection after this 30 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

The Commission is requesting review and approval of a new information collection requiring prepaid calling card providers to report quarterly the percentage of interstate, intrastate and international traffic and call volumes to carriers from which they purchase transport services. Prepaid calling card providers must also file certifications with the Commission quarterly that include the above information and a statement that they are contributing to the federal Universal Service Fund (USF) based on all interstate and international revenue, except for revenue from the sale of prepaid calling cards by, to, or pursuant to contract with Department of Defense (DoD) or a DoD entity.

The Commission has found that prepaid calling card providers are telecommunications service providers and therefore are subject to all of the regulations imposed on telecommunications service providers, including contributing to the USF. The new reporting requirements will allow the Commission to ensure that prepaid calling card providers are complying with the requirements of section 254(d) of the Telecommunications Act of 1996.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–17184 Filed 10–17–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

October 10, 2006.

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(s), as required by the Paperwork Reduction Act (PRA) 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 18, 2006. If you anticipate that you will be submitting PRA comments but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Allison E. Zaleski, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–6466, or via fax at 202–395–5167 or via internet at *Allison_E._Zaleski@eop.omb.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission, Room 1–B441, 445 12th Street, SW., Washington, DC 20554 or an e-mail to *PRA@fcc.gov*. If you would like to obtain or view a copy of this information collection after the 60-day comment period, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Rural Health Care Support Mechanism.

Form No.: N/A.

Type of Review: New collection.

Respondents: Not-for-profit institutions and State, local and tribal government.

Number of Respondents: 20.

Estimated Time per Response: 25 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 500 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission will submit this new information collection to OMB after this 60-day comment period to obtain the full three-year clearance from them. The Commission is requesting OMB approval for an Order that establishes a pilot program to assist public and non-profit health care providers to build station and regionwide broadband networks dedicated to the provision of health care services, and connect those networks to Internet2, a dedicated nationwide backbone. The construction of such networks will bring the benefits of innovative telehealth, and particularly, telemedicine services, to those areas of the country where the need for those benefits is most acute.

The pilot program is designed to encourage health care providers to join together to aggregate their needs and develop a strategy for creating statewide and/or regional networks that will connect numerous health care providers, including rural health care providers, through a dedicated, broadband network. The pilot program will fund up to 85% of the costs incurred to deploy state or regional broadband networks dedicated to health care. The pilot program will also fund up to 85% of the costs of connecting the regional and/or statewide to Internet2, a dedicated nationwide backbone that connects a number of government research institutions, as well as academic, public, and private health care institutions that are repositories of medical expertise and information. The information collected will enable the Commission to select participants for the Pilot Program.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–17342 Filed 10–17–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

October 12, 2006.

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(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law No. 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 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 18, 2006. 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 contact listed below as soon as possible.

ADDRESSES: You may submit your all Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0213.

Title: Section 73.3525, Agreements for Removing Application Conflicts.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 38.

Estimated Time per Response: 0.25–1 hour.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 39 hours.

Total Annual Cost: $61,353.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 73.3525 requires applicants for a construction permit for a broadcast station to obtain approval from the FCC to withdraw, dismiss, or amend its application when that applicant is in conflict with another application pending before the FCC. This request should contain a copy of the agreement and an affidavit of each party to the agreement. In the event that the proposed withdrawal of a conflicting application would unduly impede achievement of a fair, efficient, and equitable distribution of radio service, the FCC must issue an order providing further opportunity to apply for the facilities specified in the application(s) withdrawn. Upon release of this order, 47 CFR section 73.3525(b) requires that the party proposing withdrawal of its application give notice in a daily newspaper of general circulation published in the community in which the proposed station would have been located. Additionally, within seven days of the last publication of the notice, the applicant proposing to withdraw shall file with the FCC a statement giving the dates the notice was published, the text of the notice, and the name and location of the newspaper where the notice was published. The newspaper publication gives interested parties an opportunity to apply for the facilities specified in the withdrawn application(s).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–17343 Filed 10–17–06; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 06–1998]

Announcement of Consumer Advisory Committee Meeting Date and Agenda

AGENCY: Federal Communications Commission.

ACTION: Notice; announcement of meeting.

SUMMARY: This document announces the next meeting date and agenda of the Consumer Advisory Committee (''Committee''). The purpose of the Committee is to make recommendations to the Federal Communications Commission (''Commission'') regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of all consumers in proceedings before the Commission.

DATES: The next meeting of the Consumer Advisory Committee will take place on Friday, November 3, 2006 from 9 a.m to 4 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington DC, 20554.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, (202) 418–2809 (voice), (202) 418–0179 (TTY) or e-mail: *scott.marshall@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Public Notice*, DA 06–1998, released on October 12, 2006, announcing the next meeting date and meeting agenda of its Consumer Advisory Committee. The purpose of the Committee is to make recommendations to the Commission regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of all consumers in proceedings before the Commission.

At its November 3, 2006 meeting, the Committee will receive a briefing by Commission staff regarding the agency's activities. In addition, the Committee will receive reports from the Commission's TRS, Disability, Rural, Media, and Recommendation Follow-Up working groups. The full Consumer Advisory Committee may take action on any and/or all of these agenda items. Meeting minutes will be available for public inspection at the Commission's headquarters building located at Portals II, 445 12th Street, SW., Washington DC, 20554. The Committee meeting will be open to the public and interested persons may attend the meeting and communicate their views. Members of the public will have an opportunity to address the Committee on issues of interest to both them and the Committee. The meeting site is fully accessible to people using wheelchairs or other mobility aids. Meeting agendas and handouts will be provided in accessible formats; sign language interpreters, open captioning, and assistive listening devices will be provided on site. The meeting will also be webcast with open captioning at *http://www.fcc.gov/cgb/cac.*

A copy of the October 12, 2006 *Public Notice* is available in alternate formats (Braille, cassette tape, large print or diskette) upon request. It is also posted on the Commission's Web site at *http://www.fcc.gov/cgb/cac.* If the Public has any written comments for the Committee, please submit them to the Committee's Designated Federal Officer, Scott Marshall, Federal Communications Commission, Room 5–A824, 445 12th Street, SW., Washington, DC 20554. Contact the Commission to request other reasonable accommodations for people with disabilities as early as possible; allowing at least 14 days advance notice of the request. Please include a detailed description of any accommodations you seek and a way in which you can be contacted in case further information is needed by sending an e-mail to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Federal Communications Commission.

Mary Beth Richards,

Deputy Bureau Chief/Chief of Staff Consumer & Governmental Affairs Bureau.

[FR Doc. E6–17351 Filed 10–17–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011602–010.

Title: Grand Alliance Agreement II.

Parties: Hapag-Lloyd AG; Hapag-Lloyd USA LLC; Nippon Yusen Kaisha; and Orient Overseas Container Line, Inc.; Orient Overseas Container Line Limited; and Orient Overseas Container Line (Europe) Limited.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, D.C. 20036.

Synopsis: The amendment deletes CP Ships (UK) Limited as a party to the Agreement, changes the name of CP Ships USA LLC to Hapag-Lloyd USA LLC, and makes corresponding changes throughout the Agreement.

Agreement No.: 011660–006.

Title: Administrative Housekeeping Agreement.

Parties: The Members of The Trans-Pacific American Flag Berth Operators (TPAFBO) and the Members of The Trans-Atlantic American Flag Liner Operators (TAAFLO).

Filing Party: Howard A. Levy, Esq.; 80 Wall Street, Suite 1117; New York, NY 10005.

Synopsis: The amendment deletes the text of Appendix A, naming the individual members of TPAFBO and TAAFLO.

By order of the Federal Maritime Commission.

Dated: October 13, 2006.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E6–17363 Filed 10–17–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409), and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License number	Name/address	Date reissued
016950NF	Global Cargo Corporation, 8470 NW 30th Terrace, Miami, FL 33122	September 23, 2006.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E6–17366 Filed 10–17–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515, effective on the corresponding date shown below:

License Number: 011360N.

Name: Hirdes Freight Ltd.

Address: 855 Arthur Ave., Elk Grove Village, IL 60007.

Date Revoked: September 27, 2006.

Reason: Surrendered license voluntarily.

License Number: 017999N.

Name: Kerry Freight (USA) Inc.

Address: 147–45 Farmers Blvd., Ste. 201, Jamaica, NY 11434.

Date Revoked: September 28, 2006.

Reason: Surrendered license voluntarily.

License Number: 018641F.

Name: Sun Ocean Lines, Inc.

Address: 13084 SW. 21st Street, Miramar, FL 33027.

Date Revoked: October 2, 2006.

Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E6–17365 Filed 10–17–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Rescission of Order of Revocations

Notice is hereby given that the Order revoking the following license is being rescinded by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515.

License Number : 002688F.

Name : International Import Export Service, Inc.

Address : 147–04 176th Street, Ste. 2-W, Jamaica, NY 11434.

Order Published : FR: 10/04/06 (Volume 71, No.192, Pg.58619–58620).

Sandra L. Kusumoto,

Director Bureau of Certification and Licensing.

[FR Doc. E6–17364 Filed 10–17–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicants

Sunspeed Transportation, 11421 E. Carson Street, Ste. R, Lakewood, CA 90715.

Officer: Delio S. Silvestre, Jr., Sole Proprietor.

LGS Logistic Inc., 804 E. Mabel Ave., Monterey Park, CA 90755.

Officer: Gary Yenkok Tan, CEO, (Qualifying Individual).

Tianjin Consol International Inc., dba United Consol Line Inc., 1255 Corporate Center Drive, #407, Monterey Park, CA 91754.

Officers: Sze Sze Chan, Corporate Secretary, (Qualifying Individual), John Kuo Chow, Director/CEO.

Lusfab International Inc., 8231 NW. 68 Street, Miami, FL 33166.

Officers: Luis E. Suarez, Director, (Qualifying Individual), Pedro Figueredo, President.

Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Elle Logistics, Inc., 1962 NW. 82 Avenue, Miami, FL 33126.

Officers: Aymee Areu, President, (Qualifying Individual), Jaime Salinas, Treasurer.

Leaman Logistics, LLC, 1777 Sentry Parkway West, Abington Hall, Suite 300, Blue Bell, PA 19422.

Officers: Ronald M. Keegan, Vice President, (Qualifying Individual), J. Stephen Hamilton, CEO.

Dated: October 13, 2006.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E6–17360 Filed 10–17–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before December 18, 2006.

ADDRESSES: You may submit comments, identified by FR 4001 (7100–0097), by any of the following methods:

• Agency Web Site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

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

• E–mail: regs.comments@federalreserve.gov. Include the OMB control number in the subject line of the message.

• FAX: 202–452–3819 or 202–452–3102.

• Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

All public comments are available from the Board's web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Michelle Long, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following report:

Report title: Domestic Branch Notification

Agency form number: FR 4001

OMB control number: 7100–0097

Frequency: On occasion

Reporters: State member banks

Annual reporting hours: 2,244 hours

Estimated average hours per response: 30 minutes for expedited notifications; 1 hour for nonexpedited notifications

Number of respondents: 382 expedited; 2,053 nonexpedited

General description of report: This information collection is mandatory per Section 9(3) of the Federal Reserve Act (12 U.S.C. § 321) and is not given confidential treatment.

Abstract: The Federal Reserve Act and Regulation H require a state member bank to seek prior approval of the Federal Reserve System before establishing or acquiring a domestic branch. Such requests for approval must be filed as notifications at the appropriate Reserve Bank for the state member bank. Due to the limited information that a state member bank generally has to provide for branch proposals, there is no formal reporting form for a domestic branch notification.

A state member bank is required to notify the Federal Reserve by letter of its intent to establish one or more new branches, and provide with the letter evidence that public notice of the proposed branch(es) has been published by the state member bank in the appropriate newspaper(s). The Federal Reserve uses the information provided to fulfill its statutory obligation to review any public comment on proposed branches before acting on the proposals, and otherwise to supervise state member banks.

Board of Governors of the Federal Reserve System, October 12, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–17312 Filed 10–17–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before December 18, 2006.

ADDRESSES: You may submit comments, identified by Reg G (7100–0299), Reg H–7 (7100–0298), by any of the following methods:

• Agency Web Site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

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

• E–mail: regs.comments@federalreserve.gov. Include the OMB control number in the subject line of the message.

• FAX: 202–452–3819 or 202–452–3102.

• Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Michelle Long, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following information collections:

1. Report title: Disclosure and Reporting Requirements of CRA–Related Agreements

Agency form number: Reg G

OMB control number: 7100–0299

Frequency: On occasion, annual

Reporters: Insured depository institutions (IDIs) and nongovernmental entities or persons (NGEPs)

Annual reporting hours: 78 hours

Number of respondents: 3 IDI; 6 NGEPs

Estimated average hours per response: 1 hour (7 disclosure requirements); 4 hours (2 annual reports)

General description of report: This information collection is required pursuant the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1831y(b) and (c). The FDI Act authorizes the Federal Reserve to require the disclosure and reporting requirements of Regulation G (12 CFR 207). In general, the Federal Reserve does not consider individual respondent commercial and financial information collected by the Federal Reserve pursuant to Regulation G as confidential. However, a respondent may request confidential treatment pursuant to section (b)(4) of Freedom of Information Act, 5 U.S.C 552(b)(4).

Abstract: Section 48 of the FDI Act imposes disclosure and reporting requirements on IDIs, their affiliates and NGEPs that enter into written agreements that meet certain criteria. The written agreements must (1) be made in fulfillment of the Community Reinvestment Act of 1977 (CRA) and (2) involve funds or other resources of an IDI or affiliate with an aggregate value of more than $10,000 in a year, or loans with an aggregate principal value of more than $50,000 in a year. Section 48 excludes from the disclosure and reporting requirements any agreement between an IDI or its affiliate and an NGEP if the NGEP has not contacted the IDI or its affiliate, or a banking agency, concerning the CRA performance of the IDI.

Regulation G contains four disclosure requirements and two reporting

requirements for IDIs and affiliates and three disclosure requirements and one reporting requirement for NGEPs. Please see the agency's OMB supporting statement for a summary of the disclosure and reporting requirements of Regulation G, *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm.*

The disclosure and reporting requirements in connection with Regulation G are mandatory and apply to state member banks and their subsidiaries; bank holding companies; affiliates of bank holding companies, other than banks, savings associations, and subsidiaries of banks and savings associations; and NGEPs that enter into covered agreements with any of the aforementioned companies.

2. Report title: Disclosure Requirements in Connection With Regulation H (Consumer Protections in Sales of Insurance)

Agency form number: Reg H–7

OMB control number: 7100–0298

Frequency: On occasion

Reporters: State member banks

Annual reporting hours: 14,159 hours

Number of respondents: 899

Estimated average hours per response: 1.5 minutes

General description of report: This information collection is mandatory pursuant the Federal Deposit Insurance Act, 12 U.S.C. 1831x. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises.

Abstract: Section 305 of the Gramm–Leach–Bliley Act requires financial institutions to provide written and oral disclosures to consumers in connection with the initial sale of an insurance product or annuity concerning its uninsured nature and the existence of the investment risk, if appropriate, and the fact that insurance sales and credit may not be tied.

Covered persons must make insurance disclosures before the completion of the initial sale of an insurance product or annuity to a consumer. The disclosure must be made orally and in writing to the consumer that: (1) the insurance product or annuity is not a deposit or other obligation of, or guaranteed by, the financial institution or an affiliate of the financial institution; (2) the insurance product or annuity is not insured by the FDIC or any other agency of the United States, the financial institution, or (if applicable) an affiliate of the financial institution; and (3) in the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value.

Covered persons must make a credit disclosure at the time a consumer applies for an extension of credit in connection with which an insurance product or annuity is solicited, offered, or sold. The disclosure must be made orally and in writing that the financial institution may not condition an extension of credit on either: (1) the consumer's purchase of an insurance product or annuity from the financial institution or any of its affiliates; or (2) the consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

Board of Governors of the Federal Reserve System, October 13, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–17337 Filed 10–17–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Sunshine Act Meeting Notice

AGENCY: Federal Trade Commission.

TIME AND DATE: 2 p.m., Wednesday, November 15, 2006.

PLACE: Federal Trade Commission Building, Room 532, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion Open to the Public:

(1) Oral Argument in Rambus Incorporated, Docket 9302.

Portion Closed to the Public:

(2) Executive Session to follow Oral Argument in Rambus Incorporated, Docket 9302.

FOR FURTHER INFORMATION CONTACT: Mitch Katz, Office of Public Affairs: (202) 326–2180. Recorded Message: (202) 326–2711.

Donald S. Clark,

Secretary.

[FR Doc. 06–8783 Filed 10–16–06; 1:01 pm]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File Nos. 061 0087; 051 0065; 061 0268; 061 0267; 051 0217]

Information and Real Estate Services, LLC; Northern New England Real Estate Network, Inc.; Williamsburg Area Association of Realtors, Inc.; Realtors Association of Northeast Wisconsin, Inc.; Monmouth County Association of Realtors, Inc.; Analysis of Agreements Containing Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreements.

SUMMARY: The consent agreements in these matters settle alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaints and the terms of the consent orders—embodied in the consent agreements—that would settle these allegations.

DATES: Comments must be received on or before November 10, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Information and Real Estate Services, File No. 061 0087; or Northern New England Real Estate Network, File No. 051 0065; or Williamsburg Area Association of Realtors, File No. 061 0268; or Realtors Association of Northeast Wisconsin, File No. 061 0267; or Monmouth County Association of Realtors, Inc., File No. 051 0217,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Patrick J. Roach, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2793.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreements, and the allegations in the complaints. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 12, 2006), on the World Wide Web, at *http://www.ftc.gov/os/2006/10/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreements Containing Consent Orders To Aid Public Comment

The Federal Trade Commission has accepted for public comment a series of agreements containing consent orders with five respondent entities. Each of the proposed respondents operates a multiple listing service (''MLS'') that is designed to foster real estate brokerage services by sharing and publicizing information on properties for sale by customers of real estate brokers. The agreements settle charges that each respondent violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, through particular acts and practices of the MLS. The proposed consent orders have been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreements and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate comment on the proposed consent orders. This analysis does not constitute an official interpretation of the agreements and proposed orders, and does not modify their terms in any way. Further, the proposed consent orders have been entered into for settlement purposes only, and do not constitute an admission by any proposed respondent that it violated the law or that the facts alleged in the respective complaint against each respondent (other than jurisdictional facts) are true.

I. The Respondents

The agreements are with the following organizations:

—Information and Real Estate Services, LLC (''IRES'') is a limited liability company based in Loveland, Colorado, that is owned by five boards and associations of realtors in Boulder, Fort Collins, Greeley, Longmont, and Loveland/Berthoud, Colorado. IRES operates a regional MLS for Northern Colorado that is used by more than 5,000 real estate professionals.

—Northern New England Real Estate Network, Inc. (''NNEREN'') is a corporation based in Concord, New Hampshire, that functions as an association of realtors. NNEREN operates an MLS for New Hampshire and some surrounding areas that is used by several thousand real estate professionals.

—Williamsburg Area Association of Realtors, Inc. (''WAAR''), is a corporation based in Williamsburg, Virginia, that functions as an association of realtors. WAAR operates an MLS for the Williamsburg, Virginia, metropolitan area and surrounding counties that is used by approximately 650 real estate professionals.

—Realtors Association of Northeast Wisconsin, Inc. (''RANW'') is a non-profit corporation based in Appleton, Wisconsin, that functions as an association of realtors. RANW operates an MLS for the Northeast Wisconsin Area, which includes the cities of Green Bay, Appleton, Oshkosh, and Fond du Lac, Wisconsin, and the surrounding counties, that is used by more than 1,500 real estate professionals.

—Monmouth County Association of Realtors, Inc. (''MCAR'') is a corporation based in Tinton Falls, New Jersey, that functions as an association of realtors. MCAR operates an MLS for Monmouth County, Ocean County and the surrounding areas of New Jersey that is used by several thousand real estate professionals.

II. Industry Background

A Multiple Listing Service, or ''MLS,'' is a cooperative venture by which real estate brokers serving a common local market area submit their listings to a central service, which in turn distributes the information, for the purpose of fostering cooperation among brokers and agents in real estate transactions. The MLS facilitates transactions by putting together a home seller, who contracts with a broker who is a member of the MLS, with prospective buyers, who may be working with other brokers who are also members of the MLS. Membership in the MLS is largely limited to member brokers who generally must possess a license to engage in real estate brokerage services and meet other criteria set by MLS rules.

Prior to the late 1990s, the listings on an MLS were typically directly accessible only to real estate brokers who were members of a local MLS. The MLS listings typically were made available through books or dedicated computer terminals, and generally could only be accessed by the general public by physically visiting a broker's office or by receiving a fax or hand delivery of selected listings from a broker.

Information from an MLS is now typically available to the general public not only through the offices of real

estate brokers who are MLS members, but also through three principal categories of Internet Web sites. First, information concerning many MLS listings is available through *Realtor.com,* a national Web site run by the National Association of Realtors (''NAR''). *Realtor.com* contains listing information from many local MLS systems around the country and is the largest and most-used Internet real estate Web site. Second, information concerning MLS listings is often made available through a local MLS-affiliated Web site. Third, information concerning MLS listings is often made available on the Internet sites of various real estate brokers, who choose to provide these Web sites as a way of promoting their brokerage services. Most of these various Web sites receive information from an MLS pursuant to a procedure often known as Internet Data Exchange (''IDX''), which is typically governed by MLS policies. The IDX policies allow operators of approved Web sites to display MLS active listing information to the public.

Today the Internet plays a crucial role in real estate sales. According to a 2005 survey by the National Association of Realtors (''NAR''), 77 percent of home buyers used the Internet to assist in their home search, with 57 percent reporting frequent Internet searches. Twenty-four percent of respondents first learned about the home they selected from the Internet, the second most common means behind learning about a home from a real estate agent (50 percent).[2] In all, 69 percent of home buyers found the Internet to be a ''very useful'' source of information, and a total of 96 percent found the Internet to be either ''very useful'' or ''somewhat useful.'' [3] Moreover, the NAR Survey makes clear that the overwhelming majority of Web sites used nationally in searching for homes contain listing information that is provided by local MLS systems.[4]

A. Types of Real Estate Brokerage Professionals

A typical real estate transaction involves two real estate brokers. These are commonly known as a ''listing broker'' and a ''selling broker.'' The listing broker is hired by the seller of the property to locate an appropriate buyer. The seller and the listing broker agree upon compensation, which is determined by written agreement negotiated between the seller and the listing broker. In a common traditional listing agreement, the listing broker receives compensation in the form of a commission, which is typically a percentage of the sales price of the property, payable if and when the property is sold. In such a traditional listing agreement, the listing broker agrees to provide a package of real estate brokerage services, including promoting the listing through the MLS and on the Internet, providing advice to the seller regarding pricing and presentation, fielding all calls and requests to show the property, supplying a lock-box so that potential buyers can see the house with their agents, running open houses to show the house to potential buyers, negotiating with buyers or their agents on offers, assisting with home inspections and other arrangements once a contract for sale is executed, and attending the closing of the transaction.

The other broker involved in a typical transaction is commonly known as the selling broker. In a typical transaction, a prospective buyer will seek out a selling broker to identify properties that may be available. This selling broker will discuss the properties that may be of interest to the buyer, accompany the buyer to see various properties, try to arrange a transaction between buyer and seller, assist the buyer in negotiating the contract, and help in further steps necessary to close the transaction. In a traditional transaction, the listing broker offers the selling broker a fixed commission, to be paid from the listing broker's commission when and if the property is sold. Real estate brokers typically do not specialize as only listing brokers or selling brokers, but often function in either role depending on the particular transaction.

B. Types of Real Estate Listings

The relationship between the listing broker and the seller of the property is established by agreement. The two most common types of agreements governing listings are Exclusive Right to Sell Listings and Exclusive Agency Listings. An Exclusive Right to Sell Listing is the traditional listing agreement, under which the property owner appoints a real estate broker as his or her exclusive agent for a designated period of time, to sell the property on the owner's stated terms, and agrees to pay the listing broker a commission if and when the property is sold, whether the buyer of the property is secured by the listing broker, the owner or another broker.

An Exclusive Agency Listing is a listing agreement under which the listing broker acts as an exclusive agent of the property owner or principal in the sale of a property, but under which the property owner or principal reserves a right to sell the property without assistance of the listing broker, in which case the listing broker is paid a reduced or no commission when the property is sold.

Some real estate brokers have attempted to offer services to home sellers on something other than the traditional full-service basis. Many of these brokers, often for a flat fee, will offer sellers access to the MLS's information-sharing function, as well as a promise that the listing will appear on the most popular real estate Web sites. Under such arrangements, the listing broker does not offer additional real estate brokerage services as part of the flat fee package, but allows sellers to purchase additional services if sellers so desire. These non-traditional arrangements often are structured using Exclusive Agency Listing contracts.

There is a third type of real estate listing that does not involve a real estate broker, which is a ''For Sale By Owner'' or ''FSBO'' listing. With a FSBO listing, a home owner will attempt to sell a house without the involvement of any real estate broker and without paying any compensation to such a broker, by advertising the availability of the home through traditional advertising mechanisms (such as a newspaper) or FSBO-specific Web sites.

There are two critical distinctions between an Exclusive Agency Listing and a FSBO for the purpose of this analysis. First, the Exclusive Agency Listing employs a listing broker for access to the MLS and Web sites open to the public; a FSBO listing does not. Second, an Exclusive Agency Listing sets terms of compensation to be paid to a selling broker, while a FSBO listing often does not.

III. The Conduct Addressed by the Proposed Consent Orders

Each of the proposed consent orders is accompanied by a complaint setting forth the conduct by the respondent that is the reason for the proposed consent order. In general, the conduct at issue in these matters is largely the same as the conduct addressed by the Commission in its recent consent order involving the Austin Board of Realtors (''ABOR'').[5]

[2] E.g., Paul C. Bishop, Thomas Beers and Shonda D. Hightower, The 2005 National Association of Realtors Profile of Home Buyers and Sellers (hereinafter, ''NAR Study'') at 3–3, 3–4.

[3] *Id.* See Home Buyer & Seller Survey Shows Rising Use of Internet, Reliance on Agents (Jan. 17, 2006), available at *http://www.realtor.org/PublicAffairsWeb.nsf/Pages/HmBuyerSellerSurvey06?OpenDocument.*

[4] NAR Study at 3–19.

[5] *In the Matter of Austin Bd. of Realtors,* Docket No. C–4167 (Final Approval, Aug. 29, 2006). The ABOR consent order was published with an accompanying Analysis To Aid Public Comment at 71 FR 41023 (July 19, 2006).

The complaints accompanying the proposed consent orders allege that respondents have violated Section 5 of the FTC Act by adopting rules or policies that limit the publication and marketing on the Internet of certain sellers' properties, but not others, based solely on the terms of their respective listing contracts. The rules or policies challenged in the complaints state that information about properties will not be made available on popular real estate Web sites unless the listing contracts are Exclusive Right to Sell Listings. When implemented, these ''Web Site Policies'' prevented properties with non-traditional listing contracts from being displayed on a broad range of public Web sites.

The respondents adopted the challenged rules or policies at various times between 2001 and 2005. Each respondent, prior to the Commission's acceptance of the consent orders and proposed complaints for public comment, rescinded or modified its rules to discontinue the challenged practices. The members of each respective MLS affected by these rules have been notified of the recent changes.

The complaints allege that the respondents violated Section 5 of the FTC Act by unlawfully restraining competition among real estate brokers in their respective service areas by adopting the Web Site Policies.

A. The Respondents Have Market Power

Each of the respondents serves the great majority of the residential real estate brokers in its respective service area. These professionals compete with one another to provide residential real estate brokerage services to consumers.

Each of the respondents also is the sole or dominant MLS serving its respective service area. Membership in each of the respondents' MLS systems is necessary for a broker to provide effective residential real estate brokerage services to sellers and buyers of real property in the respective service area.[6] Each respondent, through the MLS that it operates, controls key inputs needed for a listing broker to provide effective real estate brokerage services, including: (1) A means to publicize to all brokers the residential real estate listings in the service area; and (2) a means to distribute listing information to Web sites for the general public. By virtue of industry-wide participation and control over a key input, each of the respondents has market power in the provision of residential real estate brokerage services to sellers and buyers of real property in its respective service area.

B. Respondents' Conduct

At various times between 2001 and 2005, each of the respondents adopted a rule that prevented information on listings other than traditional Exclusive Right to Sell Listings from being included in the information available from its respective MLS to be used and published by publicly-accessible Web sites.[7] The effect of these rules, when implemented, was to prevent such information from being available to be displayed on a broad range of Web sites, including the NAR-operated ''Realtor.com'' Web site; the Web sites operated by several of the respondents; and member Web sites.

Non-traditional forms of listing contracts, including Exclusive Agency Listings, are often used by listing brokers to offer lower-cost real estate services to consumers. The Web Site Policies of each of the respondents were joint action by a group of competitors to withhold distribution of listing information to publicly accessible Web sites from competitors who did not contract with their brokerage service customers in a way that the group wished. This conduct was a new variation of a type of conduct that the Commission condemned 20 years ago. In the 1980s and 1990s, several local MLS boards banned Exclusive Agency Listings from the MLS entirely. The Commission investigated and issued complaints against these exclusionary practices, obtaining several consent orders.[8]

C. Competitive Effects of the Web Site Policies

The Web Site Policies have the effect of discouraging members of the respective respondents' MLS systems from offering or accepting Exclusive Agency Listings. Thus, the Web Site Policies substantially impede the provision of unbundled brokerage services, and make it more difficult for home sellers to market their homes. The Web Site Policies have caused some home sellers to switch away from Exclusive Agency Listings to other forms of listing agreements.[9]

When home sellers switch to full service listing agreements from Exclusive Agency Listings that often offer lower-cost real estate services to consumers, the sellers may purchase services that they would not otherwise buy. This, in turn, may increase the commission costs to consumers of real estate brokerage services. By preventing Exclusive Agency Listings from being transmitted to public-access real estate Web sites, the Web Site Policies have adverse effects on home sellers and home buyers. In particular, the Web Site Policies deny home sellers choices for marketing their homes and deny home buyers the chance to use the Internet to easily see all of the houses listed by real estate brokers in the area, making their search less efficient.

D. There Is No Competitive Efficiency Associated With the Web Site Policies

The respondents' rules at issue here advance no legitimate procompetitive purpose. If, as a theoretical matter, buyers and sellers could avail themselves of an MLS system and carry out real estate transactions without compensating any of its broker members, an MLS might be concerned that those buyers and sellers were free-riding on the investment that brokers have made in the MLS and adopt rules to address that free-riding. But this theoretical concern does not justify the rules or policies adopted by the various respondents here. Exclusive Agency Listings do not enable home buyers or sellers to bypass the use of the brokerage services that the MLS was created to promote, because a listing broker is always involved in an Exclusive Agency

[6] As noted, the MLS provides valuable services for a broker assisting a seller as a listing broker, by offering a means of publicizing the property to other brokers and the public. For a broker assisting a buyer, it also offers unique and valuable services, including detailed information that is not shown on public Web sites, which can help with house showings and otherwise facilitate home selections.

[7] For example, MCAR's rule stated: ''Listing information downloaded and/or otherwise displayed pursuant to IDX shall be limited to properties listed on an exclusive right to sell basis. (Office exclusive and exclusive agency listings will not be forwarded to IDX sites.).'' (MCAR Rules and Regulations (2004)). The NNEREN rule used somewhat different wording: ''Exclusive Agency listings will not be included in NNEREN datafeeds to any Web site accessed by the general public such as nneren.com, REALTOR.com, third party feeds, IDX, etc. '' (NNEREN Rules and Regulations (Feb. 2005)).

[8] *See, e.g., In the Matter of Port Washington Real Estate Bd., Inc.,* 120 F.T.C. 882 (1995); In the Matter of United Real Estate Brokers of Rockland, Ltd., 116 F.T.C. 972 (1993); *In the Matter of Am. Indus. Real Estate Assoc.,* 116 F.T.C. 704 (1993); *In the Matter of Puget Sound Multiple Listing Assoc.,* 113 F.T.C. 733 (1990); *In the Matter of Bellingham-Whatcom County Multiple Listing Bureau,* 113 F.T.C. 724 (1990); *In the Matter of Metro MLS, Inc.,* 113 F.T.C. 305 (1990); *In the Matter of Multiple Listing Serv. of the Greater Michigan City Area, Inc.,* 106 F.T.C. 95 (1985); *In the Matter of Orange County Bd. of Realtors, Inc.,* 106 F.T.C. 88 (1985).

[9] WAAR does not appear to have implemented the Web Site Policies, as Exclusive Agency Listings have been included in IDX feeds before, during and after its policy was in effect. However, its adoption and publication of the policy alone has inhibited the use of such listings in the Williamsburg area by at least one local real estate broker, who chose not to use Exclusive Agency Listings because he did not wish to violate the local rule.

Listing, and the MLS rules of each of the respondents already provide protections to ensure that a selling broker—a broker who finds a buyer for the property—is compensated for the brokerage service he or she provides.

It is possible, of course, that a buyer of an Exclusive Agency Listing may make the purchase without using a selling broker, but this is true for traditional Exclusive Right to Sell Listings as well. Under the existing MLS rules of each of the respondents that apply to any form of the listing agreement, the listing broker must ensure that the home seller pays compensation to the cooperating selling broker (if there is one), and the listing broker may be liable himself for a lost commission if the home seller fails to pay a selling broker who was the procuring cause of a completed property sale. The possibility of sellers or buyers using the MLS but bypassing brokerage services is already addressed effectively by the respondents' existing rules that do not distinguish between forms of listing contracts, and does not justify the Web Site Policies.

IV. The Proposed Consent Orders

Despite the recent cessation by each of the respondents of the challenged practices, it is appropriate for the Commission to require the prospective relief in the proposed consent orders. Such relief ensures that the respondents cannot revert to the old rules or policies, or engage in future variations of the challenged conduct. The conduct at issue in the current cases is itself a variation of practices that have been the subject of past Commission orders; as noted above, in the 1980s and 1990s, the Commission condemned the practices of several local MLS boards that had banned Exclusive Agency Listings entirely, and several consent orders were imposed.

The proposed orders are designed to ensure that each MLS does not misuse its market power, while preserving the procompetitive incentives of members to contribute to the MLS systems operated by the respondents. The proposed orders prohibit respondents from adopting or enforcing any rules or policies that deny or limit the ability of their respective MLS participants to enter into Exclusive Agency Listings, or any other lawful listing agreements, with sellers of properties. The proposed orders include examples of such practices, but the conduct they enjoin is not limited to those five enumerated examples. In addition, the proposed orders state that, within thirty days after each order becomes final, each respondent shall have conformed its rules to the substantive provisions of the order. Each respondent is further required to notify its participants of the applicable order through its usual business communications and its Web site. The proposed orders require notification to the Commission of changes in the respondent entities' structures, and periodic filings of written reports concerning compliance with the terms of the orders.

The proposed orders apply to each of the named respondents and entities it owns or controls, including its respective MLS and any affiliated Web site it operates. The orders do not prohibit participants in the respondents' MLS systems, or other independent persons or entities that receive listing information from a respondent, from making independent decisions concerning the use or display of such listing information on participant or third-party Web sites, consistent with any contractual obligations to respondent(s).

The proposed orders will expire in 10 years.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E6–17357 Filed 10–17–06; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Electronic Health Record Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the eleventh meeting the American Health Information Community Electronic Health Record Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.).

DATES: November 7, 2006, from 1 p.m. to 4 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090 (please bring photo ID for entry to a Federal building).

FOR FURTHER INFORMATION CONTACT: *http://www/hhs.gov/healthit/ahic/ehr_main.html.*

SUPPLEMENTARY INFORMATION: The workgroup discussion will include a discussion of critical components as well as other topics relating to an electronic health record.

The meeting will be available via Web cast at *http://www.hhs.gov/healthit/ahic/ehr_instruct.html.*

Dated: October 12, 2006.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 06–8733 Filed 10–17–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Consumer Empowerment Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the eleventh meeting of the American Health Information Community Consumer Empowerment Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.).

DATES: November 6, 2006, from 1 p.m. to 5 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090 (please bring photo ID for entry to a Federal building).

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/ce_main.html.*

SUPPLEMENTARY INFORMATION: The Workgroup members will discuss outcomes from the visioning process, and continue discussion on a personal health record.

The meeting will be available via Web cast at *http//www.hhs.gov/healthit/ahic/ce_instruct.html.*

Dated: October 12, 2006.

Judith Sparrow,

Director, American health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 06–8734 Filed 10–17–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Confidentiality, Privacy and Security Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the fourth meeting of the American Health Information Community Confidentiality, Privacy and Security Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.).

DATES: November 2, 2006, from 1 p.m. to 5 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090 (please bring photo ID for entry to a Federal building).

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic.html.*

SUPPLEMENTARY INFORMATION: The workshop members will discuss identity proofing techniques and governance, user authentication and identity management, and risk assessment.

The meeting will be available via Web cast at *http://www.hhs.gov/healthit/ahic/cps_instruct.html.*

Dated: October 10, 2006.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 06–8735 Filed 10–17–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Quality Workgroup

ACTION: Announcement of meeting.

SUMMARY: This notice announces the third meeting of the American Health Information Community Quality Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.).

DATES: November 1, 2006, from 1 p.m. to 4 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090 (you will need a photo ID to enter a Federal building).

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/quality_main.html.*

SUPPLEMENTARY INFORMATION: During the meeting, the Workgroup will continue their discussion on a core set of quality measures and a discussion on the specific charge to the Workgroup.

The meeting will be available via Internet access. For additional information, go to *http://www.hhs.gov/healthit/ahic/quality_instruct.html.*

Dated: October 6, 2006.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 06–8736 Filed 10–17–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinato for Health Information Technology, American Health Information Community Chronic Care Workgroup Meeting

ACTION: Announcement of Meeting.

SUMMARY: This notice announces the eleventh meeting of the American Health Information Community Chronic Care Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.).

DATES: November 8, 2006, from 1 p.m. to 4 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201, Conference Room 4090 (please bring photo ID for entry to a Federal building).

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/cc__main.html.*

SUPPLEMENTARY INFORMATION: The Workgroup will discuss the demonstration project and secure messaging.

The meeting will be available via Web cast at *http:///www.hhs.gov/healthit/ahic/cc__instruct.hml.*

Dated: October 11, 2006.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 06–8737 Filed 10–17–06; 8:45am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–225]

Availability of Draft Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Section 104(i)(3) [42 U.S.C. 9604(i)(3)] directs the Administrator of ATSDR to prepare toxicological profiles of priority hazardous substances and to revise and publish each updated toxicological profile as necessary. This notice announces the availability of the 20th set of toxicological profiles, which consists of one new draft and six updated drafts, prepared by ATSDR for review and comment.

DATES: In order to be considered, comments on these draft toxicological profiles must be received on or before February 26, 2007. Comments received after the close of the public comment period will be considered at the discretion of ATSDR on the basis of what is deemed to be in the best interest of the general public.

ADDRESSES: Requests for printed copies of the draft toxicological profiles should be sent to the attention of Ms. Olga Dawkins, Division of Toxicology and Environmental Medicine, Agency for Toxic Substances and Disease Registry, Mailstop F–32, 1600 Clifton Road, NE., Atlanta, Georgia 30333. Electronic access to these documents is also available at the ATSDR Web site: *http://www.atsdr.cdc.gov/toxpro2.html.*

Comments regarding the draft toxicological profiles should be sent to the attention of Ms. Nickolette Roney, Division of Toxicology and Environmental Medicine, Agency for Toxic Substances and Disease Registry, Mailstop F–32, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Requests for printed copies of the draft toxicological profiles must be in writing, and must specifically identify the hazardous substance(s) profile(s) that you wish to receive. ATSDR reserves the right to provide only one copy of each profile requested, free of

charge. In case of extended distribution delays, requestors will be notified.

Written comments and other data submitted in response to this notice and the draft toxicological profiles should bear the docket control number ATSDR–225. Send one copy of all comments and three copies of all supporting documents to Ms. Roney at the above stated address by the end of the comment period. Because all public comments regarding ATSDR toxicological profiles are available for public inspection, no confidential business information or other confidential information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Olga Dawkins, Division of Toxicology and Environmental Medicine, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 1–(888) 422–8737 or (770) 488–3315.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain responsibilities for the ATSDR and the U.S. Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these responsibilities is that the Administrator of ATSDR prepare toxicological profiles for substances included on the priority lists of hazardous substances. These lists identified 275 hazardous substances that ATSDR and EPA determined pose the most significant potential threat to human health. The availability of the revised priority list of 275 hazardous substances was announced in the **Federal Register** on December 7, 2005 (70 FR 72840). For prior versions of the list of substances *see* **Federal Register** notices dated April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067); October 17, 1991 (56 FR 52166); October 28, 1992 (57 FR 48801); February 28, 1994 (59 FR 9486); April 29, 1996 (61 FR 18744); November 17, 1997 (62 FR 61332); October 21, 1999 (64 FR 56792); October 25, 2001 (66 FR 54014) and November 7, 2003 (68 FR 63098). [CERCLA also requires ATSDR to assure the initiation of a research program to fill data needs associated with the substances.] Section 104(i)(3) of CERCLA [42 U.S.C. 9604(i)(3)] outlines the content of these profiles. Each profile will include an examination, summary and interpretation of available toxicological information and epidemiologic evaluations. This information and these data are to be used to identify the levels of significant human exposure for the substance and the associated health effects. The profiles must also include a determination of whether adequate information on the health effects of each substance is available or in the process of development. When adequate information is not available, ATSDR, in cooperation with the National Toxicology Program (NTP), is required to assure the initiation of research to determine these health effects.

Although key studies for each of the substances were considered during the profile development process, this **Federal Register** notice seeks to solicit any additional studies, particularly unpublished data and ongoing studies, which will be evaluated for possible addition to the profiles now or in the future.

The following draft toxicological profiles will be made available to the public on or about October 17, 2006.

Document	Hazardous Substance	CAS Number
1.	ALUMINUM	007429–90–5
2.	*GUTHION	000086–50–0
3.	CRESOLS	001319–77–3
4.	DIAZINON	000333–41–5
5.	DICHLOROPROPENES	026952–23–8
6.	PHENOLS	000108–95–2
7.	1, 1, 2, 2-TETRACHLOROETHANE	000079–34–5

*denotes new profile

All profiles issued as ''Drafts for Public Comment'' represent ATSDR's best efforts to provide important toxicological information on priority hazardous substances. We are seeking public comments and additional information which may be used to supplement these profiles. ATSDR remains committed to providing a public comment period for these documents as a means to best serve public health and our clients.

Dated: October 12, 2006.

Ken Rose,

Acting Director, Office of Policy, Planning and Evaluation, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

[FR Doc. E6–17331 Filed 10–17–06; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension of a Currently Approved Information Collection; Program Announcement and Grant Application Instructions Template for the Older Americans Act Title IV Discretionary Grant Program

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of Information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to the standard Program Announcement and Grant Application Instructions template for Older Americans Act Title IV Discretionary Grant Program.

DATES: Submit written or electronic comments on the collection of information by December 18, 2006.

ADDRESSES: Submit electronic comments on the collection of information to: *greg.case@aoa.hhs.gov*.

Submit written comments on the collection of information to Greg Case, Administration on Aging, Washington, DC 20201 or by fax to (202) 357–3469.

FOR FURTHER INFORMATION CONTACT: Greg Case at (202) 357–3442 or *greg.case@aoa.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, AoA is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, AoA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of AoA's functions, including whether the information will have practical utility; (2) the accuracy of AoA'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. AoA plans to submit to the Office of Management and Budget for approval *Program Announcement and Grant Application Instructions Template for the Older Americans Act Title IV Discretionary Grants Program.* The Program Announcement and Application Instructions provide the requirements and instructions for the submission of an application for funding opportunities of the Administration on Aging under Title IV of the Older Americans Act. Through its Title IV Program, the Administration on Aging (AoA) supports projects for the purpose of developing and testing new knowledge and program innovations with the potential for contributing to the well-being of older Americans. The Program Announcement template may be found on the AoA Web site at *http://www.aoa.gov/doingbus/doingbus.asp.*

AoA estimates the burden of this collection of information as follows:

Frequency: The number of program announcements published is dependent upon the budget authorization for each Fiscal Year. AoA publishes an average of 10 to 15 program announcements per year.

Respondents: States, public agencies, private nonprofit agencies, institutions of higher education, and organizations including tribal organizations.

Estimated Number of Responses: 300 annually.

Total Estimated Burden Hours: 14,400.

Dated: October 12, 2006.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. E6–17325 Filed 10–17–06; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of New York State Plan Amendment 05–49

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing to be held on November 22, 2006, at 26 Federal Plaza, Room 38–110a, New York, NY, 10278, to reconsider CMS' decision to disapprove New York State plan amendment 05–49.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the presiding officer by November 2, 2006.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer, CMS, Lord Baltimore Drive, Mail Stop LB–23–20, Baltimore, Maryland 21244. Telephone: (410) 786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider CMS' decision to disapprove New York State plan amendment (SPA) 05–49 which was submitted on September 29, 2005. This SPA was disapproved on June 21, 2006.

Under SPA 05–49, New York proposed to extend previously approved provisions that provide funding to home care agencies for the purpose of maintaining or subsidizing health insurance coverage for employed home care workers.

The amendment was disapproved because it did not comport with the requirements of sections 1902(a)(4), 1902(a)(10)(A), 1902(a)(30)(A), and 1905(a) of the Social Security Act (the Act) and implementing regulations.

The issues in this reconsideration are whether:

(1) The proposed payments are for services to eligible individuals within the scope of the eligibility provisions of section 1902(a)(10) of the Act, as applied consistent with the limitations in the definition of medical assistance at section 1905(a) of the Act;

(2) The proposed payments are for services that are within the scope of covered medical assistance, as set forth in section 1905(a) of the Act and incorporated by section 1902(a)(10) of the Act;

(3) It is necessary for the proper and efficient operation of the plan for the State to include in the State plan a provision to provider costs that are not within the statutory definition of medical assistance; and

(4) The proposed payments are consistent with efficiency and economy as required by section 1902(a)(30)(A) of the Act.

We discuss these issues in more detail below, as set forth in the initial disapproval decision. The proposed payments under SPA 05–49 are not for a group or category of individuals who are eligible under the statute under either section 1902(a)(10) of the Act nor as medical assistance for a covered benefit under 1905(a) of the Act. The proposed methodology would directly compensate home health and personal care employers for health insurance costs.

Under the Medicaid statute, Federal funding is only available for medical assistance for Individuals eligible under the approved State plan. Section 1902(a)(10) of the Act lists mandatory and optional groups of individuals who may be eligible for medical assistance. Section 1902(a)(10) of the Act must be read in concert with section 1905(a) of the Act, which defines medical assistance benefits (including additional specification of the categories of eligible individuals).

For the same reasons, SPA 05–49 is not consistent with the requirements of section 1902(a)(4) of the Act. Section 1902(a)(4) of the Act requires that State Medicaid plans provide for methods of administration that are found by the Secretary to be necessary for the proper and efficient operation of the plan. It is not considered necessary for the proper and efficient operation of the plan for the State to include in the State plan a provision which would pay for provider

costs furnished to eligible individuals that are not within the statutory definition of medical assistance. It will result in State claims for FFP in expenditures as medical assistance which are not within the statutory definition of medical assistance.

Furthermore, section 1902(a)(30)(A) of the Act requires that State plan payment rates must be consistent with efficiency, economy, and quality of care. The payments that would be made under SPA 05–49 are for care or services that are not within the scope of medical assistance, and are not furnished to Medicaid-eligible individuals. Instead, the SPA would authorize a pool of funding, to subsidize health insurance that would be furnished to home health and personal care workers. The proposed payments would not be payment for identifiable covered Medicaid services, as defined under section 1905(a)(30)(A) of the Act.

Section 1116 of the Act and Federal regulations at 42 CFR part 430, establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. CMS is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing, and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to New York announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Gregor N. Macmillan, Director, State of New York, Department of Health, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, NY 12237.

Dear Mr. Macmillan:

I am responding to your request for reconsideration of the decision to disapprove New York State plan amendment (SPA) 05–49, which was submitted on September 29, 2005, and disapproved on June 21, 2006. Under SPA 05–49, New York was proposing to provide supplemental funding to home care agencies for the purpose of maintaining or subsidizing health insurance coverage for employed home care workers.

The amendment was disapproved because it did not comport with the requirements of section 1902(a)(4), 1902(a)(10)(A), 1902(a)(30)(A), and 1905(a) of the Social Security Act (the Act) and implementing regulations.

The issues in this reconsideration are whether:

(1) The proposed payments are for services to eligible individuals within the scope of the eligibility provisions of section 1902(a)(10) of the Act, as applied consistent with the limitations in the definition of medical assistance at section 1905(a) of the Act;

(2) The proposed payments are for services that are within the scope of covered medical assistance, as set forth in section 1905(a) of the Act and incorporated by section 1902(a)(10) of the Act;

(3) It is necessary for the proper and efficient operation of the plan for the State to include in the State plan a provision to provider costs that are not within the statutory definition of medical assistance; and

(4) The proposed payments are consistent with efficiency and economy as required by section 1902(a)(30)(A) of the Act.

We discuss these issues in more detail below, as set forth in the initial disapproval decision.

The proposed payments under SPA 05–49 are not for a group or category of individuals who are eligible under the statute under either section 1902(a)(10) of the Act nor as medical assistance for a covered benefit under 1905(a) of the Act. The proposed methodology would directly compensate home health and personal care employers for health insurance costs. Under the Medicaid statute, Federal funding is only available for medical assistance for individuals eligible under the approved State plan. Section 1902(a)(10) of the Act lists mandatory and optional groups of individuals who may be eligible for medical assistance. Section 1902(a)(10) must be read in concert with section 1905(a) of the Act, which defines medical assistance benefits (including additional specification of the categories of eligible individuals). For the same reasons, SPA 05–49 is not consistent with the requirements of section 1902(a)(4) of the Act. Section 1902(a)(4) of the Act requires that State Medicaid plans provide for methods of administration that are found by the Secretary to be necessary for the proper and efficient operation of the plan. It is not considered necessary for the proper and efficient operation of the plan for the State to include in the State plan a provision which would pay for provider costs furnished to eligible individuals that are not within the statutory definition of medical assistance. It will result in State claims for Federal financial participation in expenditures as medical assistance which are not within the statutory definition of medical assistance.

Furthermore, section 1902(a)(30)(A) of the Act requires that State plan payment rates must be consistent with efficiency, economy, and quality of care. The payments that would be made under SPA 05–49 are for care or services that are not within the scope of medical assistance, and are not furnished to Medicaid-eligible individuals. Instead, the SPA would authorize a pool of funding, to subsidize health insurance that would be furnished to home health and personal care workers. The proposed payments would not be payment for identifiable covered Medicaid services, as defined under section 1905(a)(30)(A) of the Act.

I am scheduling a hearing on your request for reconsideration to be held on November 22, 2006, at 26 Federal Plaza, Room 38–110a, New York, NY, 10278, to reconsider the decision to disapprove SPA 05–49. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer at (410) 786–2055. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing.

Sincerely,

Mark B. McClellan, M.D., PhD

Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: September 29, 2006.

Mark B. McClellan,

Administrator.

[FR Doc. E6–17361 Filed 10–17–06; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of Minnesota State Plan Amendment 05–015B

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of Hearing.

SUMMARY: This notice announces an administrative hearing to be held on December 4, 2006, at 233 N. Michigan Avenue, Suite 600, the Illinois Room, Chicago, IL 60601, to reconsider CMS' decision to disapprove Minnesota State plan amendment 05–015B.

Closing Date: Requests to participate in the hearing as a party must be received by the presiding officer by November 2, 2006.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding

Officer, CMS, Lord Baltimore Drive, Mail Stop LB–23–20, Baltimore, Maryland 21244; Telephone: (410) 786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider CMS' decision to disapprove Minnesota State plan amendment (SPA) 05–015B which was submitted on September 28, 2005. This SPA was disapproved on June 12, 2006.

Under this SPA, the State proposed to limit incurred medical and remedial care expenses protected under the post eligibility process only to those expenses incurred while an individual is eligible for Medicaid.

Sections 1902(a)(17), and 1902(a)(51) in conjunction with section 1924 of the Social Security Act (the Act), as these sections are refined by section 1902(r)(1), require States to take into account, under the post eligibility process, amounts for incurred medical and remedial care expenses that are not subject to payment by a third party. Section 1902(r)(1)(A)(ii) of the Act and Federal regulations at 42 CFR 435.733(c)(4)(ii) permit States to place ''reasonable'' limits on the amounts of necessary medical and remedial care expenses recognized under State law but not covered under the State plan. The amendment was disapproved because CMS found that the amendment violated the statute for reasons set forth in the disapproval letter.

The issues to be decided in the hearing are:

• Whether Minnesota's SPA 05–015B impermissibly limits the amount of incurred expenses which may be deducted from an institutionalized individual's income for purposes of the post eligibility process by limiting these expenses to those incurred when the individual was Medicaid eligible; and

• Whether allowing this limitation undermines the protection of expenses which can be incurred when an individual is not Medicaid eligible, which must be considered for purposes of the medically needy spend down.

Section 1116 of the Act and Federal regulations at 42 CFR Part 430, establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. CMS is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing, and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to Minnesota announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Ms. Christine Bronson,
Medicaid Director,
Minnesota Department of Human Services,
P.O. Box 64983,
St. Paul, MN 55164–0983.

Dear Ms. Bronson: I am responding to your request for reconsideration of the decision to disapprove the Minnesota State plan amendment (SPA) 05–015B, which was submitted on September 28, 2005, and disapproved on June 12, 2006.

Under this SPA, the State proposed to limit incurred medical and remedial care expenses protected under the post eligibility process only to those expenses incurred while an individual is eligible for Medicaid.

Sections 1902(a)(17), and 1902(a)(51) in conjunction with section 1924 of the Social Security Act (the Act), as these sections are refined by section 1902(r)(1), require States to take into account, under the post eligibility process, amounts for incurred medical and remedial care expenses that are not subject to payment by a third party. Section 1902(r)(1)(A)(ii) of the Act and Federal regulations at 42 CFR 435.733(c)(4)(ii) permit States to place ''reasonable'' limits on the amounts of necessary medical and remedial care expenses recognized under State law but not covered under the State plan. The amendment was disapproved because CMS found that the amendment violated the statute for reasons set forth in the disapproval letter.

The issues to be decided at the hearing are:

• Whether Minnesota's SPA 05–015B impermissibly limits the amount of incurred expenses which may be deducted from an institutionalized individual's income for purposes of the post eligibility process by limiting these expenses to those incurred when the individual was Medicaid eligible; and

• Whether allowing this limitation undermines the protection of expenses which can be incurred when an individual is not Medicaid eligible, which must be considered for purposes of the medically needy spend down.

I am scheduling a hearing on your request for reconsideration to be held on December 4, 2006, at 233 N. Michigan Avenue, Suite 600, the Illinois Room, Chicago, IL 60601, to reconsider the decision to disapprove SPA 05–015B. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed by Federal regulations at 42 CFR part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer at (410) 786–2055. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing.

Sincerely,

Mark B. McClellan, M.D., PhD

Section 1116 of the Social Security Act (42 U.S.C. section 1316); (42 CFR section 430.18).

(Catalog of Federal Domestic Assistance program No. 13.714, Medicaid Assistance Program.)

Dated: October 5, 2006.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E6–17368 Filed 10–17–06; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0228]

Guidance for Industry on Fixed Dose Combinations, Co-Packaged Drug Products, and Single-Entity Versions of Previously Approved Antiretrovirals for the Treatment of HIV; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Fixed Dose Combinations, Co-Packaged Drug Products, and Single-Entity Versions of Previously Approved Antiretrovirals for the Treatment of HIV.'' The guidance is intended to encourage sponsors to submit to FDA applications for fixed dose combination (FDC), co-packaged, and single-entity versions of antiretroviral drugs for the treatment of human immunodeficiency virus (HIV). The availability of a wide range of safe and effective antiretroviral products may help facilitate a wider distribution of anti-HIV drugs to better meet the demands of the global HIV/AIDS pandemic.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Jeffrey Murray, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6360, Silver Spring, MD 20993–0002, 301–796–1500.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled, ''Fixed Dose Combinations, Co-Packaged Drug Products, and Single-Entity Versions of Previously Approved Antiretrovirals for the Treatment of HIV.'' This guidance is intended to encourage the development of various configurations of previously approved antiretroviral products for the treatment of HIV. The guidance addresses the agency's current thinking regarding the types of information that should be provided in an application seeking approval for FDC, co-packaged, or single-entity products for the treatment of HIV.

The draft version of this guidance, entitled ''Fixed Dose Combination and Co-Packaged Drug Products for Treatment of HIV,'' was issued in May 2004. The guidance has been updated to address public comments to the draft version. Significant changes to the draft are as follows: (1) The inclusion of single-entity versions, in addition to combination products, in the expedited FDA review pathway; (2) the addition of tables that supply references supporting the clinical efficacy and safety of antiretroviral combinations; and (3) clarification on the amount and type of data that should be submitted in a drug application to support approval or tentative approval.

Combination therapy is essential for the treatment of HIV/AIDS. At least three active drugs, usually from two different classes, are required to suppress the virus, allow recovery of the immune system, and reduce the emergence of HIV resistance. In the United States and developing countries, the availability of a wide range of antiretroviral drug products, including simplified HIV regimens in the form of co-packaged drugs (such as blister packs) or FDCs may facilitate distribution of antiretroviral therapies and improve patient adherence to the regimens.

Although there are more than 20 unique antiretroviral drugs approved in the United States, only a few are approved for use as FDC products, and none are approved as co-packaged products. Some antiretrovirals should not be combined because of overlapping toxicities and potential viral antagonism. Other antiretrovirals should not be used in pregnant women and other special populations. Therefore, it is important that possible combinations of these products be evaluated for safety and efficacy in the populations that may have need of them.

Recently, newer FDCs and single-entity products that have not been approved by FDA have received attention, and some are being promoted for use in resource poor nations where HIV/AIDS has reached epidemic proportions. These products may offer cost advantages or allow simplified dosing. However, the safety, efficacy, and quality of many of these products have not been evaluated by FDA. Products whose safety, efficacy, and quality do not conform to expected standards may pose a threat to individual patients by increasing the chances of substandard performance, which may lead not only to treatment failure, but also to the development and spread of resistant virus.

FDA is prepared to move swiftly to evaluate such products when applications for them are submitted for approval. This guidance clarifies what regulatory requirements would be applied to such applications, what issues might be of concern, and how these should be addressed. Different considerations apply depending on whether a sponsor owns or has a right of reference to all of the data required to support an application or whether a sponsor plans to rely on literature or FDA's findings of safety and effectiveness for an approved drug. Where appropriate, this guidance addresses the issues associated with these different situations.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on FDC, co-packaged, and single-entity products for treating HIV infection. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single comment of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: October 11, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–17324 Filed 10–17–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Summaries of Medical and Clinical Pharmacology Reviews of Pediatric Studies; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of summaries of medical and clinical pharmacology reviews of pediatric studies submitted in supplements for ALTACE (ramipril), GEMZAR (gemcitabine), LESCOL (fluvastatin), SANDOSTATIN LAR (octreotide), and SEREVENT (salmeterol). These summaries are being made available consistent with the Best Pharmaceuticals for Children Act (the BPCA). For all pediatric supplements submitted under the BPCA, the BPCA requires FDA to make available to the public a summary of the medical and clinical pharmacology reviews of the pediatric studies conducted for the supplement.

ADDRESSES: Submit written requests for single copies of the summaries to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Please specify by product name which summary or summaries you are requesting. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries.

FOR FURTHER INFORMATION CONTACT: Grace Carmouze, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6460,Silver Spring, MD 20993–0002, 301–796–0700, e-mail: *grace.carmouze@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of summaries of medical and clinical pharmacology reviews of pediatric studies conducted for ALTACE (ramipril), GEMZAR (gemcitabine), LESCOL (fluvastatin), SANDOSTATIN LAR (octreotide), and SEREVENT (salmeterol). The summaries are being made available consistent with section 9 of the BPCA (Public Law 107–109). Enacted on January 4, 2002, the BPCA reauthorizes, with certain important changes, the pediatric exclusivity program described in section 505A of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355a). Section 505A of the act permits certain applications to obtain 6 months of marketing exclusivity if, in accordance with the requirements of the statute, the sponsor submits requested information relating to the use of the drug in the pediatric population.

One of the provisions the BPCA added to the pediatric exclusivity program pertains to the dissemination of pediatric information. Specifically, for all pediatric supplements submitted under the BPCA, the BPCA requires FDA to make available to the public a summary of the medical and clinical pharmacology reviews of pediatric studies conducted for the supplement (21 U.S.C. 355a(m)(1)). The summaries are to be made available not later than 180 days after the report on the pediatric study is submitted to FDA (21 U.S.C. 355a(m)(1)). Consistent with this provision of the BPCA, FDA has posted on the Internet at *http://www.fda.gov/cder/pediatric/index.htm* summaries of medical and clinical pharmacology reviews of pediatric studies submitted in supplements for ALTACE (ramipril), GEMZAR (gemcitabine), LESCOL (fluvastatin), SANDOSTATIN LAR (octreotide), and SEREVENT (salmeterol). Copies are also available by mail (see **ADDRESSES**).

II. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/cder/pediatric/index.htm*.

Dated: October 10, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–17284 Filed 10–17–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)-443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: National Health Service Corps Travel Request Worksheet (OMB No. 0915–0278): Extension

Clinicians participating in the HRSA National Health Service Corps (NHSC) Scholarship Program use the Travel Request Worksheet to receive travel funds from the Federal Government to perform pre-employment interviews at sites on the Approved Practice List. The travel approval process is initiated when a scholar notifies the NHSC's In-Service Support Branch of an impending interview at one or more NHSC approved practice sites.

The Travel Request Worksheet is also used to initiate the relocation process after a NHSC scholar has successfully been matched to an approved practice site. Upon receipt of the Travel Request Worksheet, the NHSC will review and approve or disapprove the request and promptly notify the NHSC contractor regarding authorization of the funding for the relocation.

The burden estimate for the project is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Worksheet	250	2	500	.06	30

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Kraemer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 6, 2006.

Cheryl R. Dammons,

Director, Division of Policy Review and Coordination.

[FR Doc. E6–17318 Filed 10–17–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Notice of Program Exclusions

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

Important Announcement: The Office of Inspector General (OIG) will discontinue publication of monthly exclusion actions in the **Federal Register** in two months. Downloadable files of exclusion actions taken each month are available on the OIG's Web site. In addition, the Web site has a downloadable data file and an online searchable database containing all exclusion actions currently in effect. This data is called the List of Excluded Individuals/Entities (LEIE) and is located at *http://oig.hhs.gov.* Click on EXCLUSIONS DATABASE to access the LEIE and other important information about the OIG's exclusion program.

Program Exclusions: September 2006. During the month of September 2006, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject name	Address	Effective date
PROGRAM-RELATED CONVICTION		
ABAD, NILDA	ALPINE, CA	10/19/2006
ALLISON, KEITH	LOS ANGELES, CA	10/19/2006
ANDERSON, THEODORE	KINGSTON, WA	10/19/2006
BOUCHARD, JOHN	PHILLIPSBURG, KS	10/19/2006
BOUGHTON, LLOYD	LOS ANGELES, CA	10/19/2006
BRAZIL, MICHAEL	ARLINGTON, VA	10/19/2006
CACAL, ROQUE	LOS ANGELES, CA	10/19/2006
CACAL, ROSA	LOS ANGELES, CA	10/19/2006
CARDILLO, JOHN	BERKELEY HEIGHTS, NJ	10/19/2006
DELATOUR, GREGORY	MIAMI, FL	10/19/2006
DELGADO, JOSUE	BALDWIN PARK, CA	10/19/2006
DODDS, KYLE	INDEPENDENCE, OR	10/19/2006
EASON, KIM	FRESNO, CA	10/19/2006
EDWARDS, PHYLLIS	HAMILTON, OH	10/19/2006
EVANS, AMY	PATASKALA, OH	10/19/2006
FINLEY, SANDRA	OKLAHOMA CITY, OK	10/19/2006
FLORES, VERGIL	MESQUITE, TX	10/19/2006
FRANK, PAUL	FORT DIX, NJ	10/19/2006
GALLEGOS, JODY	THORNTON, CO	10/19/2006
GORDON, RICHARD	SURPRISE, AZ	10/19/2006
GOTTSCHALL, ZAY	BUTTE, MT	10/19/2006
HABEEB, GREGORY	CLARK SUMMIT, PA	10/19/2006
HARRIS, KATRINA	NILES, OH	10/19/2006
HARRIS, TAMMY	AUSTIN, TX	10/19/2006
HARTSFIELD, ARCHIE	EL PASO, TX	10/19/2006
HERIC, THOMAS	HAWTHORNE, CA	10/19/2006
HERNANDEZ, JOSE	MIAMI, FL	10/19/2006
HOLSAN, JASON	GRAND JUNCTION, CO	10/19/2006
HOVATTER, KATHY	PARMA, OH	10/19/2006
ISHAK, MAHER	HARRIMAN, NY	10/19/2006
JOHNSON, SHELIA	SARDINIA, OH	10/19/2006
JONES, WANDA	YOUNGSTOWN, OH	10/19/2006
LAZARO, JUAN	WESTBROOK, ME	10/19/2006
LUETTGEN, TAMMIE	ALLENTOWN, PA	10/19/2006
MALAHIMOV, BORIS	BRADFORD, PA	10/19/2006
MALCOLM-FORBES, SONIA	COLUMBUS, OH	10/19/2006
MAYHUGH, JEFFREY	THORNVILLE, OH	10/19/2006
MORTON, GEORGE	PHENIX, VA	10/19/2006
PARKER, ROGER	HAMPTON, VA	10/19/2006
PETERSON, RENE	DES MOINES, IA	10/19/2006
REISBORD, DAVID	LOS ANGELES, CA	10/19/2006
RUMMELT, HERMAN	DULUTH, MN	10/19/2006
SERRANO, SUSAN	DUBLIN, CA	10/19/2006
SHUMAKER, MARY	SARDINIA, OH	10/19/2006
SISNEY, DEBRA	BULL SHOALS, AR	10/19/2006
SOLIS, MARY	WEST COVINA, CA	10/19/2006
SPEARS, RAMESHIA	GRANDVIEW, MO	10/19/2006
SPEIGHT, DIANNA	LAS VEGAS, NV	10/19/2006
STATLER, JOHN	DAYTON, OH	10/19/2006
STIMPSON, RIETA	HELENA, MT	10/19/2006
WALLED, RAFAEL	MIAMI, FL	7/5/2006
WALLERICK, MELANIE	YOUNGSTOWN, OH	10/19/2006
WILLIAMS, DRANETTA	GATESVILLE, TX	10/19/2006
WILLIAMS, HENRY	HUNTSVILLE, TX	10/19/2006

Subject name	Address	Effective date
WOODBURY PHARMACY, INC	HARRIMAN, NY	10/19/2006
FELONY CONVICTION FOR HEALTH CARE FRAUD		
BAILEY, LLEWELLYN	ROSEDALE, NY	10/19/2006
BALL, HEIDI	SPRINGFIELD, OR	10/19/2006
BATTERTON, CAROL	CHEYENNE, OK	10/19/2006
BENTLEY, WILLIAM	MONROE, WA	10/19/2006
BLEVINS, CHARLES	MONTGOMERY, AL	10/19/2006
BOUGHTON, DARLA	COEUR D'ALENE, ID	10/19/2006
CARTER, ANGEL	BATESVILLE, AR	10/19/2006
COULSON, ANDREA	ORANGE, CA	10/19/2006
CRICHTON, SONJA	LITCHFIELD PARK, AZ	10/19/2006
DECKER, CAROLINE	BOULDER, CO	10/19/2006
FARR, CHARLENE	SWANTON, VT	10/19/2006
FULKERSON, JANET	TEMPLE, TX	10/19/2006
GONZALEZ, JOSEPH	MIAMI BEACH, FL	10/19/2006
HARRIS, APRIL	PHOENIX, AZ	10/19/2006
HARRIS, JOAN	FONTANA, CA	10/19/2006
HENNEKES, ZACHARY	CINCINNATI, OH	10/19/2006
KOWALSKI, KAREN	DENVER, CO	10/19/2006
LANDIN, ALICIA	WESTMINSTER, CO	10/19/2006
LIEN, JONATHAN	SAN JOSE, CA	10/19/2006
MELTON, LINDA	CENTRAL POINT, OR	10/19/2006
MOSS, MARGO	NORWALK, IA	10/19/2006
NGUYEN, DENNIS	ELK GROVE, CA	10/19/2006
ORZO, BILLIE	ALLIANCE, OH	10/19/2006
POLZINE, ANTHONY	SAN ANTONIO, TX	10/19/2006
SCHEMPP, JOANNE	KENT, OH	10/19/2006
TAYLOR, MISTY	STRATFORD, OK	10/19/2006
WILLIS, JACQUELYN	FAIRFIELD, OH	10/19/2006
WOODRAL, JANNETTE	HEAVENER, OK	10/19/2006
ZENTZ, NANCY	CLARKSVILLE, IN	10/19/2006
ZOLOTAREVA, ELLA	BROOKLYN, NY	10/19/2006
FELONY CONTROLLED SUBSTANCE CONVICTION		
BAIKAUSKAS, LAURIE	PEARLAND, TX	10/19/2006
BARNWELL, TERRI	BRIDGEPORT, TX	10/19/2006
BEAVER, CHERYL	ELKHART, IN	10/19/2006
CAMPBELL, TINO	BRIGHTON, CO	10/19/2006
CONLEY, JAMES	FLATWOODS, KY	10/19/2006
COPLEY, TIFFANY	LUBBOCK, TX	10/19/2006
DONCASTER-LAWSON, PATRICIA	WILLIAMSBURG, KY	10/19/2006
FEE, CATHERINE	EGG HARBOR CITY, NJ	10/19/2006
GINGLE, MICHELLE	WESLEY CHAPEL, FL	10/19/2006
HUTTON, JOANNA	HOCKESSIN, DE	10/19/2006
KELLEY-WALLER, SUSAN	OVERTON, TX	10/19/2006
KNOX, ROBERT	PRINCETON, WV	10/19/2006
NAGY, HEATHER	PORT RICHEY, FL	10/19/2006
PORTINGA, DONNA	WYLIE, TX	10/19/2006
RUPARD, LORA	SHEPHERDSVILLE, KY	10/19/2006
SANDLIN, JENNIFER	ANCHORAGE, AK	10/19/2006
SZURGOT, LONDA	JOSHUA, TX	10/19/2006
WAGMAN, PHILIP	CAMP HILL, PA	10/19/2006
WHITE, TRACY	IOWA CITY, IA	10/19/2006
YELTON, DEBRA	NEVADA CITY, CA	10/19/2006
PATIENT ABUSE/NEGLECT CONVICTION		
AKTHAR, WAHEED	HOUSTON, TX	10/19/2006
ALEXANDER, JASMINE	LITTLETON, CO	10/19/2006
ALLDREDGE, JOYCE	NEWBERG, OR	10/19/2006
BELTRAN, RICARDO	WHITTIER, CA	10/19/2006
BOYCE, EMILY	AMITYVILLE, NY	10/19/2006
CLARK, WILLIAM	BALLWIN, MO	10/19/2006
CLOUGH, KRISTEN	PORTSMOUTH, NH	10/19/2006
DUVALL, DONNA	LOCO, OK	10/19/2006
ELMORE, ASHLEY	BETHANY, OK	10/19/2006
EVANS, JOHN	HARDWICK, GA	10/19/2006
GREENBERG, WILLIAM	WEST BLOOMFIELD, MI	10/19/2006
GRIMES, BETTY	GLENDORA, CA	10/19/2006
HAECK, MARGARET	LANSING, MI	10/19/2006
HAMED, JILL	COPPERAS COVE, TX	10/19/2006

Subject name	Address	Effective date
HARTKOPF, PAMELA	ROTHSCHILD, WI	10/19/2006
HENRY, JESSE	ALBUQUERQUE, NM	10/19/2006
KATHPAL, GURBACHAN	CANONSBURG, PA	10/19/2006
KNEELAND, ASHLEY	JAY, OK	10/19/2006
KONADU, OFORI	COLUMBUS, OH	10/19/2006
LARKIN, PATRICIA	GUTHRIE, OK	10/19/2006
LOESER, PETER	FRANKLIN, NH	10/19/2006
MAGANA, IGNACIO	JUPITER, FL	10/19/2006
MASSEY, TRACI	CANTON, OH	10/19/2006
MESSER, KIMBERLY	CORINTH, MS	10/19/2006
PARKER, COURTNEY	CHICKASHA, OK	10/19/2006
SANDERS, MICHAEL	NEWTON, NJ	10/19/2006
SHOLES, MARK	SAINT PETERSBURG, FL	10/19/2006
SINGLETON, EMILY	MIAMI, FL	10/19/2006
SNIDER, CHARLES	PORTLAND, OR	10/19/2006
SPEARS, VIRGINIA	ROSEVILLE, CA	10/19/2006
STANG, ROBERT	KINGSLEY, MI	10/19/2006
THOMPSON, COLLEEN	ROCKVILLE, MD	10/19/2006
TROTTIER, PATRICIA	LANCASTER, NH	10/19/2006
VILLAREAL, JULIUS	CHULA VISTA, CA	10/19/2006
WILLIAMSEN, JEFFREY	MT PLEASANT, IA	10/19/2006
WRIGHT, JOSEPH	AUGUSTA, WV	10/19/2006
WUELLEH, JAMES	COLUMBUS, OH	10/19/2006
YATES, GEORGE	STERLING, CO	10/19/2006
CONVICTION FOR HEALTH CARE FRAUD		
ASHLEY, PEGGY	MAYFLOWER, AR	10/19/2006
BASSETT, SARA	LEON, IA	10/19/2006
GURUNIAN, TIFFANY	BOSSIER CITY, LA	10/19/2006
PINKHAM, JENNIFER	CANAAN, ME	10/19/2006
LICENSE REVOCATION/SUSPENSION/SURRENDER		
ABRAMS, BRUCE	LEXINGTON, KY	10/19/2006
ALDRICH, JOYCE	PARKER, CO	10/19/2006
ANDERSON, PEGGY	STANWOOD, WA	10/19/2006
ANDERSON-STRATTON, JAIMEE	OGDEN, UT	10/19/2006
BABINEAU, MARSHA	SURPRISE, AZ	10/19/2006
BADER, RALPH	TAFT, CA	10/19/2006
BALLENTINE, SALLY	ARLINGTON, TX	10/19/2006
BATES, WILLIAM	MONTICELLO, FL	10/19/2006
BEAUDOIN, PATRICIA	HOUSTON, TX	10/19/2006
BELIN, MARY	CORONA, CA	10/19/2006
BENASFRE, SANDERSON	WILMINGTON, CA	10/19/2006
BEVINS, ELIZABETH	WINCHESTER, KY	10/19/2006
BIRD, CHARLES	ALTAMONTE SPRINGS, FL	10/19/2006
BOTEO, AURA	S. SAN FRANCISCO, CA	10/19/2006
BOTKIN, JENNIFER	FRENCHTOWN, MT	10/19/2006
BOUCHARD, ROXANNE	ENFIELD, CT	10/19/2006
BOUTACOFF, MARIA	FAIRFAX, CA	10/19/2006
BOYNTON, HOLLY	EVANSTON, WY	10/19/2006
BRADBURN, JAMIE	GOLDEN, CO	10/19/2006
BRECKEN, SIGRID	OLD ORCHARD BEACH, ME	10/19/2006
BRISTOL, KENNETH	FLAGSTAFF, AZ	10/19/2006
BROWN, KELLY	FT OGLETHORPE, GA	10/19/2006
BROWNE, CLINTON	GAINESVILLE, FL	10/19/2006
BROWNING, MICHELLE	WESTMINSTER, CO	10/19/2006
BRUNELLE, ELIZABETH	TUCSON, AZ	10/19/2006
BRUNNER, MARY	DENVER, CO	10/19/2006
BUCKLAND, DEANNA	ROCHESTER, NY	10/19/2006
BUSCHER, RICHARD	YAKIMA, WA	10/19/2006
BUSEY, REBECCA	SHREVEPORT, LA	10/19/2006
CACHUELA, DANILO	CHULA VISTA, CA	10/19/2006
CARNEY, JOHN	BLUEFIELD, VA	10/19/2006
CARPENTER, IZETTA	LOS GATOS, CA	10/19/2006
CHAVEZ, YVETTE	LOCKEFORD, CA	10/19/2006
CHIPMAN, BRENDA	AMERICAN FORK, UT	10/19/2006
CHRAPA, EDEANE	E AURORA, NY	10/19/2006
COHEN, STACIE	FRAMINGHAM, MA	10/19/2006
COLEMAN, LYNDEE	PHILO, CA	10/19/2006
COMBS, SANDRA	WHITE RIVER JUNCTION, VT	10/19/2006
COMPTON, KATHRYN	PIKEVILLE, KY	10/19/2006
CONLEY, TONY	HOLDENVILLE, OK	10/19/2006

Subject name	Address	Effective date
COON, JENNIFER	BINGHAMTON, NY	10/19/2006
CROWLEY, CAITLIN	MANCHESTER, NH	10/19/2006
CUDNEY, KATHI	EUREKA, CA	10/19/2006
CYNEWSKI, KATELYN	EXETER, NH	10/19/2006
CYPRESS, ROVET	HAMPTON, VA	10/19/2006
DALLEY, MELISSA	WEST JORDAN, UT	10/19/2006
DANIELS, STEPHANIE	TEMECULA, CA	10/19/2006
DEVITO, DANIELLE	MECHANICVILLE, NY	10/19/2006
DIAZ, CHRISTOPHER	GRAND JUNCTION, CO	10/19/2006
DRAPER, SPENCER	CANYON LAKE, TX	10/19/2006
DUFF, JONNA	OXNARD, CA	10/19/2006
DUFFEY, DANNELL	VISALIA, CA	10/19/2006
DUFFY, KATHY	GREENVILLE, TX	10/19/2006
EARL, THEODORE	PITTSBURGH, PA	10/19/2006
EASON, WALTER	JACKSONVILLE, AL	10/19/2006
EDGE, NIKKI	YERINGTON, NV	10/19/2006
EISENBERG, LAURA	PORT HENRY, NY	10/19/2006
FALL, DONNA	PITTSBURGH, PA	10/19/2006
FARMARTINO, ROCKY	HERMITAGE, PA	10/19/2006
FIELDS, BRYAN	MISSOURI CITY, TX	10/19/2006
FINCH, GHIA	INDIANAPOLIS, IN	10/19/2006
FRANCOIS, IOLA	GADSDEN, AL	10/19/2006
FRISBY, JODI	PAYSON, UT	10/19/2006
GAINES, GINGER	TAMPA, FL	10/19/2006
GARDNER, TODD	KANAB, UT	10/19/2006
GERAGHTY, MARY	RUNNING SPRINGS, CA	10/19/2006
GILLILAND, JAMES	VANCOUVER, WA	10/19/2006
GISOLO, LINDA	MIDLAND, TX	10/19/2006
GREEN, JUDITH	ESSEX JUNCTION, VT	10/19/2006
GREER, JULIANA	MESA, AZ	10/19/2006
HAHN, REBECCA	PHOENIX, AZ	10/19/2006
HALL, LINDA	ANDERSON, IN	10/19/2006
HALSTED, DAVID	TRAVERSE CITY, MI	10/19/2006
HANGE, PAULEE	LANSDALE, PA	10/19/2006
HANNA, DARWIN	BOLINGBROOK, IL	10/19/2006
HANSEN, TAMMY	HUTTO, TX	10/19/2006
HARRIS, JENNIFER	TEMPE, AZ	10/19/2006
HARRIS, RICHARD	HENDERSONVILLE, NV	10/19/2006
HARRIS, VISHUN	REDLANDS, CA	10/19/2006
HERNANDEZ, SYLVIA	GLENDALE, AZ	10/19/2006
HODGSON, MELISSA	OKLAHOMA CITY, OK	10/19/2006
HOLLAND, ANGELICA	TUCSON, AZ	10/19/2006
HOLZHAUSEN, KAREN	NORTH EAST, PA	10/19/2006
HOPES, JAMES	ALEXANDER, AR	10/19/2006
HOSKINS, VICKIE	BAXTER, KY	10/19/2006
HUARD, KATHY	BROOKFIELD, MA	10/19/2006
HUEBENER, CHRISTIANE	DES MOINES, IA	10/19/2006
HUGHSON, KATHLEEN	RICHMOND, VA	10/19/2006
HUNT, WAYNE	BROOKLYN, NY	10/19/2006
HUTSON, TRACY	ABILENE, TX	10/19/2006
JAMISON, LISA	ARANSAS PASS, TX	10/19/2006
JEFFERSON, SHIRLEY	WAXAHACHIE, TX	10/19/2006
JOHNSON, CHANIKA	LONGVIEW, TX	10/19/2006
JOHNSON, ROBERT	DELTONA, FL	10/19/2006
JOHNSTON, KELLIE	BLUE BELL, PA	10/19/2006
JONES, LISA	MONTGOMERY, IN	10/19/2006
JUAREZ, SANDRA	BUTTE, MT	10/19/2006
KEEN, KIMBERLY	WHITNEY, TX	10/19/2006
KING, PATRICIA	HOUSTON, TX	10/19/2006
KLEIN, SHARON	JACKSONVILLE, FL	10/19/2006
KOEN, SHAUN	HANSFORD, CA	10/19/2006
KOLINSKY, BARBARA	BERLIN, NH	10/19/2006
KRAEMER, LINDA	BLANDON, PA	10/19/2006
KRIKSCIUN, DONNA	OAKDALE, CT	10/19/2006
LA FAMILIA PHARMACY III, INC	MIAMI, FL	10/19/2006
LA FAMILIA PHARMACY IV, INC	DEERFIELD BEACH, FL	10/19/2006
LADD, ROBERT	WESTMORELAND, TN	10/19/2006
LAFAYETTE, PATRICIA	BRISTOL, VT	10/19/2006
LANCASTER, DAVID	SAINT GEORGE, UT	10/19/2006
LANCASTER, MELISSA	ARCHBALD, PA	10/19/2006
LANDERS, MARIBETH	KELLER, TX	10/19/2006
LAPOINTE, DAVID	PROVIDENCE, RI	10/19/2006
LAQUERRE, CHERI	WEST BARNSTABLE, MA	10/19/2006
LATTERMAN, MICHAEL	MIAMI BEACH, FL	10/19/2006

Subject name	Address	Effective date
LAUBER, JANE	TUCSON, AZ	10/19/2006
LEFAIVRE-KNUTSON, JULIE	OCALA, FL	10/19/2006
LENTZ, BRIAN	DENVER, CO	10/19/2006
LEWIS, FRANK	DAVIS, CA	10/19/2006
LIMIDO, GLEN	MAYWOOD, NJ	10/19/2006
LINEBARGER, NANCY	GUILD, NH	10/19/2006
LO CASCIO, THOMAS	FLORAL PARK, NY	10/19/2006
LOGAN, JOEL	NORWELL, MA	10/19/2006
LOVATO, ANDREA	MONROE, NH	10/19/2006
LOWMAN, BRIAN	OOLTEWAH, TN	10/19/2006
LUCAS, KATINA	STATEN ISLAND, NY	10/19/2006
LUCAS, KRISTI	ROANOKE, VA	10/19/2006
LUCAS, LESLIE	BARRE, VT	10/19/2006
MAGDELENA, EMILY	MARICOPA, AZ	10/19/2006
MAGNON, CONSTANCE	ELMENDORF, TX	10/19/2006
MANIG, MARK	COLORADO SPRINGS, CO	10/19/2006
MARCH, LOIS	CORDELE, GA	10/19/2006
MARRAZZO-TALLIA, CHRISTAL	FAIRHAVEN, NJ	10/19/2006
MCGETTIGAN, MARY	PHILADELPHIA, PA	10/19/2006
METIAM, FRANCROSENDO	SPARKS, NV	10/19/2006
MILLER, CYNTHIA	NASHVILLE, TN	10/19/2006
MILLER, TYLER	MANTI, UT	10/19/2006
MITCHELL, JOSHUA	AUGUSTA, ME	10/19/2006
MITCHELL, KENNETH	SANFORD, ME	10/19/2006
MORALES, SUSAN	FLORESVILLE, TX	10/19/2006
MORRIS, JANET	JELLICO, TN	10/19/2006
MORRIS, THERESA	ROCHESTER, NY	10/19/2006
MORRISON, HOLLY	WESTERVILLE, OH	10/19/2006
NAZIR, KHALIL	ALBANY, NY	10/19/2006
NELSON, J	SALT LAKE CITY, UT	10/19/2006
NGUYEN, KHOA	SEATTLE, WA	10/19/2006
NIELSEN, JAIMIE	JOHNSON, VT	10/19/2006
NORRIS, DEBRA	DALLAS, TX	10/19/2006
NORRIS, JO	KRUM, TX	10/19/2006
NORWOOD, CAROLE	BENTON, TN	10/19/2006
NURIAS LA FAMILIA PHARMACY	DEERFIELD BEACH, FL	10/19/2006
OLIVER, BEVERLY	DONALDSONVILLE, LA	10/19/2006
OLIVER, CRISTY	ALVIN, TX	10/19/2006
OLMSTEAD, STEPHEN	SEATTLE, WA	10/19/2006
ORNALES, JOEY	YOAKUM, TX	10/19/2006
PARKER, ANDREA	NEWARK, NY	10/19/2006
PARLANTE, DANIELLE	WILLIAMSPORT, PA	10/19/2006
PASCO, MARITONE	HOUSTON, TX	10/19/2006
PATURU, SUMATHI	BIRMINGHAM, AL	10/19/2006
PETRIE, JENNIFER	CLEARLAKE, CA	10/19/2006
PINA, DARLEEN	TEATICKET, MA	10/19/2006
POOL-PARKER, MIKA	NORMAN, OK	10/19/2006
PRIEM, LOREN	DENVER, CO	10/19/2006
READ, BONNIE	SPRING HILL, FL	10/19/2006
REDD, SHERRI	SENATOBIA, MS	10/19/2006
REESE, CHRISTOPHER	CLINTON, NY	10/19/2006
REHM, TODD	LAKE GEORGE, NY	10/19/2006
ROCKE, DARCELLE	DENVER, CO	10/19/2006
ROUSSEAU, JANET	MIDDLETON, NH	10/19/2006
ROY, SUSAN	SHREWSBURY, MA	10/19/2006
RUDOLPH, MELISSA	CANAL WINCHESTER, OH	10/19/2006
SANDOVAL, MARIA	WACO, TX	10/19/2006
SCHMITTLE, KARL	YORK, PA	10/19/2006
SCOTT, SHARON	BRIDGEWATER, MA	10/19/2006
SERTICH, PAMELA	HELOTES, TX	10/19/2006
SHAPIRO, GARY	SANTA MONICA, CA	10/19/2006
SHENKMAN, BERNARD	ALLENTOWN, PA	10/19/2006
SILVA, MARLENE	WILTON, CA	10/19/2006
SIMOLARIS, PAMELA	LOWELL, MA	10/19/2006
SLAVIN, CARL	ANNAPOLIS, MD	10/19/2006
SNOW, MICHAEL	WEST CHESTER, PA	10/19/2006
SOMERVILLE, MICHAEL	SALT LAKE CITY, UT	10/19/2006
SPILKER, BOBBI	WESTON, OH	10/19/2006
STANLEY, TERESA	CONROE, TX	10/19/2006
STECKEL, ELIZABETH	HUDSON, OH	10/19/2006
STONE, MARY	LAKEWOOD, NJ	10/19/2006
SUMMERSON, TAMMY	FAIRHOPE, AL	10/19/2006
TERRIEN, MARGARET	BURLINGTON, VT	10/19/2006
THOMAS, MARC	ALBUQUERQUE, NM	10/19/2006

Subject name	Address	Effective date
THOMPSON, VIOLET	LAFAYETTE, IN	10/19/2006
TICE, FREDRICK	SAN ANTONIO, TX	10/19/2006
TIPPETS, RANDY	OGDEN, UT	10/19/2006
TOBAH, JAMES	MESA, AZ	10/19/2006
TURNER, CLARENCE	WORCESTER, MA	10/19/2006
UPCHURCH, YALINDA	GARLAND, TX	10/19/2006
VALADEZ, STEPHEN	SIGNAL MOUNTAIN, TN	10/19/2006
VAN DYKE, ALBERT	MANTI, UT	10/19/2006
VINCENT, ERNIE	CLAYTON, CA	10/19/2006
WALCZAK, CHRISTOPHER	MONTPELIER, VT	10/19/2006
WALKER, PAMELA	AUSTIN, TX	10/19/2006
WALTERS, BRENDA	ABILENE, TX	10/19/2006
WATERS, MARK	CEDAR CITY, UT	10/19/2006
WEISBACH, DAVID	OCEANSIDE, CA	10/19/2006
WEISS, JUDITH	APTOS, CA	10/19/2006
WELLS, MICHELLE	WACO, TX	10/19/2006
WENZEL, STEPHEN	FORT WORTH, TX	10/19/2006
WESLEY, MARILYN	LITTLE ROCK, AR	10/19/2006
WHELAN, JOHN	LINDENHURST, NY	10/19/2006
WHETSEL, SHARON	ALVIN, TX	10/19/2006
WHITE, KENT	CHATTANOOGA, TN	10/19/2006
WHITE, LINDA	ENID, OK	10/19/2006
WILLIAMS, MATTHEW	LAWTEY, FL	10/19/2006
WILLIAMS, ROBERT	BALTIMORE, MD	10/19/2006
WRIGHT, CYNTHIA	CHANTILLY, VA	10/19/2006
ZEIM, LISHA	SALT LAKE CITY, UT	10/19/2006
ZINGARO, ROBERT	EL PASO, TX	10/19/2006
FEDERAL/STATE EXCLUSION/SUSPENSION		
ASCONA AMBULETTE SERVICE, INC	BROOKLYN, NY	10/19/2006
MARTINEZ, ROSA	YAKIMA, WA	10/19/2006
FRAUD/KICKBACKS/PROHIBITED ACTS/SETTLEMENT AGREEMENT		
FERTAL, BRUCE	CANAL FULTON, OH	8/7/2006
OWNED/CONTROLLED BY EXCLUDED/CONVICTED INDIVIDUAL		
ACTIVE PAIN CLINIC, PA	NEW PORT RICHEY, FL	10/19/2006
BRANDON MOBILITY, INC	W YARMOUTH, MA	10/19/2006
EMA EYEWEAR, INC	HOLLYWOOD, FL	10/19/2006
HERNANDO ANESTHESIA ASSOCIATES PA	WEEKI WACHEE, FL	10/19/2006
HIGHLAND HILLS MANAGEMENT CORP	JESUP, GA	10/19/2006
NATIONALITIES UNITED, INCORPORATED	LINCOLN, NE	10/19/2006
PRO-VENTION CHIROPRACTIC PC	BETTENDORF, IA	10/19/2006
ST LUCIE PAIN CENTER, INC	W PALM BEACH, FL	10/19/2006
ZAKY-SHERREL MEDICAL CORPORATION	HUNTINGTON PARK, CA	10/19/2006
DEFAULT ON HEAL LOAN		
HERRING, CHARLES	FREMONT, CA	10/19/2006
LANGSTON, MARTIN	BATON ROUGE, LA	10/19/2006
PETRELL, ALICIA	PLYMOUTH, MA	10/19/2006
PHIPPS, DONNA	LONGVIEW, TX	10/19/2006
SATIR, SERVET	ORANGE, TX	10/19/2006
CIVIL MONETARY PENAL LAW		
HORRAS, THOMAS	KNOXVILLE, IA	4/25/2006
RICHARDS, CHRISTINE	KNOXVILLE, IA	4/25/2006

Dated: October 4, 2006.

Maureen R. Byer,

Director, Exclusions Staff, Office of Inspector General.

[FR Doc. E6–17330 Filed 10–17–06; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–75]

Notice of Submission of Proposed Information Collection to OMB; Debt Resolution Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD is required to collect debt owed to the agency. As part of the collection process, demand for repayment is made on the debtor(s) in response, debtors opt to ignore the debt, pay the debt or dispute the debt. Disputes and offers to repay the debt result in information collections. Borrowers who wish to pay less than the full amount due must submit a Personal Financial Statement and Settlement Offer. HUD uses the information to analyze debtors' financial positions and then approve settlements, repayment agreements, and preauthorized electronic payments to HUD. Borrowers who wish to dispute must provide information to support their positions.

DATES: *Comments Due Date:* November 17, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0483) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Debt Resolution Program.

OMB Approval Number: 2502–0483.

Form Numbers: HUD–56141, HUD–56142, HUD–56146, and HUD–92090.

Description of the Need for the Information and its Proposed Use: HUD is required to collect debt owed to the agency. As part of the collection process, demand for repayment is made on the debtor(s) in response, debtors opt to ignore the debt, pay the debt or dispute the debt. Disputes and offers to repay the debt result in information collections. Borrowers who wish to pay less than the full amount due must submit a Personal Financial Statement and Settlement Offer. HUD uses the information to analyze debtors' financial positions and then approve settlements, repayment agreements, and preauthorized electronic payments to HUD. Borrowers who wish to dispute must provide information to support their positions.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	850	0.30		3.27		854

Total Estimated Burden Hours: 854.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: *October 12, 2006.*

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–17285 Filed 10–17–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–74]

Notice of Submission of Proposed Information Collection to OMB; Certified Eligibility for Adjustments for Damage or Neglect

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

One-time certification by mortgages to show that they have acquired hazard insurance acceptable to HUD at a reasonable rate and that the mortgagee may convey fire damaged properties without a surcharge to the claim.

DATES: *Comments Due Date:* November 17, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0349) and should be sent to: HUD Desk Officer, Office of Management and Budget, New

Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Certified Eligibility for Adjustments for Damage or Neglect.

OMB Approval Number: 2502–0349.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use:

One-time certification by mortgages to show that they have required hazard insurance acceptable to HUD at a reasonable rate and that the mortgagee may convey fire damaged properties without a surcharge to the claim.

Frequency Of Submission: On occasion.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	275		0.1		0.9		25

Total Estimated Burden Hours: 25.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 12, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–17286 Filed 10–17–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–73]

Notice of Submission of Proposed Information Collection to OMB; Public Housing Homeownership Program Family Application, Reporting and Recordkeeping Requirements, Homeownership Program Application and Approval

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Public Housing Agencies (PHAs) apply to HUD for approval to implement homeownership programs to make public housing dwelling units, public housing developments, and other housing units available for purchase by low-income families as their principal residence. PHAs approved to administer homeownership programs must report annually to HUD on progress made in program implementation. Interested families are required to submit applications to PHAs for approval to purchase subject dwellings.

DATES: *Comments Due Date:* November 17, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0233) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Public Housing Homeownership Program Family Application, Reporting and Recordkeeping Requirements, Homeownership Program Application and Approval.

OMB Approval Number: 2577–0233.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use:

Public Housing Agencies (PHAs) apply to HUD for approval to implement homeownership programs to make public housing dwelling units, public housing developments, and other housing units available for purchase by low-income families as their principal residence. PHAs approved to administer

homeownership programs must report annually to HUD on progress made in program implementation. Interested families are required to submit applications to PHAs for approval to purchase subject dwellings.

Frequency of Submission: On occasion, Annually.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	127		1.63		4.30		892

Total Estimated Burden Hours: 892.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 11, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–17287 Filed 10–17–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5040–N–02]

Notice of Proposed Information Collection: Comment Request Ginnie Mae Mortgage-Backed Securities Guide 5500.3, Revision 1 (Forms and Electronic Data Submissions)

AGENCY: Office of the President of Government National Mortgage Association (Ginnie Mae), HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 18, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, QDAM, Information Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 800a, Washington, DC 20410; fax—(202) 708–3135; e-mail—*Lillian_L._Deitzer@hud.gov*; telephone—(202) 708–2374 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Debra Murphy, Ginnie Mae, 451 7th Street, SW., Room B–133, Washington, DC 20410; e-mail—*Debra_L._Murphy@hud.gov*; telephone—(202) 475–4923; fax—(202) 485–0225 (this is not a toll-free number); Victoria Vargas, Ginnie Mae, 451 7th Street, SW., Room B–133, Washington, DC 20410; e-mail—*Victoria_Vargas@hud.gov*; telephone—(202) 475–6752; fax—(202) 485–0225 (this is not a toll-free number); or the Ginnie Mae Web site at *http://www.ginniemae.gov* for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice reflects the change in burden hours due to Ginnie Mae consolidating its data collection process for program participants and due to an increase in data reporting requirements as it relates to Ginnie Mae's proposed Home Equity Conversion Mortgages security.

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden hours of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Ginnie Mae Mortgage-Backed Securities Guide 5500.3, Revision 1 (Forms and Electronic Data Submissions).

OMB Control Number, if applicable: 2503–0033.

Description of the need for the information and proposed use: Ginnie Mae's Mortgage-Backed Securities Guide 5500.3, Revision 1 (''Guide'') provides instructions and guidance to participants in the Ginnie Mae Mortgage-Backed Securities (''MBS'') programs (''Ginnie Mae I and Ginnie Mae II''). Participants in the Ginnie Mae I program issue securities backed by single-family or multifamily loans. Participants in the Ginnie Mae II program issue securities backed by single-family loans. The Ginnie Mae II MBS are modified pass-through MBS on which registered holders receive an aggregate principal and interest payment from a central paying agent on all of their Ginnie Mae II MBS. The Ginnie Mae II MBS also allow small issuers who do not meet the minimum dollar pool requirements of the Ginnie Mae I MBS to participate in the secondary mortgage market. In addition, the Ginnie Mae II MBS permit the securitization of adjustable rate mortgages (''ARMs''). Included in the Guide are appendices, forms, and documents necessary for Ginnie Mae to properly administer its MBS programs.

Agency form numbers, if applicable: 11700, 11701, 11702, 11704, 11705, 11706, 11707, 11708, 11709, 11709–A, 11710A, 1710–B, 1710–C, 11710D, 11710E, 11711–A, 11711–B, 11712, 11712–II, 11714, 11714–SN, 11715, 11717, 11717–II, 11720, 1724, 11728, 11728–II, 1731, 11732, 1734, 11747, 11747–II, 11748–A, 11772–II.

Estimation of the total number of hours needed to prepare the information collection, including number of respondents, frequency of response, and hours of response:

Form	Appendix No.	Title	No. of respondents	Frequency of responses per year	Total annual responses	Hours per response	Total annual hours
11700	II–1	Letter of Transmittal	160	4	640	0.033	21
11701	I–1	Application for Approval FHA Lender and/or Ginnie Mae Mortgage-Backed Securities Issuer.	16	1	16	1.000	16
11702	I–2	Resolution of Board of Directors and Certificate of Authorized Signatures.	250	1	250	0.080	20
11704	II–2	Commitment to Guaranty Mortgage-Backed Securities.	160	4	640	0.033	21
11705	III–6	Schedule of Subscribers and Ginnie Mae Guaranty Agreement.	250	1	2,012	0.005	10
11706	III–7	Schedule of Pooled Mortgages.	250	1	2,012	0.0075	15
11707	III–1	Master Servicing Agreement.	250	1	250	0.016	4
11708	V–5	Document Release Request.	250	34	8,500	0.050	425
11709	III–2	Master Agreement for Servicer's Principal and Interest Custodial Account.	250	1	250	0.033	8
11709–A	I–6	ACH Debit Authorization ..	250	1	250	0.033	8
11710A, 1710B, 1710C & 11710E.	VI–12	Issuer's Monthly Accounting Report and Liquidation Schedule.	95	1	95	0.500	48
11710 D	VI–5	Issuer's Monthly Summary Reports.	95	1	95	0.250	24
11711A and 11711B.	III–5	Release of Security Interest and Certification and Agreement.	250	12	24144	0.005	121
11712, 11712–II, 11717, 11717–II, 1724, 11728, 11728–II, 1731, 1734, 11747, 11747–II, and 11772–II.	IV–6, IV–23, V–4, IV–20, IV–8, IV–24, IV–5, IV–22, IV–21, IV–9, IV–10, IV–7.	Ginnie Mae I and II Prospectus Forms.	250	12	24,144	0.133	3,211
11714 and 11714SN.	VI–10, VI–11	Issuer's Monthly Remittance Advice and Issuer's Monthly Serial Note Remittance Advice.	250	379	94,750	0.016	1,516
11715	III–4	Master Custodial Agreement.	250	1	250	0.033	8
11720	III–3	Master Agreement for Servicer's Escrow Custodial Account.	250	1	250	0.033	8
11732	III–22	Custodian's Certification for Construction Securities.	75	1	75	0.016	1
11748 A	VI–6	Graduated Payment Mortgage or Growing Equity Mortgage Pool or Loan Package Composition.	46	8	368	0.016	6
	IX–1	Financial Statements and Audit Reports.	250	1	250	1.000	250
		Mortgage Bankers Financial Reporting Form.	245	4	980	0.500	490

Form	Appendix No.	Title	No. of respondents	Frequency of responses per year	Total annual responses	Hours per response	Total annual hours
	XI–6, XI–8, XI–9.	Soldiers' and Sailors' Quarterly Reimbursement Request and SSCRA Loan Eligibility Information.	68	1,245	84,660	0.033	2,794
	VI–2	Letter for Loan Repurchase.	250	12	2,376	0.030	71
	III–21	Certification Requirements for the Pooling of Multifamily Mature Loan Program.	75	1	75	0.050	4
	VI–9	Request for Reimbursement of Mortgage Insurance Claim Costs for Multifamily Loans.	20	1	68	0.250	17
	VII–1	Collection of Remaining Principal Balances.	250	12	7,328,856	0.004	29,315
		Data Verification Form	250	2	500	0.050	25
	III–9	Authorization to Accept Facsimile Signed Correction Request Forms.	41	12	492	0.016	8
	III–13	Electronic Data Interchange System Agreement.	250	1	250	0.166	42
	III–14	Enrollment Administrator Signatories for Issuers and Document Custodians.	250	1	250	0.100	25
		Corporate Guaranty Agreement.	34	1	34	0.050	2
	I–4	Cross Default Agreement	71	1	71	0.050	4
	VIII–2	Transfer Agreements	10	1	10	0.080	1
	VIII–3	Assignment Agreements ..	79	1	10	0.130	1
	VIII–1	Acknowledgement Agreement and Accompanying Documents—Pledge of Servicing.	10	1	10	0.083	1
	XI–2	Supervisory Agreement	10	1	10	0.080	1
		Ginnie Mae Reporting and Feedback Data Collection.	250	12	3,000	4.304	12,912
Total	.....	.....	250	Varies	7,577,804	Varies	38,541

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 11, 2006.

Michael J. Frenz,

Executive Vice President, Government National Mortgage Association.

[FR Doc. E6–17288 Filed 10–17–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket Nos. FR–5030–FA–10, FR–5030–FA–13, FR–5030–FA–17, and FR–5030–FA–29]

Announcement of Funding Award—FY 2006; Healthy Homes and Lead Hazard Control Grant Programs

AGENCY: Office of Healthy Homes and Lead Hazard Control, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in competitions for funding under the Office of Healthy Homes and Lead Hazard Control Grant Programs Notices of Funding Availability (NOFA). This announcement contains the name and address of the award recipients and the amounts to be awarded.

FOR FURTHER INFORMATION CONTACT: Jonnette Hawkins, Department of Housing and Urban Development, Office of Healthy Homes and Lead Hazard Control, 451 7th St., SW., Room 8236, Washington, DC 20410, telephone (202) 755–1785, extension 7593. Hearing- and speech-impaired persons may access the number above via TTY by calling the toll free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The 2006 awards were announced on September 21, 2006. These awards were the result of competitions announced in a **Federal Register** notice published on March 8, 2006 (71 FR 11814, 11834, 11847, and 11858). The purpose of the competitions was to award funding for grants and cooperative agreements for the Lead Hazard Control Grant Programs. Applications were scored and selected on the basis of selection criteria contained in these notices. A total of approximately $118,297,403 will be awarded.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is

publishing the names, addresses, and amounts of these awards as follows:

A total of $81,653,722 will be awarded to 30 grantees for the Lead Based Paint and Hazard Control Program: Cochise County, Lead Hazard Control Program, P.O. Box 167, 100 Clawson Ave., Bisbee, AZ 85603, $1,971,253; State of California, Community Services & Development Programs, 700 North 10th St., Room 258, Sacramento, CA 95814, $3,000,000; San Bernardino County, Public Health, Child & Family Health Services, 120 Carousel Mall, San Bernardino, CA 92415–0475, $3,000,000; State of Connecticut, 25 Sigourney St., Hartford, CT 06106, $3,000,000; City of Hartford, 131 Coventry St., Hartford, CT 06112, $3,000,000; St. Clair County, Intergovernmental Grants, 19 Public Square, Suite 200, Belleville, IL 62220, $2,116,478; Madison County, Community Development, 130 Hillsboro, Edwardsville, IL 62025, $3,000,000; County of Peoria, Peoria City County Health Dept., 2116 N. Sheridan Road, Peoria, IL 61604–3457, $3,000,000; City of Fort Wayne, Room 800, City County Building, One Main St., Fort Wayne, IN 46802, $1,897,415; City of South Bend, 501 Alonzo Watson Drive, South Bend, IN 46601, $3,000,000; State of Kansas, 1000 SW. Jackson, Suite 330, Topeka, KS 66612, $2,987,083; City of Boston, Neighborhood Development Home Owner Services, 26 Court St., 9th Floor, Boston, MA 02108, $3,000,000; City of Somerville, Strategic Planning & Community Development, 93 Highland Ave., City Hall, Somerville, MA 02143, $1,911,849; State of Michigan, Department of Community Health, Environmental and Occupational Epidemiology, P.O. Box 30195, Lansing, MI 48909, $3,000,000; County of St. Louis, Community Development/ Planning, 121 South Meramec, Suite 444, Clayton, MO 63105, $2,715,390; City of St. Louis, 1015 Locust St., Suite 1200, St. Louis, MO 63101, $3,000,000; City of Charlotte, Neighborhood Development, Housing Services, 600 E. Trade St, Charlotte, NC 28202, $2,999,944; State of North Carolina, Lead Poisoning Prevention Program, 1632 Mail Service Center, Raleigh, NC 27699, $3,000,000; County of Orange, Community Development, 255 Main St., Goshen, NY 10924, $2,821,149; Monroe County, Public & Environmental Health, 111 Westfall Rd, P.O. Box 92832, Rochester, NY 14692, $2,998,283; Onondaga County, Community Development, 1100 Civic Center, Syracuse, NY 13202, $3,000,000; County of Westchester, Department of Planning, 148 Martine Ave., Room 114, White Plains, NY 10601, $3,000,000; City of Portland, Housing & Community Development, 421 SW. Sixth Ave., Suite 1100, Portland, OR 97204, $3,000,000; Commonwealth of Pennsylvania, Department of Health, Seventh & Forster St., 7th Floor East Wing, Harrisburg, PA 17120, $3,000,000; County of Lawrence, 430 Court St., New Castle, PA 16101, $3,000,000; State of Rhode Island, Development Department, Lead, 44 Washington St., Providence, RI 02903, $3,000,000; City of Warwick, Planning Department, Office of Housing & Community, 3275 Post Road, City Hall Annex, Warwick, RI 02886, $2,125,992; Shelby County, Department of Housing, Planning and Development, 1075 Mullins Station Road, Memphis, TN 38134, $2,998,886; Salt Lake County, Human Services/Community Resources & Development, 2001 State St., S–2100, Salt Lake City, UT 84190, $2,010,000; County of Rock, Planning & Development, 51 South Main St., Janesville, WI 53545, $1,100,000.

A total of $20,535,349 will be awarded to 7 grantees for the Lead Hazard Reduction Demonstration Grant Program: State of Connecticut, 25 Sigourney St., Hartford, CT 06106, $4,000,000; City of Hartford, 131 Coventry St., Hartford, CT 06112, $3,416,713; City of Boston, Neighborhood Development Homeowner Services, 26 Court St., 9th Floor, Boston, MA 02108, $1,545,966; City of Somerville, SPCD Housing, City Hall, 93 Highland Ave., Somerville, MA 02143, $1,572,670; City of St. Louis, 1015 Locust St., Suite 1200, St. Louis, MO 63101, $4,000,000; County of Westchester, Department of Planning, Housing, 148 Martine Ave., Room 414, White Plains, NY 10601, $2,000,000; City of Cleveland, 1925 St. Clair Ave., Cleveland, OH 44114, $4,000,000.

A total of $5,999,823 will be awarded to 3 grantees for the Operation Lead Elimination Action Program (LEAP): Environmental Education Associates, Inc., 346 Austin St., Buffalo, NY 14201, $1,999,997; Mahoning Valley Real Estate Investors Association, 2901 Market St., Suite 200, Youngstown, OH 44507, $2,000,000; Middle Tennessee State University, Engineering, Technical & Industrial Studies, Occupational Health and Safety, 1500 Greenland Drive, Campus P.O. Box 19, Murfreesboro, TN 37132, $1,999,826.

A total of $2,778,130 will be awarded to 7 grantees for the Lead Technical Studies Program: University of Illinois Board of Trustees, 1901 S. First St., Suite A, Champaign, IL 61820, $369,114; University of Illinois at Chicago, School of Public Health, MB 502, M/C 551, 809 S. Marshfield Ave., Chicago, IL 60612–7205, $848,500; Phoenix Science & Technology, Inc., 27 Industrial Ave., Chelmsford, MA 01824, $375,207; St. Louis University, School of Public Health, Community Health, 211 North Grand Blvd., St. Louis, MO 63103, $495,732; Research Triangle Institute, 3040 Cornwallis Road, Research Triangle Park, NC 27709, $190,000; University of Cincinnati, Department of Environmental Health, Environmental and Occupational Hygiene, 47 Corry Blvd., Edwards One, Suite 7148, P.O. Box 210222, Cincinnati, OH 45221, $420,600; University of Cincinnati College of Medicine, Environmental Health, Epidemiology, 47 Corry Blvd., Edwards One, Suite 7148, P.O. Box 210222, Cincinnati, OH 45221, $78,977.

A total of $3,760,259 will be awarded to 4 grantees for the Healthy Homes Demonstration Grant Program: Alameda County Lead Poisoning Prevention Program, Community Development Agency, Lead Poisoning Prevention, 2000 Embarcadero, Suite 300, Oakland, CA 94606, $1,000,000; City of Minneapolis Healthy Homes & Lead Hazard Control, Regulatory Services, Environmental Management & Safety, 250 S 4th St., Room 414, Minneapolis, MN 55415, $1,000,000; Cuyahoga County Board of Health Department, Community Health, 5550 Venture Drive, Parma, OH 44130, $1,000,000; Cook County Department of Public Health, Environmental Health Services, Prevention Services Unit, 1010 Lake St., Suite 300, Oak Park, IL 60301, $760,259.

A total of $2,000,000 will be awarded to 8 grantees for the Lead Outreach Grants Program: Saint Francis Hospital & Medical Center, Pediatrics, 114 Woodland St., Hartford, CT, 06105, $298,058; Area Health Education Center of Southern Nevada, 1094 E. Sahara Ave., Las Vegas, NV 89104, $199,451; West Harlem Environmental Action, Inc., 271 West 125th St., Suite 206, New York, NY 10027, $282,960; Research Foundation of SUNY on behalf of SUNY Potsdam, P.O. Box 9, Potsdam, NY 12201–0009, $111,285; National Nursing Centers Consortium, U.S. HUD Lead Outreach Grant Program, 260 South Broad St., 18th Floor, Philadelphia, PA 19102, $200,000; Le Bonheur Community Outreach, 2400 Poplar Ave., Suite 318, Memphis, TN 38112, $250,332; Indiana Black Expo, Inc., Youth & Family Programs, 3145 N. Meridian St., Indianapolis, IN 46208, $357,914; Board of Regents, University of Nebraska-Lincoln, SE Research & Extension Center, IANR Cooperative Extension, 312 N. 14th St., Alexander

Bldg., West, Lincoln, NE 68588, $300,000.

A total of $1,570,120 will be awarded to 4 grantees for the Healthy Homes Technical Studies Grants Program: National Center for Healthy Housing, 10227 Wincopin Circle, Suite 0200, Columbia, MD 21044, $150,120; University of Minnesota, Environmental Health Sciences, 200 Oak St., SE, Suite 450, McNamara Alumni Center, Minneapolis, MN 55455, $490,000; St. Louis University, School of Public Health, Community Health, 211 North Grand Blvd., St. Louis, MO 63103, $530,000; University of Cincinnati, Environmental Health, Epidemiology, 47 Corry Blvd., Edwards One, Suite 7148, Cincinnati, OH 45221, $400,000.

Dated: October 6, 2006.

Jon L. Gant,

Director, Office of Healthy Homes, and Lead Hazard Control.

[FR Doc. E6–17311 Filed 10–17–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5076–D–12]

Order of Succession for the Office of Fair Housing and Equal Opportunity

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of order of succession.

SUMMARY: In this notice, the Assistant Secretary for Fair Housing and Equal Opportunity designates the Order of Succession for the Office of Fair Housing and Equal Opportunity. This Order of Succession supersedes the Order of Succession for the Assistant Secretary for Fair Housing and Equal Opportunity published on November 6, 2000.

Effective Date: June 14, 2006.

FOR FURTHER INFORMATION, CONTACT: Deborah R. Harrison, Administrative Officer, Office of Fair Housing and Equal Opportunity, Resource Management Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5124, Washington, DC 20410, (202) 708–2701. (This is not a toll-free number.) This number may be accessed through TTY by calling the toll-free Federal Information Relay Service at 1-(800)-877–8339.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Fair Housing and Equal Opportunity is issuing this Order of Succession of officials authorized to perform the functions and duties of the Office of the Assistant Secretary for Fair Housing and Equal Opportunity when, by reason of absence, disability, or vacancy in office, the Assistant Secretary is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345–3349d). This publication supersedes the Order of Succession notice on November 6, 2000 (65 FR 66550).

Accordingly, the Assistant Secretary for Fair Housing and Equal Opportunity designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in the office, the Assistant Secretary for Fair Housing and Equal Opportunity is not available to exercise the powers or perform the duties of the Office of Assistant Secretary for Fair Housing and Equal Opportunity, the following officials within the Office of Fair Housing and Equal Opportunity are hereby designated to exercise the powers and perform the duties of the Office:

(1) General Deputy Assistant Secretary for Fair Housing and Equal Opportunity;

(2) Deputy Assistant Secretary for Enforcement and Programs;

(3) Deputy Assistant Secretary for Operations and Management;

(4) Director, Office of Policy, Legislative Initiatives, and Outreach;

(5) Director, Office of Enforcement;

(6) Director, Office of Programs;

(7) Director, Office of Management, Planning, and Budget;

(8) Director, Policy and Legislative Initiatives Division.

These officials shall perform the functions and duties of the office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in the office.

Section B. Authority Superseded

This Order of Succession supersedes the Order of Succession for the Assistant Secretary for Fair Housing and Equal Opportunity, published on November 6, 2000 (65 FR 66550).

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 14, 2006.

Kim Kendrick,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. E6–17045 Filed 10–17–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5076–D–01]

Order of Succession for the Office of the Assistant Secretary for Administration

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice of order of succession.

SUMMARY: In this notice, the Assistant Secretary for Administration designates the Order of Succession for the Office of Administration. This Order of Succession supersedes the Order of Succession for the Assistant Secretary for Administration published on June 23, 2003.

Effective Date: June 14, 2006.

FOR FURTHER INFORMATION CONTACT: Michelle Gaston, Director, Office of Budget and Management Support, Office of Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6210, Washington, DC 20410–3000, telephone (202) 708–1583. (This is not a toll-free number.) This number may be accessed through TTY by calling the toll-free Federal Information Relay Service number at 1–(800) 877–8339.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration is issuing this Order of Succession of officials authorized to perform the duties and functions of the Office of the Assistant Secretary for Administration when, by reason of absence, disability, or vacancy in the office, the Assistant Secretary for Administration is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345–3349d). This publication supersedes the Order of Succession notice of June 23, 2003 (68 FR 37169).

Accordingly, the Assistant Secretary for Administration designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for

Administration is not available to exercise the powers or perform the duties of the Office of the Assistant Secretary for Administration, the following officials within the Office of Administration are hereby designated to exercise the powers and perform the duties of the Assistant Secretary for Administration:

(1) General Deputy Assistant Secretary for Administration;

(2) Deputy Assistant Secretary for Operations;

(3) Deputy Assistant Secretary for Human Resource Management;

(4) Deputy Assistant Secretary for Budget and Management Support;

(5) Director, Office of Security and Emergency Planning;

(6) Director, Office of Human Resource Management;

(7) Director, Administrative Service Center 2;

(8) Director, Administrative Service Center 1;

(9) Director, Administrative Service Center 3.

The officials shall perform the functions and duties of this office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his or hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

This Order of Succession supersedes the Order of Succession for the Assistant Secretary for Administration published on June 23, 2003 (68 FR 37169).

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 14, 2006.

Keith A. Nelson,

Assistant Secretary for Administration.

[FR Doc. E6–17056 Filed 10–17–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5076–D–02]

Order of Succession for the Office of the Chief Procurement Officer

AGENCY: Office of the Chief Procurement Officer, HUD.

ACTION: Notice of order of succession.

SUMMARY: In this notice, the Chief Procurement Officer designates the Order of Succession for the Office of the Chief Procurement Officer. The Office of the Chief Procurement Officer was previously part of the Office of Administration.

Effective Date: July 13, 2006.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Associate Chief Procurement Officer, Office of the Chief Procurement Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5278, Washington, DC 20410–3000, telephone (202) 708–0600. (This is not a toll-free number.) This number may be accessed through TTY by calling the toll-free Federal Information Relay Service number at 1–(800) 877–8339.

SUPPLEMENTARY INFORMATION: The Chief Procurement Officer is issuing this Order of Succession of officials authorized to perform the duties and functions of the Office of the Chief Procurement Officer when, by reason of absence, disability, or vacancy in the office, the Chief Procurement Officer is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345–3349d).

The Office of the Procurement Officer was previously part of the Office of Administration, but is now an independent office. Elsewhere in this edition of the **Federal Register**, HUD's Office of Administration is publishing an updated Order of Succession for the Office of Administration that reflects the current structure of the Office of Administration, which excludes the Office of the Chief Procurement Officer.

Accordingly, the Chief Procurement Officer designates the following Order of Succession:

Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Chief Procurement Officer is not available to exercise the powers or perform the duties of the Office of the Chief Procurement Officer, the following officials within the Office of the Chief Procurement Officer are hereby designated to exercise the powers and perform the duties of the Chief Procurement Officer:

(1) Deputy Chief Procurement Officer;

(2) Assistant Chief Procurement Officer, Program Operations;

(3) Assistant Chief Procurement Officer, Support Operations;

(4) Assistant Chief Procurement Officer, Policy and Systems;

(5) Assistant Chief Procurement Officer, Field Operations;

(6) Director, Field Contracting Operations (Southern);

(7) Director, Field Contracting Operations (Western);

(8) Director, Field Contracting Operations (Northern).

The officials shall perform the functions and duties of this office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his or hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 13, 2006.

Joseph A. Neurauter,

Chief Procurement Officer.

[FR Doc. E6–17053 Filed 10–17–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5076–D–14]

Order of Succession for the Office of Community Planning and Development

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of order of succession.

SUMMARY: In this notice, the Assistant Secretary for Community Planning and Development (Assistant Secretary) designates the Order of Succession for the Office of Community Planning and Development. This Order of Succession supersedes the Order of Succession for the Assistant Secretary for Community Planning and Development, published on August 22, 2000.

Effective Date: September 8, 2006.

FOR FURTHER INFORMATION CONTACT: Karen E. 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, (202) 708–1817. (This is not a toll-free number.) This number may be accessed via TTY by calling the Federal Information Relay Service at (800) 877–8339 (toll-free).

SUPPLEMENTARY INFORMATION: The Assistant Secretary issuing this Order of Succession of officials authorized to perform the functions and duties of the Office of the Assistant Secretary for Community Planning and Development when, by reason of absence, disability, or vacancy in office, the Assistant Secretary is not available to exercise the powers or perform the duties of the office. This Order of Succession is

subject to the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345–3349d). This publication supersedes the Order of Succession notice of August 22, 2000 (65 FR 51014).

Accordingly, the Assistant Secretary designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary is not available to exercise the powers or perform the duties of the Office of Assistant Secretary for Community Planning and Development, the following officials within the Office of Community Planning and Development are hereby designated to exercise the powers and perform the duties of the Office:

(1) General Deputy Assistant Secretary;

(2) Deputy Assistant Secretary for Operations;

(3) Deputy Assistant Secretary for Special Needs;

(4) Deputy Assistant Secretary for Grants Programs;

These officials shall perform the functions and duties of the Office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

This Order of Succession supersedes the Order of Succession for the Assistant Secretary for Community Planning and Development, published at 65 FR 51014 (August 22, 2000).

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 8, 2006.

Pamela H. Patenaude,

Assistant Secretary for Community Planning and Development.

[FR Doc. E6–17044 Filed 10–17–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5076–D–04]

Order of Succession for the Office of Housing

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice of order of succession.

SUMMARY: In this notice, the Assistant Secretary for Housing designates the Order of Succession for the Office of Housing. This Order of Succession supersedes the Order of Succession for the Assistant Secretary for Housing published on February 5, 2003 (68 FR 5909).

Effective Date: June 20, 2006.

FOR FURTHER INFORMATION CONTACT: Eliot C. Horowitz, Senior Advisor to the Assistant Secretary for Housing-Federal Housing Commissioner, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9110, Washington, DC 20410–0500. Telephone (202) 708–1490 (this is not a toll-free number). A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–(800) 877–9339 (Federal Information Relay Service) (this is a toll-free number).

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Housing is issuing this Order of Succession of officials authorized to perform the functions and duties of the Office of the Assistant Secretary for Housing when, by reason of absence, disability, or vacancy in office, the Assistant Secretary is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345–3349d. This publication supersedes the Order of Succession notice published on February 5, 2003 (68 FR 5909).

Accordingly, the Assistant Secretary for Housing designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for Housing is not available to exercise the powers or perform the duties of the Office of Assistant Secretary for Housing, the following officials within the Office of Housing are hereby designated to exercise the powers and perform the duties of the Assistant Secretary for Housing:

(1) General Deputy Assistant Secretary for Housing;

(2) Deputy Assistant Secretary for Multifamily Housing;

(3) Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing;

(4) Deputy Assistant Secretary for Finance and Budget;

(5) Deputy Assistant Secretary for Single Family Housing;

(6) Deputy Assistant Secretary for Operations;

(7) Deputy Assistant Secretary for Affordable Housing Preservation.

These officials shall perform the functions and duties of the office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

This Order of Succession supersedes the Order of Succession for the Assistant Secretary for Housing published on February 5, 2003 (68 FR 5909).

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 20, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. E6–17059 Filed 10–17–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5076–D–03]

Order of Succession for the Office of the Assistant Secretary for Public and Indian Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of order of succession.

SUMMARY: In this notice, the Assistant Secretary for Public and Indian Housing designates the Order of Succession for the Office of Public and Indian Housing. This Order of Succession supersedes the Order of Succession for the Assistant Secretary for Public and Indian Housing published on November 6, 2000, at 65 FR 66551.

Effective Date: June 15, 2006.

FOR FURTHER INFORMATION CONTACT: Katherine C. Anderson, Office of Policy, Program and Legislative Initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4116, Washington, DC 20410–5000, telephone (202) 708–0713. (This is not a toll-free number.) This number may be accessed through TTY by calling the toll-free Federal Information Relay Service number at 1–(800) 877–8339.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Public and Indian Housing is issuing this Order of

Succession of officials authorized to perform the functions and duties of the Office of the Assistant Secretary for Public and Indian Housing when, by reason of absence, disability, or vacancy in office, the Assistant Secretary is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345–3349d. This publication supersedes the Order of Succession notice of November 6, 2000 (65 FR 66551).

Accordingly, the Assistant Secretary for Public and Indian Housing designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for Public and Indian Housing is not available to exercise the powers or perform the duties of the Office of the Assistant Secretary for Public and Indian Housing, the following officials within the Office of Public and Indian Housing are hereby designated to exercise the powers and perform the duties of the Assistant Secretary for Public and Indian Housing:

(1) General Deputy Assistant Secretary for Public and Indian Housing;

(2) Deputy Assistant Secretary for Public Housing and Voucher Programs;

(3) Deputy Assistant Secretary for Field Operations;

(4) Deputy Assistant Secretary for Public Housing Investments.

These officials shall perform the functions and duties of the office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

This Order of Succession supersedes the Order of Succession for the Assistant Secretary for Public and Indian Housing published on November 6, 2000 (65 FR 66551).

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 15, 2006.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

[FR Doc. E6–17054 Filed 10–17–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Low Effect Habitat Conservation Plan for the Schwisow Development in Adams County, ID

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; receipt of application.

SUMMARY: This notice advises the public that Duane and Darlene Schwisow (Applicants) have applied to the Fish and Wildlife Service (Service) for an incidental take permit (ITP), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The requested 25-year permit would authorize the incidental take of the threatened northern Idaho ground squirrel (*Spermophilus brunneus brunneus*) (''squirrels''), on 13.9 square meters (150 square feet) of suitable but unoccupied habitat associated with the development of a residence in Adams County, Idaho.

We are requesting comments on the permit application and on whether the proposed Habitat Conservation Plan (HCP) qualifies as a ''low effect'' HCP, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. We explain the basis for this possible determination in a draft Environmental Action Statement (EAS), which is also available for public review.

DATES: Written comments must be received by 5 p.m. on November 17, 2006.

ADDRESSES: Comments should be addressed to Jeri Wood, Biologist, Fish and Wildlife Service, Snake River Fish and Wildlife Office, 1387 Vinnell Way, Suite 368, Boise, Idaho 83709, (telephone number (208) 378–5243; fax number (208) 378–5262). For further information and instruction on the reviewing and commenting process, see Public Review and Comment section below.

FOR FURTHER INFORMATION CONTACT: Jeri Wood, at the above address, or telephone (208) 378–5243.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the application, proposed HCP, or EAS, should contact the Service by telephone (see **FOR FURTHER INFORMATION CONTACT**) or by letter (see **ADDRESSES**). Copies of the subject documents also are available for public inspection during regular business hours at the Snake River Fish and Wildlife Office (see **ADDRESSES**).

Background

Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and Federal regulations prohibit the ''take'' of a fish or wildlife species listed as endangered or threatened. Take of federally listed fish and wildlife is defined under section 3 of the Act as including to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in such conduct'' (16 U.S.C. 1538). The Service may, under limited circumstances, issue permits to authorize ''incidental take'' of listed species. ''Incidental take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened species and endangered species, respectively, are at 50 CFR 17.32 and 50 CFR 17.22. The Applicants are seeking a permit for the incidental take of the northern Idaho ground squirrel during the 25-year term of the permit.

Applicants propose to develop and carry out construction activities on the proposed covered lands, comprising 2.0 hectares (5 acres), as a residence with a septic system, well and utility lines. Of the proposed covered area's 2.0 hectares (5 acres), approximately 1.2 hectares (3 acres) will be set aside as a Protected Area. The Protected Area is currently occupied habitat for the northern Idaho ground squirrel. Incidental take of the northern Idaho ground squirrel would be authorized for the remaining 0.81 hectare (2 acres) Project Area in unoccupied but suitable habitat for northern Idaho ground squirrels. The 0.81 hectare (2 acres) site will be developed for a 13.9 square meter (150 square feet) development pad for a residence, a septic system, underground utility lines, and well. Therefore, Applicants seek a Permit for the 0.81 hectares (2 acres) of the proposed covered area.

The proposed minimization and mitigation measures include avoidance of all ground disturbing activity in the 1.2 hectare (3 acre) Protected Area; and to mitigate for the temporary loss of suitable habitat due to the development of utility lines, a septic system and well in the 0.81-hectare (2-acre) Project Area, Applicants will replant these disturbed areas with native plants. Monitoring of the northern Idaho ground squirrel and its habitat would occur throughout the 2.0 hectares (5 acres) of proposed covered lands[w1].

Approval of the HCP may qualify as a categorical exclusion under NEPA, as provided by the Departmental Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1) and as a ''low effect'' plan

as defined by the Habitat Conservation Planning Handbook (Service, 1996). Determination of low effect HCPs is based upon the plan having: minor or negligible effects on federally listed, proposed, or candidate species and their habitats; minor or negligible effects on other environmental values or resources; and, impacts that considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to the environmental values or resources which would be considered significant. If the proposed Schwisow HCP is found to qualify as a low-effect HCP, further NEPA documentation would not be required.

Public Review and Comment

If you wish to comment on the permit application, draft Environmental Action Statement, or the proposed HCP, you may submit your comments to the address listed in the **ADDRESSES** section of this document. We will evaluate this permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a) of the Act and NEPA regulations. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. Anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety. If we determine that the requirements are met, we will issue an incidental take permit under section 10(a)(1)(B) of the Act to the Applicants for take of the squirrels, incidental to otherwise lawful activities in accordance with the terms of the permit. We will not make our final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

The Service provides this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6).

Dated: September 11, 2006.

Jeffery L. Foss,

Field Office Supervisor, Fish and Wildlife Service, Boise, Idaho.

[FR Doc. E6–17280 Filed 10–17–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application for an Incidental Take Permit for the Sarment Parcel Low-Effect Habitat Conservation Plan, Monterey County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Daniel Keig (applicant) has applied to the Fish and Wildlife Service (Service or ''we'') for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). We are considering issuing a 5-year permit to the applicant that would authorize take of the federally endangered Smith's blue butterfly (*Euphilotes enoptes smithi*) incidental to otherwise lawful activities associated with construction of a single family home, which would remove 0.3 acre of Smith's blue butterfly habitat within a 6.1-acre parcel in Carmel Highlands, Monterey County, California.

We invite comments from the public on the permit application, which is available for review. The application includes a Habitat Conservation Plan (HCP), that fully describes the proposed project and the measures that the applicant would undertake to minimize and mitigate anticipated take of the Smith's blue butterfly, as required in Section 10(a)(2)(B) of the Act. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below.

We also invite comments on our preliminary determination that the HCP qualifies as a ''low-effect'' plan, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. We explain the basis for this possible determination in a draft Environmental Action Statement and associated Low Effect Screening Form, which are also available for public review.

DATES: Written comments should be received on or before November 17, 2006.

ADDRESSES: Written comments should be addressed to Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003. Comments may also be sent by facsimile to (805) 644–3958. To obtain copies of draft documents, see ''Availability of Documents'' under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Jacob Martin, Fish and Wildlife Biologist (*see* **ADDRESSES**), telephone: (805) 644–1766, extension 285.

SUPPLEMENTARY INFORMATION: Please contact the Ventura Fish and Wildlife Office (*see* **ADDRESSES**) if you would like copies of the application, HCP, and Environmental Action Statement. Documents will also be available for review by appointment, during normal business hours, at the Ventura Fish and Wildlife Office (*see* **ADDRESSES**) or via the Internet at *http://www.fws.gov/ventura.*

Background

Section 9 of the Act and Federal regulations prohibit the ''take'' of fish or wildlife species listed as endangered or threatened, respectively. Take of listed fish or wildlife is defined under the Act to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. However, the Service, under limited circumstances, may issue permits to cover incidental take, *i.e.*, take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found at 50 CFR 17.32 and 17.22, respectively. Among other criteria, issuance of such permits must not jeopardize the existence of federally listed fish, wildlife, or plants.

The Sarment Parcel (Assessor's Parcel Number 241–221–005) (Parcel) has an area of 6.1 acres, is owned by the applicant, and is located east of California Highway 1, in Carmel Highlands, Monterey County, California. The applicant proposes to develop a single family home within the Parcel. Development activities would include grading; construction of the home, driveway, and septic system; and landscaping; which are expected to disturb up to 0.3 acre. Two native plant communities are found within the Parcel, coastal sage scrub and closed-cone coniferous forest. Disturbed areas also exist within the Parcel, including an existing road and areas dominated by invasive plants.

The areas of coastal sage scrub within the Parcel include seacliff buckwheat (*Eriogonum parvifolium*), a food plant used by all life stages of the Smith's blue butterfly. Surveys in July 2000, July

2003, and August 2005 revealed these areas to be occupied by the Smith's blue butterfly. The proposed development would remove an area (0.3 acre) of coastal sage scrub that includes approximately 650 seacliff buckwheat plants. This removal is expected to result in take of Smith's blue butterflies. Additional seacliff buckwheat plants may be removed due to management activities, including invasive plant removal.

The applicant proposes to implement measures to minimize and mitigate for take of the Smith's blue butterfly within the project site. Specifically, they propose to: (1) Protect in perpetuity 1.04 acres, containing at least 2,000 seacliff buckwheat plants, via a deed restriction; (2) manage the protected area in perpetuity; (3) remove invasive plant species, especially iceplant (*Carpobrotis sp.*) throughout most of the Parcel; and (4) undertake various measures during grading and construction activities at the project site to minimize impacts to Smith's blue butterflies and their habitat.

The impacts from proposed construction are considered to be minor to the species as a whole because the amount of habitat being disturbed is small relative to the amount of habitat available within the Carmel Highlands area and within the range of the species as a whole.

The Service's proposed action is to issue an incidental take permit to the applicant who would then implement the HCP. Two alternatives to the taking of listed species under the proposed action are considered in the HCP. Under the No-Action alternative, the proposed expansion would not occur and the HCP would not be implemented. This would avoid effects of habitat removal due to the proposed development on the Smith's blue butterfly. However, this alternative would not meet the needs of the applicant. Also, the proposed deed restricted area would not be managed in perpetuity.

Under the Redesigned Project alternative, the development footprint for the project would be relocated to another portion of the site, thus reducing or altering the area of impacted habitat for the Smith's blue butterfly. Alternate locations for new construction are limited within the Parcel due to the presence of steep slopes. An alternate construction site within the Parcel, adjacent to and uphill of the proposed site, was considered, but as this site was also occupied by seacliff buckwheat and Smith's blue butterflies, relocation of the project was not expected to substantially benefit the Smith's blue butterfly.

The Service has made a preliminary determination that the HCP qualifies as a ''low-effect'' plan as defined by our Habitat Conservation Planning Handbook (November 1996). Our determination that a habitat conservation plan qualifies as a low-effect plan is based on the following three criteria: (1) Implementation of the plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the plan, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. As more fully explained in our Environmental Action Statement and associated Low Effect Screening Form, the applicant's proposal to develop a single family home within the Parcel qualifies as a ''low-effect'' plan for the following reasons:

(1) Approval of the HCP would result in minor or negligible effects on the Smith's blue butterfly. The Service does not anticipate significant direct or cumulative effects to the Smith's blue butterfly resulting from the proposed development of the project site.

(2) Approval of the HCP would have minor or negligible effects on unique geographic, historic, or cultural sites, and would not involve unique or unknown environmental risks.

(3) Approval of the HCP would not result in any cumulative or growth-inducing impacts and would not result in significant adverse effects on public health or safety.

(4) The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local, or tribal law or requirement imposed for the protection of the environment.

(5) Approval of the HCP would not establish a precedent for future actions or represent a decision in principle about future actions with potentially significant environmental effects.

The Service therefore has made a preliminary determination that approval of the HCP qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Based upon this preliminary determination, we do not intend to prepare further National Environmental Policy Act documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

Public Review and Comment

If you wish to comment on the permit application, draft Environmental Action Statement, or the proposed HCP, you may submit your comments to the address listed in the **ADDRESSES** section of this document. Our practice is to make comments, including names, home addresses, etc., of respondents available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must provide a rationale demonstrating and documenting that disclosure would constitute a clearly unwarranted invasion of privacy. In the absence of exceptional, documented circumstances, this information will be released. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

The Service provides this notice pursuant to section 10(c) of the Endangered Species Act. We will evaluate the permit application, the HCP, and comments submitted thereon to determine whether the application meets the requirements of section 10 (a) of the Act. If the requirements are met, the Service will issue a permit to the applicant. We will make the final permit decision no sooner than 30 days after the date of publication of this notice.

Dated: October 10, 2006.

Diane K. Noda,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. E6–17329 Filed 10–17–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application for an Incidental Take Permit for Construction of Four Single-Family Homes in Brevard County, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Laura and Tariq Hussain (Applicants) request an incidental take permit (ITP) for a duration of one year, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Applicants anticipate removal of about 0.97 acre of Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) foraging, sheltering, and possibly nesting habitat, incidental to lot preparation for the construction of four single-family homes and supporting infrastructure in Brevard County, Florida (Project). The Applicants' Habitat Conservation Plan (HCP) describes the mitigation and minimization measures proposed to address the effects of the Project to the scrub-jay. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Written comments on the ITP application and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before November 17, 2006.

ADDRESSES: Persons wishing to review the application and HCP may obtain a copy by writing the Service's Southeast Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (*Attn:* Endangered Species Permits), or the Service's Jacksonville Field Office, Fish and Wildlife Service, 6220 Southpoint Drive, Suite 310, Jacksonville, Florida 32216–0912. Please reference permit number TE118200–0 in such requests. Documents will also be available for public inspection by appointment during normal business hours at the Southeast Regional Office or the Jacksonville Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, (see **ADDRESSES** above), *telephone:* 404/679–7313, *facsimile:* 404/679–7081; or Paula Sisson, Fish and Wildlife Biologist, Jacksonville Field Office, Jacksonville, Florida (see **ADDRESSES** above), *telephone:* 904/232–2580, ext. 126.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE118200–0 in such comments. You may mail comments to the Service's Southeast Regional Office (see **ADDRESSES**). You may also comment via the internet to ''*david_dell@fws.gov*''. Please include your name and return address in your internet message. If you do not receive a confirmation from us that we have received your internet message, contact us directly at either telephone number listed above (see **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand-deliver comments to either Service office listed above (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The Florida scrub-jay is geographically isolated from other species of scrub-jays found in Mexico and the western United States. The scrub-jay is found exclusively in peninsular Florida and is restricted to xeric uplands (predominately in oak-dominated scrub). Increasing urban and agricultural development has resulted in habitat loss and fragmentation, which has adversely affected the distribution and numbers of scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

According to scrub-jay surveys accomplished from 1999 through 2003, proposed residential construction on the Applicants' four lots in the City of Palm Bay (Port Malibar Subdivision) would take place within 438 feet of locations where scrub-jays were sighted. Scrub-jays using the subject residential lots and adjacent properties are part of a larger complex of scrub-jays located in a matrix of urban and natural settings in areas of southern Brevard and northern Indian River counties. Within the City of Palm Bay, 20 families of scrub-jays persist in habitat fragmented by residential development.

Since the Applicants' four residential lots fall within the 438-foot buffer established for two known scrub-jay territories, the lots likely provide scrub-jays with foraging, sheltering, and possibly nesting habitat. Accordingly, loss of this habitat due to residential construction could result in the take of two scrub-jay families, by reducing the amount of available habitat.

The Applicants propose to minimize impacts to the scrub-jay by avoiding land clearing activities on any lot during the nesting season (March 1 through June 30) if active nests are found. The Applicants propose to mitigate the take of scrub-jays through contribution of $16,296 to The Nature Conservancy's Conservation Fund for the management and conservation of the Florida scrub-jay. Funds in this account are earmarked for use in the conservation and recovery of scrub-jays, including habitat acquisition, restoration, and management.

The Service has determined that the Applicants' proposal, including the proposed mitigation and minimization measures, would individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, the ITP is a ''low-effect'' project and would qualify as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). This preliminary information may be revised based on our review of public comments that we receive in response to this notice. Low-effect HCPs are those involving: (1) Minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, the ITP would be issued for incidental take of the Florida scrub-jay. The Service will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue an ITP. This notice is provided pursuant to section 10 of the Endangered Species Act and National Environmental Policy Act regulations (40 CFR 1506.6).

Dated: September 21, 2006.

Cynthia K. Dohner,

Deputy Regional Director, Southeast Region.

[FR Doc. E6–17341 Filed 10–17–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Indian Energy and Economic Development is seeking comments on renewal of a reporting system for Public Law 102–477, ''Indian Employment, Training and Related Services Demonstration Act of 1992.'' The existing data collection, cleared under OMB Control Number 1076–0135, expires on November 30, 2006. This information collection requirement satisfies this statutory requirement.

DATES: Submit comments on or before December 18, 2006.

ADDRESSES: Send comments to Lynn Forcia, Chief, Division of Workforce Development, telefacsimile number (202) 208–6991 or write to Division of Workforce Development, Office of Indian Energy and Economic Development, 1951 Constitution Avenue, NW., Mail Stop 20–SIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: You may request further information or obtain copies of the proposed information collection request from the Lynn Forcia, Chief, Division of Workforce Development at the address above.

SUPPLEMENTARY INFORMATION: A report system for the Public Law 102–477 initiative expires November 30, 2006. This is a request for an extension of a previously approved information collection request.

The information collection is needed to document satisfactory compliance with statutory requirements of the various integrated programs. Public Law 102–477 authorizes tribal governments to integrate federally funded employment, training and related services programs into a single, coordinated, comprehensive service delivery plan. Funding agencies include the Department of the Interior, the Department of Labor, and the Department of Health and Human Services. The Department of the Interior is statutorily required to serve as the lead agency. Section II of this Act requires that the Secretary of the Interior make available a single universal report format which shall be used by a tribal government to report on integrated activities and expenditures undertaken by tribes. The Department of the Interior shares the information collected from these reports with the Department of Labor and the Department of Health and Human Services.

Public Law 102–477 requires that the tribes report annually. Tribal governments voluntarily participating in Public Law 102–477 are required to annually complete one financial report, one narrative and one program statistical report. When the forms were first developed in 1993, the 7 pages replaced 166 pages of instructions and applications representing three different agencies and twelve different funded but related programs. We estimated a 95 percent reduction in reporting, which is consistent with the Paperwork Reduction Act. Since that time, Federal program additions and changes have affected the data collection. The revised proposed forms include 13 pages of forms and instructions if a tribal government decides to integrate the Department of Health and Human Services, Temporary Assistance to Needy Families (TANF) program into Public Law 102–477. If a tribal government does not include TANF, the tribe is required to report 8 of the 13 pages. In either event, Public Law 102–477 reporting process continues to be a major reduction in reporting.

Request for Comments

The Department of the Interior requests your comments on this collection concerning:

(a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used;

(c) Ways we could enhance the quality, utility and clarity of the information to be collected; and

(d) Ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section, room 18, during the hours of 8 a.m. to 5 p.m., Eastern Standard Time, Monday through Friday, except for legal holidays. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comments. We will honor your request according to the requirements of the law. All comments from organizations or representatives will be available for review. We may withhold comments from review for other reasons.

Information Collection Abstract

OMB Control Number: 1076–0135.

Type of review: Renewal.

Title: A Reporting System for Public Law 102–477, Indian Employment, Training and Related Services Demonstration Project.

Brief description of collection: Tribal governments voluntarily participating in Public Law 102–477 are statutorily required to annually complete one report including: (a) A 1-page program statistical form, (b) a 1-page financial report, and (c) a narrative which will describe what the tribal government is trying to accomplish with its employment, training and related services resources in its own circumstances and the extent to which it has succeeded. The narrative report may be in any format. In addition, those tribes voluntarily integrating the Department of Health and Human Services, Temporary Assistance to Needy Families must also complete an additional 1-page form. The entire reporting format includes 13 pages of forms and instructions.

Respondents: Respondents are tribal governments, which voluntarily participate in Public Law 102–477.

Number of respondents: We currently have 49 grantees representing 243 federally-recognized tribes.

Estimated time per response: We estimate that completion of the reporting requirements will require 10 hours per year to complete for each grantee, times 49 equals 490 burden hours. If the tribal governments have also integrated Department of Health and Human Services, Temporary Assistance to Needy Families they must complete one additional form. We estimate that this would add an additional hour per respondent. If all 49 grantees add the Temporary Assistance to Needy Families to their Public Law 102–477 program, the total burden hours would equal 49 grantees times 11 hours or 539 total burden hours.

Frequency of response: All voluntarily participating tribal governments in Public Law 102–477 must complete the required reports once each year of participation.

Total Annual Burden to Respondents: We estimate that the total burden hours will be 539 hours or less.

Total Annual Cost to Respondents: We estimate that the total annual cost to respondents is $5,390 per year. This cost includes filing space cost and materials. The cost does not include salary.

Dated: October 2, 2006.

Michael D. Olsen,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E6–17354 Filed 10–17–06; 8:45 am]

BILLING CODE 4310–4M–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–180]

Meeting of the Central California Resource Advisory Council

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Central California Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held Friday and Saturday, Nov. 17 and 18, 2006, in the Meeting Room of the Dow Villa Motel, 310 S. Main St., Lone Pine, California. On Nov. 17, the members will convene at 9 a.m. for a business meeting, followed by a field trip to the Alabama Hills beginning at noon. Members of the public are welcome to attend the tour and meeting. Field tour participants must provide their own transportation and lunch. The Advisory Council will resume its meeting at 9 a.m. on Nov. 18 in the Dow Villa Motel Conference Room. Time for public comment is reserved from 10 a.m. to noon on Nov. 18.

FOR FURTHER INFORMATION CONTACT: BLM Bishop Field Office Manager Bill Dunkelberger, (760) 872–5011; or BLM Central California Public Affairs Officer David Christy, (916) 985–4474.

SUPPLEMENTARY INFORMATION: The twelve-member Central California Resource Advisory Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of public land issues associated with public land management in the Central California. At this meeting, agenda items include discussion of a recreation fee business plan for the Clear Creek Special Recreation Management Area and management of the Alabama Hills area. The RAC members will also hear status reports from the Folsom, Hollister, Bakersfield and Bishop field office managers. The meeting is open to the public. The public may present written comments to the Council, and time will be allocated for hearing public comments. Depending on the number of persons wishing to comment and the time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact the BLM as indicated above.

Charge Code: CA 110–1430–HN.

Dated: October 11, 2006.

David Christy,

Public Affairs Officer.

[FR Doc. E6–17282 Filed 10–17–06; 8:45 am]

BILLING CODE 4310–14–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before September 30, 2006. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by November 2, 2006.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

ALABAMA

Baldwin County

Stuart, Henry, House, 22787 AL 98, Montrose, 06000985

Calhoun County

Fort McClellan Ammunition Storage Historic District, Pappy Dunn Blvd., Anniston, 06000981

Fort McClellan Industrial Historic District, Jimmy Parks Blvd., Transportation Rd. Idaho Ave., Anniston, 06000982

Fort McClellan Post Headquarters Historic District, Buckner Circle, Headquarters Ave., Drennan Dr., Anniston, 06000983

Fort McClellan World War II Housing Historic District, Breman Rd. Bachelor Dr., Iron Mountain Rd., Micron Wy., Anniston, 06000984

ARKANSAS

Franklin County

Whitman, Merle, Tourist Cabin, (Arkansas Highway History and Architecture MPS), 200 N. Bell St., Ozark, 06000980

GEORGIA

Bibb County

Macon Railway and Light Company Substation, 1015 Riverside Dr., Macon, 06000986

Putnam County

Strong-Davis-Rice-George House, 107 Hudson Rd., Eatonton, 06000987

MISSOURI

Boone County

Downtown Columbia Historic District, (Downtown Columbia Historic District MPS AD), Parts of 7th, 8th, 9th, 10th, E. Broadway, Cherry, Hitt, Locust, and E. Walnut Sts., Columbia, 06000990

Buchanan County

Herbert, Alois, Double House, (St. Joseph, Buchanan County, Missouri MPS AD), 620 S. 10th St., Saint Joseph, 06000992

Logan, John Sublett Jr. and Caroline Ashton, House, (St. Joseph, Buchanan County, Missouri MPS AD), 1906 N. 22nd St., Saint Joseph, 06000991

Camden County

Urbauer Fishing Lodge Historic District, 442 Riverbird Ln., Camdenton, 06000989

Jackson County

Drumm, Andrew, Institute, 3210 Lee's Summit Rd., Independence, 06001014

St. Louis County

Tuxedo Park Christian Church, 700 Tuxedo Blvd., Webster Groves, 06000988

NEBRASKA

Adams County

Jackson-Einspahr Sod House, Address Restricted, Holstein, 06000994

Cass County

Perry, Glenn and Addie, Farmhouse, Address Restricted, Plattsmouth, 06000999

Dakota County

Bonderson, Ben, Farm, 1541 270th St., Emerson, 06000993

Douglas County

Bennington State Bank, 15411 S. Second St., Bennington, 06000998

Gage County

Purdy, Rachel Kilpatrick, House, 1201 N 11th St., Beatrice, 06000995

Johnson County

Townsend, George, House, 61872 NE 136, Tecumseh, 06000996

Sarpy County

Gordon, William E., House, 711 Bellevue Blvd. S, Bellevue, 06000997

NEW YORK

Herkimer County

Italian Community Bake Oven, NY 167, Little Falls, 06001003

Onondaga County

Cosman Family Cemetery, Lattintown Rd., Middle Hope, 06001002

Otsego County

Fly Creek Historic District, (Industrial Development in the Oaks Creek Valley, Otsego County, New York MPS), NY 28, NY 80, Cty Rd. 26, Cemetery Rd., Goose St. Allison Rd., Bissell Rd., Fly Creek, 06001004

Rockland County

Andre, Maj. John, Monument, 42 Andre Hill, Tappan, 06001001 Washington County
Dayton-Williams House, 65 Dayton Hill Rd., Middel Granville, 06001000

PENNSYLVANIA

Lancaster County

Ephrata Commercial Historic District, Portions of W. Main, E. Main, N. State, S. State Sts., and Washington Ave., Ephrata, 06001005

Philadelphia County

Presser Home for Retired Music Teachers, 101–121 W. Johnson St., Philadelphia, 06001006

SOUTH DAKOTA

Corson County

Sitting Bull Monument, SE ¼ of SE ¼ of Sec 13 T18 R29, Mobridge, 06001008

Minnehaha County

Renner Ball Park, ¾ mi. W of 258th St., and SD 115 intersection, Renner, 06001007

TENNESSEE

Sumner County

Durham's Chapel School, 5055 Old TN 31 E, Bethpage, 06001009

VERMONT

Franklin County

Giroux Furniture Company Building, 10–18 Catherine St., St. Albans, 06001010

VIRGINIA

Chesterfield County

Dale's Pale Archeological District, (Prehistoric through Historic Archeological and Architectural Resources at Bermuda Hundred MPS), South Shore of James R., Chesterfield County Park, Chester, 06001012
Town of Bermuda Hundred Historic District, (Prehistoric through Historic Archeological and Architectural Resources at Bermuda Hundred MPS), Both sides of Bermuda Hundred and Allied Rds., Chester, 06001011

WASHINGTON

Whitman County

College Hill Historic District, Roughly bounded by Stadium Way, B St., Howard St. and Indiana St., Pullman, 06001013

[FR Doc. E6–17297 Filed 10–17–06; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response Compensation, and Liability Act

Notice is hereby given that on October 4, 2006, a proposed Consent Decree in *United States* v. *Afton Chemical Corp;, et al.*, Case No. 3: 06–cv–763 (''*Afton Chemical*''), was lodged with the United States District Court for the Southern District of Illinois.

In *Afton Chemical*, the United States is seeking recovery of approximately $3.5 million in response costs incurred in connection with a 1999–2000 removal action (''Removal Action'') at Sauget Area 2, Southern Site Q, in Cahokia, Illinois. The proposed Consent Decree would resolve the United States' claims against 21 of the *Afton Chemical* defendants (the ''Settling Defendants''). Under the proposed Consent Decree, the Settling Defendants would pay $2,601,594.20 to the United States. In exchange, they would receive contribution protection and a covenant by the United States not to sue them for response costs incurred in connection with the Removal Action. The Settling Defendants include the following: Afton Chemical Corporation; Allied Waste Industries, Inc.; A.O. Smith Corporation; Barry-Wehmiller Companies, Inc.; BASF Corporation; BFI Waste Systems of North America, Inc.; Blue Tee Corp.; Cyprus Amax Minerals Company; The Dow Chemical Company; Eagle Marine Industries, Inc.; Exxon Mobil Corporation; Flint Group Incorporated; Fru-Con Construction Corporation; The Glidden Company; Mallinckrodt Inc.; Merck & Co., Inc.; Pharmacia Corporation; The Procter & Gamble Company; The Procter & Gamble Manufacturing Company; Service America Corporation; and Union Carbide Corporation.

The Department of Justice will receive for a period of 30 days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Afton Chemical Corp., et al.*, D.J. Ref. 90–11–206089/1.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 9 Executive Drive, Fairview Heights, IL 62208–1344, and at the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, IL 60604–3590. During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by e-mailing or faxing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*, fax number (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 $10.50 (25 cents per page reproduction cost) payable to the United States Treasury. If a request for a copy of the proposed Consent Decree is made by fax or e-mail, please forward a check in the aforementioned amount to the Consent Decree Library at the address noted above.

William Brighton,

Assistant Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 06–8744 Filed 10–17–06; 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

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Cooper Industries, LLC*, Civil Action No. 4:06–CV–467 RP–TJS, was lodged on September 29, 2006 with the United States District Court for the Southern District of Iowa. Under this Consent Decree, the Settling Defendant will reimburse the United States for response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the McGraw Edison Superfund Site in Centerville, Appanoose County, Iowa.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Cooper Industries, LLC*, DOJ Ref. 90–11–3–08559.

The proposed consent decree may be examined at the office of the United States Attorney, 110 East Court Avenue, Suite 286, Des Moines, IA 50309–2044 and at U.S. EPA Region 7, 901 N. 5th Street, Kansas City, KS 66101. During the comment period, the consent decree may be examined on the following Department of Justice Web site to *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the consent decree also may 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, please enclose a check in the amount of $4.50 (without attachments) or $4.75 (with attachments) for *United States* v. *Cooper Industries, LLC*, (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. 06–8741 Filed 10–17–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Proposed Agreement Regarding Alleged Non-Compliance With Consent Decree in United States v. Cummins Engine Company, Inc.

Notice is hereby given of a proposed Agreement Regarding Alleged Non-Compliance with Consent Decree (''Agreement'') in the case of *United States* v. *Cummins Engine Company, Inc.,* Civil Action No. 98–02546, in the United States District Court for the District of Columbia.

The Agreement resolves four matters involving Cummins' alleged failure to comply with a 1999 Consent Decree settling claims under Title II of the Clean Air Act, 42 U.S.C. 7521 *et seq.* (the ''Act''), regarding the alleged use of illegal emission-control ''defeat devices'' on Cummins' 1998 and prior heavy-duty diesel engines (''HDDEs''). The first matter concerns Cummins' use of a computer-based auxiliary emission control device (''AECD'') to prevent engine overheating, on approximately 11,600 model years 2000–2003 engines sold for use in school buses and recreational vehicles. The overheat AECD, which required EPA approval, did not operate in the manner described in Cummins' applications to EPA for regulatory ''certificates of conformity'' permitting the sale of the engines in the United States and as pre-approved in the 1999 Consent Decree. The second matter concerns Cummins' use of 1101 more Averaging, Banking and Trading (''AB&T'') Credits than was permitted by the consent Decree. The third matter relates to Cummins' implementation of a Low NO_X Rebuild Program for which Cummins failed to request the requisite EPA approval (until April 13, 2006). The last matter is Cummins' omission of 26,347 engines from its Low NO_X Rebuild Program. In addition, the Settlement resolves Cummins' disclosure to the United States that in 2001 it violated provisions of 40 CFR part 86 in connection with certification testing of engines under the Consent Decree by its failure to perform test equipment calibrations within applicable time limits set forth in 40 CFR 86.1321; 1321(b); 1323(a) & (b) and 1324.

These violations are addressed through Cummins' payment of an agreed penalty in the amount of $950,000, to be shared between the United States and the California Air Resources Board. Cummins will also continue a recall to fix or disable the overheat AECD. Lastly, Cummins will recoup the excess tons of NO_X emitted by its violations of the Consent Decree, offset by any tons obtained in the ongoing recall. the NO_X tons must come from one of three sources: (1) Cummins' on-road AB&T accounts; (2) Cummins' off-road AB&T accounts; or (3) currently valid stationary source NO_X tons purchased on the open market through a licensed broker.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Cummins Engine Company, Inc.*, D.J. Ref. 90–5–2–1–2136A.

During the public comment period, the Agreement may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.*

A copy of the Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax No. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the Decree from the Consent Decree Library, please enclose a check in the amount of $4.50 (25 cents per page reproduction cost for 18 pages) payable to the U.S. Treasury.

Karen Dworkin,

Assistant Chief, Environmental Enforcement Section.

[FR Doc. 06–8742 Filed 10–17–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on October 4, 2006, a proposed consent decree in *United States and State of Indiana* v. *City of Indianapolis*, Civ. No. 1:06–cv–1456, was lodged with the United States District Court for the Southern District of Indiana.

In this action the United States sought civil penalties and injunctive relief for alleged violations of Sections 301 and 402 of the Clean Water Act, 33 U.S.C. 1319 and 1342, in connection with the City's operation of its municipal wastewater and sewer system. The City currently discharges approximately eight billion gallons of untreated sewage per year from approximately 133 Combined Sewer Overflows, Sanitary Sewer Overflows, and bypass locations into the White River and its tributaries. The Complaint alleges that the City's discharges, which occur approximately 60 times per year, violate the Clean Water Act either because the discharges violate limitations and conditions in the City's National Pollutant Discharge Elimination System (NPDES) permits, or because the discharges are from point sources not authorized by the City's NPDES permits. The Complaint also asserts claims for violations of comparable State law on behalf of the State of Indiana.

Under the proposed Consent Decree, the City would be required to: (1) Implement a Long Term Control Plan which would greatly reduce Combined Sewer Overflows; (2) implement a plan designed to eliminate Sanitary Sewer Discharges; (3) perform a Supplemental

Environmental Project which must cost a minimum of $2 million; (4) pay to the United States a civil penalty of $588,900; (5) either pay the State a civil penalty of $588,900, or pay the State a civil penalty of $58,890 and undertake a State Supplemental Environmental Project which must cost a minimum of $1,060,020; and (6) perform various other remedial measures. The injunctive relief that would be secured by the proposed Consent Decree is expected to cost approximately $1.868 billion in 2005 dollars. The Long Term Control Plan includes a construction schedule of twenty years (from the anticipated date of approval of the Long Term Control Plan).

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and State of Indiana* v. *City of Indianapolis*, D.J. Ref. 90–5–1–1–07292.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Indiana, U.S. Courthouse—5th Floor, 46 East Ohio Street, Indianapolis, IN 46204 (contact Asst. U.S. Attorney Thomas Kieper (317–226–6333)), and at U.S. EPA Region 5, 7th Floor Records Center, 77 West Jackson Blvd., Chicago, Illinois 60604 (contact Assoc. Regional Counsel Gary Prichard (312–886–0570)). During the public comment period, the proposed consent decree, including the Long Term Control Plan, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $21.50 (25 cents per page reproduction cost) for the Consent Decree without appendices, or for $467.75 for the Consent Decree and all appendices, 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.

William Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–8745 Filed 10–17–06; 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 3, 2006 a proposed Consent Decree with the Estate of Irving Rubin in *United States* v. *Mallinckrodt et al.,* Civil Action No. 4:02CV1488, was lodged with the United States District Court for the Eastern District of Missouri. In this action the United States sought recovery of response costs incurred by the Environmental Protection Agency at the Great Lakes Container Corporation Superfund Site located in St. Louis, Missouri. The Consent Decree resolves our claims for past and future response costs against the Estate of Irving Rubin (''the Estate''). The Consent Decree requires the Estate to pay the EPA Hazardous Substance Superfund $300,000 for reimbursement of past response costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Mallinckrodt, et al.* D.J. Ref. 90–11–3–07280. The Consent Decree may be examined at the Office of the United States Attorney, Thomas F. Eagleton U.S. Courthouse, 111 South 10th Street, 20th Floor, St. Louis, MO 63102, and at U.S. EPA Region VII, 901 North 5th Street, Kansas City, Kansas 66025. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax No. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.00 for *United States* v. *Mallinckrodt, et al.* (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Maher,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. 06–8743 Filed 10–17–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'')

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 25, 2006, a proposed Consent Decree (''Decree'') in *United States of America* v. *Union Pacific Railroad Company*, Civil Action No. 1:06–CV–00115–BSJ was lodged with the United States District Court for the District of Utah, Central Division.

The Decree resolves the United States' claims against Union Pacific Railroad Company (''Union Pacific'') pursuant to sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), as amended, 42 U.S.C. §§ 9606, 9607(a), seeking (1) the performance of studies and response work by the Defendant at the Ogden Rail Yard Site (''Site'') in Weber County, Utah, consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, as amended, 40 CFR part 300 (''National contingency Plan''); and (2) to recover funds expended by the United States in response to a release and threatened release of hazardous substances at the Site.

Under the terms of the CD, Union Pacific will reimburse EPA for outstanding response costs of $20,779 and perform cleanup work at the Site valued at $4,500,000. Portions of the Site are contaminated with polyaromatic hydrocarbons, solvents, and metals including lead. In addition to paying for outstanding response costs and performing cleanup work at the Site, Union Pacific will reimburse EPA for all future oversight costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC

20044–7611, and should refer to *United States of America* v. *Union Pacific Railroad Company*, D.J. Ref. 90–11–2–08568.

The Decree may be examined at the Office of the United States Attorney, District of Utah, 185 South State Street, Suite 400, Salt Lake City, Utah 84111. During the public comment period, the Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.*

A copy of the Decree may also be obtained by mail from the consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.50 payable to the U.S. Treasury.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–8746 Filed 10–17–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 17, 2006, and published in the **Federal Register** on May 25, 2006, (71 FR 30165), Applied Science Labs., Division of Alltech Associates Inc., 2701 Carolean Industrial Drive, State College, Pennsylvania 16801, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

The company plans to manufacture metabolites of Delta-9–THC to be used as chromatographic standards. These compounds fall under drug code 7370 Tetrahydrocannabinols).

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Applied Science Labs to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Applied Science Labs to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: October 11, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–17291 Filed 10–17–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 22, 2006, Boehringer Ingelheim Chemicals Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Methadone (9250)	II
Methadone Intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for sale to its customers for formulation into finished pharmaceuticals.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, *Attention:* DEA Federal Register Representative/ODL; or any being sent via express mail should be sent to DEA Headquarters, *Attention:* DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than December 18, 2006.

Dated: October 6, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–17276 Filed 10–17–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II and prior to issuing a registration under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on May 22, 2006, Boehringer Ingelheim Chemical, Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Phenylacetone (8501), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance to bulk manufacture amphetamine.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL; or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway,

Alexandria, Virginia 22301; and must be filed no later than November 17, 2006.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance in schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: October 11, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–17293 Filed 10–17–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated June 7, 2006, and published in the **Federal Register** on June 13, 2006 (71 FR 34162), Roche Diagnostics Operations, Inc., Attn: Regulatory Compliance, 9115 Hague Road, Indianapolis, Indiana 46250, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic class of controlled substances listed in Schedule I and II:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Cocaine (9041)	II
Ecgonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II
Alphamethadol (9605)	II

The company plans to import the listed controlled substances for the manufacture of diagnostic products for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Roche Diagnostics Operations, Inc. to import the basic class of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Roche Diagnostics Operations, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and § 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substances listed.

Dated: October 11, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–17289 Filed 10–17–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 27, 2006, Varian, Inc., Lake Forest, 25200 Commercentre Drive, Lake Forest, California 92630–8810, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in Schedule II:

Drug	Schedule
Phencyclidine (7471)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Benzoylecgonine (9180)	II

The company plans to manufacture small quantities of the listed controlled substances for use in diagnostic products.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, *Attention:* DEA Federal Register Representative/ODL; or any being sent via express mail should be sent to DEA Headquarters, *Attention:* DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than December 18, 2006.

Dated: October 11, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–17277 Filed 10–17–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

October 13, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Ira Mills at the Department of Labor on 202–693–4122 (this is not a toll-free number) or E-Mail: *Mills.Ira@dol.gov.* This ICR can also be accessed online at *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm.* ICRs are filed according to the date the 60-day Notice for Public Comment was published in the **Federal Register** Notice; therefore, on the left hand side of this site, look under July 25, 2006 to access 1205–0441.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Extension of a currently approved collection.

Title: Evaluation of the Individual Training Account Experiment.

OMB Number: 1205–0441.

Frequency: One time, follow-up, as needed.

Affected Public: Individuals or households.

Type of Response: Reporting.

Number of Respondents: 3,840.

Annual Responses: 3,840.

Average Response time: 30 minutes.

Total Annual Burden Hours: 1,920.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): 0.

Description: This clearance package seeks approval for the extension of the currently approved follow-up survey for the Individual Training Account (ITA) Experiment. The experiment is designed to test three different approaches to providing ITAs. Data from the follow-up survey of ITA customers will be used by Mathematica Policy Research, Inc. to describe experiences inside the workforce system and labor market outcomes for ITA customers. Measures of these experiences and outcomes would be used to further evaluate the three approaches. Based on information from the survey and other data sources, the U.S. Department of Labor can provide information to local workforce boards on how to administer their ITA programs.

Ira L. Mills,

Departmental Clearance Officer, Team Leader.

[FR Doc. E6–17356 Filed 10–17–06; 8:45 am]

BILLING CODE 4510–30–P

FEDERAL COUNCIL ON THE ARTS AND THE HUMANITIES

Arts And Artifacts Indemnity Panel Advisory Committee; Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue, NW., Washington, DC 20506, in Room 716, from 9 a.m. to 5 p.m., on Monday, November 6, 2006.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after January 1, 2007.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993, I have determined that the meeting would fall within exemption (4) of 5 U.S.C. 552(b) and that it is essential to close the meeting.

It is suggested that those desiring more specific information contact Acting Advisory Committee Management Officer, Heather Gottry, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or call 202–606–8322.

Heather Gottry,

Acting Advisory Committee Management Officer.

[FR Doc. E6–17362 Filed 10–17–06; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–482]

Wolf Creek Nuclear Operating Corporation; Notice of Receipt and Availability of Application for Renewal of Wolf Creek Generating Station, Unit 1 Facility Operating License No. NPF–42 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC or Commission) has received an application, dated September 27, 2006, from Wolf Creek Nuclear Operating Corporation, filed pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, and Title 10 of the *Code of Federal Regulations* Part 54 (10 CFR Part 54), to renew the operating license for the Wolf Creek Generating Station (WCGS), Unit 1. Renewal of the license would authorize the applicant to operate the facility for an additional 20-year period beyond the period specified in the current operating license. The current operating license for WCGS, Unit 1, (NPF–42), expires on March 11, 2025. WCGS, Unit 1, is a pressurized water reactor designed by Westinghouse Electric Corporation that is located near Burlington, KS. The acceptability of the tendered application for docketing, and other matters including an opportunity to request a hearing, will be the subject of subsequent **Federal Register** notices.

Copies of the application are available to the public at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852 or through the internet from the NRC's Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room under Accession Number ML062770300. The ADAMS Public Electronic Reading Room is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html.* In addition, the application is available at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html.* Persons who do not have access to the internet or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff at 1–800–397–4209, extension 4737, or by e-mail to *pdr@nrc.gov.*

A copy of the license renewal application for the WCGS, Unit 1, is also available to local residents near the site at the Burlington Library, 410 Juniatta, Burlington, KS 66839.

Dated at Rockville, Maryland, this 12th day of October, 2006.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Deputy Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E6–17323 Filed 10–17–06; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Privacy Act of 1974, Computer Matching Program—Postal Service and State Agencies

AGENCY: Postal Service.

ACTION: Notice of Computer Matching Program—Postal Service and states maintaining public sex offender registries.

SUMMARY: The Postal Service plans to conduct an ongoing matching program to identify any current Postal Service employees who are required by state law to register on a state's public registry of sex offenders. State registries contain information about individuals who are statutorily required to register, having committed sexually-violent offenses against adults or children, certain other crimes against victims who are minors, or other comparable offenses. The Postal Service is undertaking this initiative to ascertain the suitability of individuals for certain positions or employment. The Postal Service will compare its payroll database for employees working in participating states against public records contained in the state sex offender registries.

DATES: The matching program will become effective no sooner than 30 days after notice of the matching program is sent to Congress and the Office of Management and Budget (OMB). Agreements with individual states will continue for 18 months from the effective date and may be extended for a period of time, up to 12 months, if certain conditions are met.

ADDRESSES: Written comments on this proposal should be mailed or delivered to the Records Office, Postal Service, 475 L'Enfant Plaza, SW., Room 5846, Washington, DC 20260–5353. Copies of all written comments will be available at the above address for public inspection and photocopying between 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jane Eyre at 202–268–2608.

SUPPLEMENTARY INFORMATION: The Postal Service seeks to provide the public with accurate and efficient mail delivery to the more than 144 million businesses and residences in this country. Given the public nature of the Postal Service, published standards of conduct for Postal Service employees prohibit any employee from engaging in criminal, dishonest, or similar prejudicial conduct. The Postal Service plans to participate as the recipient agency in computer matches of current Postal Service employees who have been required as a matter of law to register on state sexual offender public registries. After extensively verifying the accuracy of the information, the Postal Service will use the information to determine whether the reported offenses may impact on an individual's suitability for certain positions or employment. The Postal Service will analyze each occurrence on a case-by-case basis to determine the appropriate action to take. In this regard, the Postal Service will consider the seriousness of the offense, the date of the offense, and the nature of the employee's position with the Postal Service.

The only data to be used in the match is public information, from both the Postal Service and the state agencies. The Postal Service will extract public information, including employees' name and work location, from its payroll database. This information is public information in accordance with Handbook AS–353, *Guide to Privacy and Freedom of Information Act*, section 5–2b(3) (available at *www.usps.com/privacyoffice*), and the Postal Service considers such data to be subject to disclosure requirements under the Freedom of Information Act. The data will be matched against participating state sexual offender registries, which are posted on various state Web sites for the public.

The Postal Service will take extensive efforts to ensure that the data is accurate. Postal inspectors will review the match report in order to verify that the person identified in the state sexual offender public registry is in fact a Postal Service employee. A postal inspector will then determine whether the person is properly included on the public registry by reviewing the relevant facts about the offense from information furnished by relevant law enforcement agencies, such as the arresting agency. The postal inspector will refer instances where the employee failed to provide any required notice of the offense to Postal Service management, or other instances considered employee misconduct, to the Office of Inspector General (OIG). The inspector or OIG special agent will prepare an investigative memorandum or report of investigation, respectively, which will be sent to the individual employee's installation head. The installation head will ensure that a case-by-case analysis is conducted regarding the appropriate action to be taken. The Postal Service will provide at least 30 days advance notice prior to the initiation of any adverse action against a matched individual (unless the Postal Service determines that public health or safety may be affected or threatened pursuant to 5 U.S.C. 552a(p)(3)).

The privacy of employees will be safeguarded and protected. The Postal Service will manage all data in strict accordance with the *Privacy Act of 1974* and the terms of the matching agreement. Any verified data that is maintained will be managed within the parameters of the *Privacy Act System of Record USPS 700.000, Inspection Service Investigative File System* (last published April 29, 2005 (Volume 70, Number 82)); and, for cases referred to the OIG, data that is maintained will also be managed within the parameters of *Privacy Act System of Record USPS 700.300, Inspector General Investigative Records* (last published June 14, 2006 (Volume 71, Number 114)). To the extent that there are any disclosures of Postal Service payroll data (the state agencies will not have access to such data), such disclosures are authorized by the Privacy Act. Disclosures are authorized by a Privacy Act routine use applicable to the payroll system of records (as well as other personnel systems) that pertains to disclosures to federal and state agencies that are needed by the Postal Service or agency to make decisions regarding personnel matters; and under 5 U.S.C. 552a(b)(2) which authorizes disclosures that would be required under 5 U.S.C. 552 (the Freedom of Information Act).

Key privacy features of the matching agreement include the following:

- Requiring that the identity of matched individuals be verified and that the relevant facts of the offense be confirmed;
- Requiring appropriate security controls for the data match;
- Providing protections for employees, who appear as an initial match but who are not subsequently verified as belonging on the state registry of offenders; and
- Requiring the Postal Service to complete the verification, and provide at least 30 days advance notice, prior to the initiation of any adverse action against a matched individual (unless the Postal Service determines that public health and safety may be affected or threatened pursuant to 5 U.S.C. 552a(p)(3)).

The Postal Service intends to enter into matching agreements with the states using the template matching agreement below. If there is any substantive variation in a matching agreement with a state, the Postal Service will issue notice of that modified matching agreement in the **Federal Register**. Set forth below are the terms of the template-matching agreement, which provide the information required by the *Privacy Act of 1974*, as amended (5 U.S.C. 552a), and the *Computer Matching and Privacy*

Protection Act of 1988 (Public Law 100–503).

Neva R. Watson,

Attorney, Legislative.

Memorandum of Agreement Between United States Postal Service and the State of _____

A. Introduction

The Postal Service plans to match extracts from its payroll system against the state of _____ registry of sexual offenders. Since the match compares a federal payroll system against a non-federal system, the computer match is subject to the computer match requirements of section (o) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Public Law 100–503). Section (o) requires a federal agency, in order to use records for a computer matching program, to enter into a written agreement with the non-federal agency that has been approved by the participant federal agency Data Integrity Board.

B. Purpose and Legal Authority

1. Purpose of the Matching Program

The purpose of this agreement is to set forth the terms under which a computer matching program will be conducted to identify Postal Service employees, who have been required to register with the state's sexual offender public registry. The registry contains information about individuals, who are required by state law to register as a sex offender, having committed sexually-violent offenses against adults or children, certain other crimes against victims who are minors, or other comparable offenses. The Postal Service is undertaking this initiative to determine whether reported offenses may affect an individual's suitability for certain positions or employment.

2. Legal Authority

The legal authority for undertaking this matching program is contained in the Postal Reorganization Act, 39 U.S.C. 401(10) and 404(a)(7). Section 401(10) of the Act grants the Postal Service ''to have all other powers incidental, necessary, or appropriate to the carrying on of its functions, or the exercise of its specific powers,'' and Section 404(a)(7) of the Act authorizes the Postal Service to ''investigate postal offenses and civil matters relating to the Postal Service.''

C. Justification and Expected Results

The expected results of the match are to identify current Postal Service employees, who have been required as a matter of law to register on the state's sexual offender public registry. As described below, the Postal Service will take appropriate steps to verify the information is valid. In instances where a match is verified, the Postal Service will conduct a case-by-case analysis regarding the employee to determine the appropriate action to be taken. In this regard, the Postal Service will evaluate the seriousness of the offense, the date of the offense, and the nature of the postal position of the employee. Although monetary savings may result indirectly from the matching program due to the minimization of the exposure to the community of employees who pose a potential threat of harm to the public, the Postal Service does not estimate any specific cost savings. The purpose and value of the program is safety for the community and other Postal Service employees.

The principal alternative to using a computer matching program for identifying such individuals would be to conduct a manual comparison of Postal Service payroll records of employees with the state's sexual offender public registry. Given that the Postal Service employs thousands of employees in the state, this would impose significant administrative burden and financial costs.

D. Records Description

1. Systems of Records and Estimation of Number of Records Involved

The Postal Service will extract records from its Privacy Act System of Records (USPS 100.400), Personnel Compensation and Payroll Records, containing payroll records for approximately _____ current employees who work in the state of _____. The Postal Service will match the records with the state sex offender registry records for the state, which contain records for approximately _____listed offenders.

2. Data Elements To Be Used in the Match

The Postal Service will provide a data extract that will contain a list of employee names associated with a facility name and address. This list will be compared against the state file of registered sexual offenders, establishing ''hits'' (i.e., individuals common to both files on the basis of matched names and home or work locations). For each hit, the Postal Service will obtain the name and address of each individual.

3. Projected Starting and Completion Dates

The matching program is expected to begin in _____ 2006 and to continue in effect for 18 months unless terminated by either party before that time. The Postal Service will provide notice of the program to the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives, and the Office of Management and Budget (OMB). Matches under this program will be conducted no often than quarterly. Matching activity under this program will begin no sooner than 30 days after transmittal of the matching agreements to Congress and OMB.

E. Notice Procedures

Constructive notice is given in the **Federal Register** notice that describes this matching program. In addition, the Postal Service will provide advance notice to relevant employee unions and management associations prior to the initiation of this matching program. For current and future employees completing a PS Form 2591, *Application for Employment*, a notice of possible computer matches involving their records will be included in the Privacy Act notice on that form.

F. Verification Procedures

The Postal Service and the state agency agree that the occurrence of a report containing any individual's name common to both files (a ''hit'') is not conclusive evidence of a person's conduct, but merely an indication that further examination is warranted. No adverse action will be premised upon the raw results of the computer match. The Postal Service agrees to verify the information obtained in the match in accordance with the procedures described herein.

In all cases of matched names, postal inspectors will verify that the person identified in the state sexual offender public registry is a postal employee. If an employee's identity is established, a postal inspector will confirm and verify the relevant facts about the offense from relevant law enforcement sources. Examples of sources that may be reviewed include the National Crime Information Center (NCIC), the National Law Enforcement Telecommunication System (NLETS), and sources provided by state law enforcement agencies such as the arresting agency.

Prior to the Postal Service initiating any adverse action against any employee identified through this match, the employee will be given advance

notice of, and an opportunity to contest, the action as provided in the applicable union agreements and Postal Service regulations, but not less than 30 days. The Postal Service may take appropriate action without providing such advance notice, however, if it determines that public health and safety may be affected or threatened pursuant to 5 U.S.C. 552a(p)(3).

The Postal Service will not maintain any lists of individuals representing non-hits. The match will be structured so as not to produce any records or lists of non-hits.

G. Disposition of Matched Items

Information about individuals who initially were ''hits'' but are not subsequently verified as being both a Postal Service employee and on the state sex offender list will be destroyed immediately upon making that verification. Other identifiable records created during the course of the matching program will be destroyed as soon as they have served the matching program's purpose and any legal retention requirements. Destruction will be by shredding, burning, or electronic erasure.

H. Security Procedures

1. Administrative

The Postal Service will protect the privacy of the subject individuals by strict adherence to the provisions of the Privacy Act of 1974. The Postal Service will maintain and safeguard data exchanged and any records created during the course of the matching program in accordance with the Privacy Act. Records will be kept in secured areas during working and non-working hours. Hardcopy records will be stored in locked desks or file cabinets and automated records will be stored in secured computer facilities with strict ADP controls. Access will be restricted to those individuals who are authorized to obtain access or need access to accomplish the matching program's purpose. The state agency will not have access to Postal Service payroll records or to any matched records, and will provide access to its system in accordance with state law.

2. Technical

The Inspection Service and the state agency will establish agreed upon procedures for the secure and expedited exchange of information between them. The Postal Service payroll data will be kept on the secured Inspection Service network. Access to the state registry will also be done on the secured Inspection Service network. While in the custody of the Inspection Service, the data will be stored in a secure database that meets all law enforcement security standards.

I. Records Usage, Duplication and Re-Disclosure Restrictions

The Postal Service will not (1) disclose records obtained for this matching program within or outside its agency except as authorized by law or when disclosure is necessary to conduct the matching program; (2) use the records in a manner incompatible with the purposes stated in this matching program; or (3) extract information concerning ''non-matching'' individuals (individuals not identified as being both a Postal Service employee and a sexual offenders registrant). The state agency will not have access to or retain Postal Service payroll data or any matched data under this program. The Postal Service will not duplicate data exchanged unless needed to conduct the matching program, and all stipulations herein will apply to any duplication. The Postal Service may disclose results of any matches for follow-up and verification, or for civil or criminal law enforcement investigation or prosecution, if the match uncovers activity that warrants such action.

J. Records Accuracy Assessments

The degree of accuracy of Postal Service data is considered extremely high since the automated system in which it is housed contains numerous edits that prevent invalid information from being entered. Steps to ensure accuracy include certifications and edits that prevent duplicate or multiple actions on the same employee in the same cycle, entry of keying errors, and entry of actions before their effective dates. The probability of encountering erroneous matches or other incorrect information through the use of these data is extremely small. Federal law contains safeguards requiring states that maintain registries to ensure the accuracy of their data. In particular, federal law requires states to obtain the fingerprints of each registrant. Moreover, the states must verify the accuracy of each registrant's address information at least annually and as often as every ninety days for certain offenders. The Postal Service will also use the verification procedure established above to ensure that it is relying upon accurate data.

K. Comptroller General Access

The Comptroller General may have access to all records necessary to monitor or verify compliance with this Agreement.

L. Duration of Matching Agreement

This agreement will become effective under the terms set forth in Paragraph D, and remain in effect for 18 months. At the end of this period, the agreement may be renewed for a period of up to one additional year if the Data Integrity Board determines within three months before the expiration date that the program has been conducted appropriately and should continue to be conducted without change. The agreement may be modified at any time if the modification is in writing and approved by both parties in accordance with the Privacy Act and agency guidelines.

[FR Doc. E6–17453 Filed 10–17–06; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Privacy Act of 1974, Computer Matching Program

AGENCY: Postal Service.

ACTION: Notice of Computer Matching Program.

SUMMARY: The Postal Service ™ plans to conduct an ongoing matching program to identify any current Postal Service employees, who are required by state law to register on a state's public registry of sex offenders. State registries contain information about individuals who are statutorily required to register, having committed sexually-violent offenses against adults or children, certain other crimes against victims who are minors, or other comparable offenses. The Postal Service is undertaking this initiative to ascertain the suitability of individuals for certain positions or employment. The Postal Service will compare its payroll database for employees working in designated states against public records contained in the state sex offender registries.

DATES: The matching program will become effective no sooner than 30 days after notice of the matching program is sent to Congress and the Office of Management and Budget (OMB).

ADDRESSES: Written comments on this proposal should be mailed or delivered to the Records Office, Postal Service, 475 L'Enfant Plaza, SW., Room 5846, Washington, DC 20260–5353. Copies of all written comments will be available at the above address for public inspection and photocopying between 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jane Eyre at 202–268–2608.

SUPPLEMENTARY INFORMATION: The Postal Service seeks to provide the public with accurate and efficient mail delivery to the more than 144 million businesses and residences in this country. Given the public nature of the Postal Service, published standards of conduct for Postal Service employees prohibit any employee from engaging in criminal, dishonest, or similar prejudicial conduct. The Postal Service plans to conduct an internal match that compares records from a *Privacy Act of 1974* system of records and a grouping of records that is not subject to the Privacy Act. Under these circumstances, the match does not constitute a matching program subject to the computer matching provisions of the Privacy Act. Nevertheless, the Postal Service is conducting the matching program under these provisions to protect the interests of its employees.

This new computer match program will identify Postal Service employees, who have been required as a matter of law to register on state sexual offender public registries. After extensively verifying the accuracy of the information, the Postal Service will use the information to determine whether reported offenses may impact on an individual's suitability for certain positions or employment. The Postal Service will analyze each occurrence on a case-by-case basis to determine the appropriate action to take. In this regard, the Postal Service will consider the seriousness of the offense, the date of the offense, and the nature of the employee's position with the Postal Service.

The only data to be used in the match is public information, from both the Postal Service and the state public sex offender registries. The Postal Service will extract public information, including employees' name and work location, from its payroll database. This information is public information in accordance with Handbook AS–353, *Guide to Privacy and Freedom of Information Act,* section 5–2b(3) (available at *www.usps.com/privacyoffice*), and the Postal Service considers such data to be subject to disclosure requirements under the Freedom of Information Act. The data will be matched against state sexual offender registries, which are posted on various state Web sites for the public.

The Postal Service will take extensive efforts to ensure that the data is accurate. Postal Inspectors will conduct the match and will review the match report in order to verify that the person identified in the state sexual offender public registry is in fact a Postal Service employee. A postal inspector will then determine whether the person is properly included on the public registry by reviewing the relevant facts about the offense from information furnished by relevant law enforcement agencies, such as the arresting agency. The postal inspector will refer, to the Office of the Inspector General (OIG), instances where the employee failed to provide Postal Service management with any required notice of the offense; the OIG will also be informed of other instances of employee misconduct. The inspector or OIG special agent will prepare an investigative memorandum or report of investigation, respectively, which will be sent to the individual employee's installation head. The installation head will ensure that a case-by-case analysis is conducted regarding the appropriate action to be taken. The Postal Service will provide at least 30 days advance notice prior to initiation of any adverse action against a matched individual (unless the Postal Service determines that public health or safety may be affected or threatened pursuant to 5 U.S.C. 552a(p)(3)).

The privacy of employees will be safeguarded and protected. The Postal Service will manage all data in strict accordance with the Privacy Act and the terms of the matching agreement. Any verified data that is maintained will be managed within the parameters of *Privacy Act System of Record USPS 700.000, Inspection Service Investigative File System* (last published April 29, 2005 (Volume 70, Number 82)); and, for cases referred to the Postal Service OIG, data that is maintained will also be managed within the parameters of *Privacy Act System of Record USPS 700.300, Inspector General Investigative Records* (last published June 14, 2006 (Volume 71, Number 114)). Disclosures are authorized by a Privacy Act routine use applicable to the payroll system of records (as well as other personnel systems) that pertains to disclosures to Federal and state agencies that are needed by the Postal Service or agency to make decisions regarding personnel matters; and under 5 U.S.C. 552a(b)(2) which authorizes disclosures that would be required under 5 U.S.C. 552 (the Freedom of Information Act).

Key privacy features of the matching agreement include the following:

- Requiring that the identity of matched individuals be verified and that the relevant facts of the offense be confirmed;
- Requiring appropriate security controls for the data match;
- Providing protections for employees who appear as an initial match but who are not subsequently verified as belonging on the state registry of offenders; and
- Requiring the Postal Service to complete the verification, and provide at least 30 days advance notice, prior to initiation of any adverse action against a matched individual (unless the Postal Service determines that public health and safety may be affected or threatened pursuant to 5 U.S.C. 552a(p)(3)).

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E6–17391 Filed 10–17–06; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) *Collection title:* Application for Spouse Annuity Under the Railroad Retirement Act.

(2) *Form(s) submitted:* AA–3, AA–3cert.

(3) *OMB Number:* 3220–0042.

(4) *Expiration date of current OMB clearance:* 12/31/2006.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 8,500.

(8) *Total annual responses:* 8,500.

(9) *Total annual reporting hours:* 4,297.

(10) *Collection description:* The Railroad Retirement Act provides for the payment of annuities to spouses of railroad retirement annuitants who meet the requirements under the Act. The application obtains information supporting the claim for benefits based on being a spouse of an annuitant. The information is used for determining entitlement to and amount of the annuity applied for.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312–751–3363) or *Charles.Mierzwa@rrb.gov*.

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago,

Illinois, 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E6–17281 Filed 10–17–06; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54588; File No. SR–CTA/CQ–2006–02]

Consolidated Tape Association; Notice of Filing and Immediate Effectiveness of the Tenth Substantive Amendment to the Second Restatement of the Consolidated Tape Association Plan and the Seventh Substantive Amendment to the Restated Consolidated Quotation Plan

October 11, 2006.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 608 thereunder,[2] notice is hereby given that on September 18, 2006, the Consolidated Tape Association (''CTA'') Plan and Consolidated Quotation (''CQ'') Plan participants (''Participants'') [3] submitted to the Securities and Exchange Commission (''Commission'') proposals to amend the CTA and CQ Plans (collectively, the ''Plans'').[4] The proposals represent the tenth substantive amendment made to the Second Restatement of the CTA Plan (''Tenth Amendment to the CTA Plan'') and the seventh substantive amendment to the Restated CQ Plan (''Seventh Amendment to the CQ Plan''), and reflect changes unanimously adopted by the participants. The Tenth Amendment to the CTA Plan and the Seventh Amendment to the CQ Plan (''Amendments'') would modify the procedures for entering into arrangements for pilot test operations. In addition, these amendments would exclude pilot test operations from the requirement that any change in the charges set forth in *Exhibit E* to the respective Plans be effected by a Plan amendment.

Pursuant to Rule 608(b)(3)(ii) under the Act,[5] the Participants designated the Amendments as concerned solely with the administration of the Plans. As a result, the Amendments have become effective upon filing with the Commission. At any time within 60 days of the filing of the amendments, the Commission may summarily abrogate the Amendments and require that the Amendments be re-filed in accordance with paragraph (a)(1) of Rule 608 and reviewed in accordance with paragraph (b)(2) of Rule 608, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act. The Commission is publishing this notice to solicit comments from interested persons.

I. Description and Purpose of the Proposed Amendments

A. Application of Pilot Test Procedures

The Amendments propose to modify the procedures that apply to the entrance into arrangements for pilot test operations and to explicitly exclude pilot test operations from the relevant Plan provisions which require any change in the charges set forth in the Plans to be effected by an amendment.

Currently, the Plans permit a network's administrator to enter into arrangements with vendors and other persons for pilot test operations designed to develop, or to permit the development of, new last sale price information services and uses and new quotation information services and uses, as relevant, without the need for agreements with, and collection of charges from, customers of such vendors or other persons. In order to enter into such arrangements, a network administrator, acting on behalf of the Participants, must promptly report the commencement of each arrangement and, upon an arrangement's conclusion, any market research obtained from the pilot test operations to CTA or the Operating Committee, as relevant. The arrangements are exempt from certain provisions in the Plans regarding the form of, and necessity for, agreements with recipients of last sale price and quotation information, as relevant, and the amount and incidence of charges.

The Amendments propose to require that a network's administrator act with the concurrence of a majority of Participants, not merely on behalf of such Participants, in order to enter into arrangements for pilot test operations. Further, a network's administrator will be required to also report the commencement of each arrangement and any market research obtained from the pilot test operations to the SEC.

Finally, the Amendments propose to clarify that pilot test operations are exempt from the Plans' provisions regarding the establishment and amendment of charges. The provisions require any additions, deletions, or modifications to any of the charges set forth in *Exhibit E* to the Plans to be effected by an amendment to the Plans. Amendments to *Exhibit E* are subject to voting and other procedural requirements. Pursuant to the Amendments, charges imposed in connection with arrangements for pilot test operations will not constitute an addition, deletion, or modification to the charges set forth in *Exhibit E* and, as a result, do not require a Plan amendment. The text of the proposed Amendments is available on the CTA's Web site (*http://www.nysedata.com/cta*), at the principal office of the CTA, and at the Commission's Public Reference Room.

B. Additional Information Required by Rule 608(a)

1. Governing or Constituent Documents

Not applicable.

2. Implementation of Amendments

The Participants have manifested their approval of the proposed Amendments by means of their execution of the Amendments. The Amendments have become effective upon filing.[6]

3. Development and Implementation Phases

Not applicable.

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] Each Participant executed the proposed amendments. The current Participants are the American Stock Exchange LLC (''Amex''); Boston Stock Exchange, Inc. (''BSE''); Chicago Board Options Exchange, Incorporated (''CBOE''); Chicago Stock Exchange, Inc. (''CHX''); National Association of Securities Dealers, Inc. (''NASD''); National Stock Exchange (''NSX''); New York Stock Exchange LLC (''NYSE''); NYSE Arca, Inc. (''NYSE Arca''); and Philadelphia Stock Exchange, Inc. (''Phlx'').

[4] *See* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (order approving CTA Plan); 15009 (July 28, 1978), 43 FR 34851 (August 7, 1978) (order temporarily approving CQ Plan); and 16518 (January 22, 1980), 45 FR 6521 (order permanently approving CQ Plan). The most recent restatement of both Plans was in 1995. The CTA Plan, pursuant to which markets collect and disseminate last sale price information for listed securities, is a ''transaction reporting plan'' under Rule 601 under the Act, 17 CFR 242.601, and a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for listed securities, is also a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608.

[5] 17 CFR 242.608(b)(3)(ii).

[6] *See id.*

4. Analysis of Impact on Competition

The Participants believe that the proposed amendments do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Participants do not believe that the proposed amendments introduce terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Act.

5. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

6. Approval by Sponsors in Accordance With Plan

Each of the Participants has approved the Amendments in accordance with Section IV(b) of the CTA Plan and Section IV(c) of the CQ Plan, as applicable.

7. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

8. Terms and Conditions of Access

Not applicable.

9. Method of Determination and Imposition, and Amount of Fees and Charges

Not applicable.

10. Method of Frequency of Processor Evaluation

Not applicable.

11. Dispute Resolution

Not applicable.

C. Additional Information Required by Rule 601(a) (Solely With Respect to the Tenth Amendment to the CTA Plan)

1. Reporting Requirements

Not applicable.

2. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

3. Manner of Consolidation

Not applicable.

4. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

5. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

6. Terms of Access to Transaction Reports

Not applicable.

7. Identification of Marketplace Execution

Not applicable.

II. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Plans amendments are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–CTA/CQ–2006–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–CTA/CQ–2006–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed Plan amendment that are filed with the Commission, and all written communications relating to the proposed Plan amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the CTA. 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 No. SR–CTA/CQ–2006–02 and should be submitted on or before November 8, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–17315 Filed 10–17–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54589; File No. SR–ISE–2006–60]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

October 11, 2006.

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 3, 2006, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. The ISE has filed the proposed rule change as one establishing or changing a due, fee, or other charge imposed by the ISE under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to remove (i) the surcharge fee for transactions in options on the Standard & Poor's Depository Receipts® (''SPDRs®''), and (ii) language relating to an expired fee waiver. The text of the proposed rule change is available on the Exchange's Internet Web site (*http://www.iseoptions.com*), at the principal office of the ISE, and at the Commission's Public Reference Room.

[7] 17 CFR 200.30–3(a)(27).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

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 ISE 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 ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Schedule of Fees to remove (i) the surcharge fee previously adopted [5] for transactions in options on SPDRs®, and (ii) language relating to an expired fee waiver. The Exchange is proposing to remove the surcharge fee from its Schedule of Fees because it no longer pays a license fee to Standard & Poor's, the owner of the index on which SPDRs are based, in connection with transactions in options on SPDRs. Accordingly, there is no longer a need for this surcharge fee. The Exchange will, however, continue to charge an execution fee and a comparison fee for transactions in options on SPDRs.

Additionally, the Exchange previously adopted a waiver on the surcharge for options on the Russell 1000 Index.[6] That waiver expired on September 29, 2006. Therefore, the Exchange proposes to delete the reference to the waiver under the Notes section on its Schedule of Fees.

2. Statutory Basis

The basis for the proposed rule change is the requirement under Section 6(b)(4) of the Act [7] that an exchange have an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

[5] *See* Securities Exchange Act Release Nos. 51901 (June 22, 2005), 70 FR 37455 (June 29, 2005) (Adopting a $0.10 per contract surcharge for certain transactions in options on SPDRs); and 52237 (August 10, 2005), 70 FR 48454 (August 17, 2005) (Applying the $0.10 per contract surcharge retroactively to January 10, 2005).

[6] *See* Securities Exchange Act Release No. 53608 (April 6, 2006), 71 FR 19222 (April 13, 2006).

[7] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change establishes or changes a due, fee, or other charged imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(2) [9] thereunder. At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such proposed 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 No. SR–ISE–2006–60 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–ISE–2006–60. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISE–2006–60 and should be submitted on or before November 8, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

J. Lynn Taylor,

Assistant Secretary.

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[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54591; File No. SR–NASD–2006–115]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of a Proposed Rule Change Relating to a New NASD Trade Reporting Facility Established in Conjunction With the Boston Stock Exchange

October 12, 2006.

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 September 29, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by NASD. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

NASD proposes to adopt rules relating to a new Trade Reporting Facility (the ''NASD/BSE TRF'') to be established by NASD, in conjunction with the Boston Stock Exchange (''BSE''), that would provide members with another mechanism for reporting trades in exchange-listed securities effected otherwise than on an exchange. The proposed NASD/BSE TRF structure and rules are substantially similar to the Trade Reporting Facility established by NASD and the Nasdaq Stock Market, Inc. (the ''NASD/Nasdaq TRF'') and the rules relating thereto, which the Commission approved.[3]

The text of the proposed rule change is available on NASD's Web site at (*http://www.nasd.com*), at the principal office of NASD, at the Commission's Public Reference Room, and on the Commission's Web site (*http://www.sec.gov*).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. NASD 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

Among other things, the NASD/Nasdaq TRF Approval Order[4] approved: (1) Amendments to the NASD Delegation Plan, NASD By-Laws and NASD rules to reflect a phased implementation strategy for the operation of the Nasdaq Stock Market LLC as a national securities exchange with respect to Nasdaq-listed securities during a transitional period; and (2) rules for reporting trades effected otherwise than on an exchange to the NASD/Nasdaq TRF, including the NASD Rule 4000 Series (The Trade Reporting Facility) and the NASD Rule 6100 Series (Clearing and Comparison Rules), which generally apply to trade reporting and clearing and comparison services via the NASD/Nasdaq TRF.

NASD/BSE Trade Reporting Facility

The NASD proposes to establish a new NASD/BSE TRF on substantially the same terms as the NASD/Nasdaq TRF.[5] The NASD/BSE TRF will provide members with another mechanism, which has been developed by the BSE, for reporting transactions in exchange-listed securities executed otherwise than on an exchange. Members will match and/or execute orders internally or through proprietary systems and submit these trades to the NASD/BSE TRF with the appropriate information and modifiers. The NASD/BSE TRF will report the trades to the appropriate exclusive securities information processor (''SIP'').[6] As with trades reported to the NASD/Nasdaq TRF, NASD/BSE TRF transactions disseminated to the media will include a modifier indicating the source of such transactions that would distinguish them from transactions executed on or through the BSE. In addition, the NASD/BSE TRF will provide NASD with a real-time copy of each trade report for regulatory review purposes. At the option of the participant, the NASD/BSE TRF may also provide the necessary clearing information regarding transactions to the National Securities Clearing Corporation (''NSCC'').

Like the NASD/Nasdaq TRF, the NASD/BSE TRF will be a facility of NASD, subject to regulation by NASD and NASD's registration as a national securities association. It will not be a service ''for the purpose of effecting or reporting a transaction'' on the BSE; rather, it will be a service for the purpose of reporting over-the-counter (''OTC'') transactions in exchange-listed securities to NASD.[7] Thus, members that meet all applicable requirements will have the option of reporting transactions in exchange-listed securities executed otherwise than on an exchange to an NASD Trade Reporting Facility (the NASD/BSE TRF, the NASD/Nasdaq TRF, or the NASD/NSX TRF[8]), NASD's Alternative Display Facility (''ADF''),[9] or NASD's Intermarket Trading System/Computer Assisted Execution System (''ITS/CAES'') System.[10]

[3] *See* Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (order approving File No. SR–NASD–2005–087) (''NASD/Nasdaq TRF Approval Order''). The changes approved in the NASD/Nasdaq TRF Approval Order became effective on August 1, 2006, the date when The NASDAQ Stock Market LLC (the ''Nasdaq Exchange'') commenced operation as a national securities exchange for Nasdaq-listed securities. On September 5, 2006, NASD filed a proposal that, among other things, expands the scope of the NASD/Nasdaq TRF rules to include reporting in all exchange-listed securities. *See* Securities Exchange Act Release No. 54451 (September 15, 2006), 71 FR 55243 (September 21, 2006) (notice of filing of File No. SR–NASD–2006–104) (''September 2006 Proposal'').

[4] *See* note 3, *supra.*

[5] In response to comments submitted to the Commission in connection with its proposal to establish the NASD/Nasdaq TRF, NASD indicated that it was prepared to implement a Trade Reporting Facility with any exchange based on whatever technology the exchange has available to it. *See* letter from Robert Glauber, Chairman and Chief Executive Officer, NASD, to the Hon. Christopher Cox, Chairman, U.S. Securities and Exchange Commission, dated May 2, 2006. As the Commission noted in the NASD/Nasdaq TRF Approval Order, the Act does not prohibit NASD from establishing different facilities for purposes of fulfilling its regulatory obligations. *See* NASD/Nasdaq TRF Approval Order, *supra* note 3.

[6] NASD represents that the NASD/BSE TRF will have controls in place to ensure that transactions that are reported to the NASD/BSE TRF, but priced significantly away from the current market, will not be submitted to the SIP. The NASD notes that this is consistent with current practice in that neither NASD's Alternative Display Facility nor the NASD/Nasdaq TRF submits such trades to the SIP. According to the NASD, this practice is designed to preserve the integrity of the tape.

[7] *See* NASD/Nasdaq TRF Approval Order, *supra* note 3.

[8] NASD also has filed a proposed rule change to establish a Trade Reporting Facility in conjunction with the National Stock Exchange (the ''NASD/NSX TRF''). *See* Securities Exchange Act Release No. 54479 (September 21, 2006), 71 FR 56573 (September 27, 2006) (notice of filing of File No. SR–NASD–2006–108). If approved by the Commission, the NASD/NSX TRF would provide members with another mechanism for reporting trades in Nasdaq-listed equity securities effected otherwise than on an exchange. NASD intends to submit a filing at a later date to expand reporting to the NASD/NSX TRF to include all exchange-listed securities.

[9] NASD has filed a proposed rule change proposing to expand ADF functionality to all exchange-listed securities. *See* Securities Exchange Act Release No. 54277 (August 4, 2006), 71 FR 46527 (August 14, 2006) (notice of filing of File No. SR–NASD–2006–091).

[10] NASD has filed a proposed rule change to, among other things, provide for the operation of the ITS/CAES System, which includes the reporting of transactions in non-Nasdaq exchange-listed securities. *See* September 2006 Proposal, *supra* note 3. NASD represents that it will have an integrated audit trail of all TRF, ADF, and ITS/CAES System transactions, as applicable in a particular security, and will have integrated surveillance capabilities. NASD expects that comprehensive audit trail and surveillance integration on an automated basis will be completed by the end of the fourth quarter of 2006 for Nasdaq-listed securities and by the end of the first quarter of 2007 for non-Nasdaq exchange-listed securities. Prior to that time, NASD staff will be able to create an integrated audit trail on a manual basis as needed for regulatory purposes.

BSE has developed the system that participants will use to access the NASD/BSE TRF. Technical specifications to connect to the NASD/BSE TRF system are available upon request to NASD and will be accessible through the NASD's Web site at a later date.

NASD/BSE TRF Limited Liability Company Agreement

NASD and BSE propose to enter into a Limited Liability Company Agreement of NASD/BSE Trade Reporting Facility LLC (''the NASD/BSE LLC Agreement''). The terms of the NASD/BSE LLC Agreement are substantially similar to the terms of the LLC agreement that NASD entered with Nasdaq Stock Market Inc. (''Nasdaq'').

NASD will have sole regulatory responsibility for the NASD/BSE TRF, while BSE agrees to pay the cost of regulation and will provide systems to enable members to report trades to the NASD/BSE TRF. BSE will be entitled to the profits and losses, if any, derived from the operation of the NASD/BSE TRF.

NASD, the ''SRO Member'' under the NASD/BSE LLC Agreement, will perform SRO Responsibilities including, but not limited to:

(1) Adoption, amendment, and interpretation of policies arising out of and regarding any aspect of the operation of the facility considered material by the SRO Member, or regarding the meaning, administration, or enforcement of an existing rule of the SRO Member, including any generally applicable exemption from such a rule;

(2) Approval of rule filings of the SRO Member prior to filing with the SEC;

(3) Regulation of the NASD/BSE TRF's activities of or relating to SRO Responsibilities, including the right to review and approve, in the SRO Member's sole reasonable discretion, the regulatory budget for the NASD/BSE TRF;

(4) Securities regulation and any other matter implicating SRO Responsibilities; and

(5) Real-time market surveillance.[11]

BSE, the ''Business Member'' under the NASD/BSE LLC Agreement, will be primarily responsible for the management of the facility's business affairs to the extent those activities are not inconsistent with the regulatory and oversight functions of NASD. Under Section 9(d) of the NASD/BSE LLC Agreement, each Member agrees to comply with the federal securities laws and the rules and regulations thereunder and to cooperate with the Commission pursuant to its regulatory authority.

The NASD/BSE TRF will be managed by or under the direction of a Board of Directors to be established by the parties. NASD will have the right to designate at least one Director, the SRO Member Director, who may be a member of NASD's Board of Governors or an officer or employee of NASD designated by the NASD's Board of Governors. The SRO Member Director will have veto power over all major actions of the NASD/BSE LLC Board. Section 10(e) of the NASD/BSE LLC Agreement defines ''Major Actions'' to include:

(1) Approving pricing decisions that are subject to the SEC filing process;

(2) Approving contracts between the NASD/BSE TRF and the Business Member, any of its affiliates, directors, officers, or employees;

(3) Approving Director compensation;

(4) Selling, licensing, leasing, or otherwise transferring material assets used in the operation of the NASD/BSE TRF's business outside of the ordinary course of business with an aggregate value in excess of $3 million;

(5) Approving or undertaking a merger, consolidation, or reorganization of the NASD/BSE TRF with any other entity;

(6) Entering into any partnership, joint venture, or other similar joint business undertaking;

(7) Making any fundamental change in the market structure of the NASD/BSE TRF from that contemplated by the Members as of the date of the NASD/BSE LLC Agreement;

(8) To the fullest extent permitted by law, taking any action to effect the voluntary, or which would precipitate an involuntary, dissolution or winding up of the Company, other than as contemplated by Section 21 of the NASD/BSE LLC Agreement;

(9) Conversion of the NASD/BSE TRF from a Delaware limited liability company into any other type of entity;

(10) Expansion of or modification to the business which results in the NASD/BSE TRF engaging in material business unrelated to the business of Non-System Trading; [12]

(11) Changing the number of Directors on or composition of the NASD/BSE LLC Board; and

(12) Adopting or amending policies regarding access and credit matters affecting the NASD/BSE TRF.

In addition, each Director agrees to comply with the federal securities laws and the rules and regulations thereunder and to cooperate with the Commission and the SRO Member pursuant to their regulatory authority.

The principal difference between the NASD/BSE LLC Agreement and the LLC Agreement NASD entered with Nasdaq relates to termination. The initial term of the agreement is three years. During that time, until the NASD/BSE TRF reaches ''Substantial Trade Volume'' (defined as 250,000 trades or more per day for three consecutive months), BSE may terminate the arrangement for convenience. After the NASD/BSE TRF reaches Substantial Trade Volume, either Member may terminate the NASD/BSE Trade Reporting Facility LLC by providing to the other Member prior written notice of at least one year (as in the case with Nasdaq). Neither Member may deliver such notice before the second anniversary of the effective date of the NASD/BSE LLC Agreement. In addition, at any time, NASD may terminate in the event its status or reputation as a preeminent SRO is called into jeopardy by the actions of BSE or the NASD/BSE TRF. In the event of termination of the NASD/BSE TRF arrangement, NASD will be able to fulfill all of its regulatory obligations with respect to OTC trade reporting through its other facilities, including the NASD/Nasdaq TRF, ADF, and the ITS/CAES System.

NASD/BSE Trade Reporting Facility Rules

Members will report trades in exchange-listed securities effected otherwise than on an exchange to the NASD/BSE TRF pursuant to NASD rules. As such, NASD is proposing rules relating to the use and operation of the NASD/BSE TRF that are substantially similar to the rules approved by the Commission relating to the NASD/Nasdaq TRF. Specifically, NASD is proposing the new NASD Rule 4000D and NASD Rule 6100D Series, which largely track the NASD Rule 4000 and NASD Rule 6100 Series that the Commission approved in the NASD/Nasdaq TRF Approval Order.[13]

Similar to the NASD/Nasdaq TRF rules, to become a participant in the NASD/BSE TRF, an NASD member must meet minimum requirements as

[11] The SRO Member will perform real-time market surveillance related to trades reported to the NASD/BSE TRF. However, because the NASD/BSE TRF via the Business Member will submit transaction information directly to the SIP, the NASD/BSE TRF via the Business Member also will establish and implement controls to ensure that transactions that are reported to the NASD/BSE TRF, but are priced significantly away from the current market, will not be submitted to the SIP. *See supra* note 6.

[12] Pursuant to the NASD/BSE LLC Agreement, ''Non-System Trading'' means trading otherwise than on an exchange of securities for which the SEC has approved a transaction reporting plan pursuant to Rule 601 of Regulation NMS under the Act.

[13] *See* note 3, *supra.*

outlined in NASD Rule 6120D. These include execution of, and continuing compliance with, a Participant Application Agreement; membership in, or maintenance of an effective clearing arrangement with a participant of a clearing agency registered pursuant to the Act; and the acceptance and settlement of each trade that the NASD/BSE TRF identifies as having been effected by the participant.

Members that report trades to the NASD/BSE TRF must include the details of the trade, as required by the proposed rules. Participants must also include the unique order identifier assigned for purposes of reporting to the Order Audit Trail System pursuant to the NASD Rule 6950 Series, thus enabling NASD to match the order against the trade that was reported to the tape by the NASD/BSE TRF.

As with the NASD/Nasdaq TRF, participants may enter into ''give up'' arrangements whereby one member reports to the NASD/BSE TRF on behalf of another member. Participants must complete and submit to the NASD/BSE TRF the appropriate documentation reflecting the arrangement. Proposed NASD Rule 4632D(h) provides that the member with the reporting obligation remains responsible for the transaction submitted on its behalf. Further, both the member with the reporting obligation and the member submitting the trade to the NASD/BSE TRF are responsible for ensuring that the information submitted is in compliance with all applicable rules and regulations.[14]

In addition, participants will be able to submit ''riskless principal'' transactions [15] to the NASD/BSE TRF. Similar to the NASD/Nasdaq TRF, the non-media portion of a riskless principal transaction will not be reported to the tape, but will be submitted real-time to NASD for regulatory purposes and, at the option of the user, to NSCC. Proposed NASD Rule 4632D(e)(3)(B) [16] would clarify that where the media leg of the riskless principal transaction is reported to the NASD/BSE TRF, the second, non-media leg must also be reported to the NASD/BSE TRF. However, where the media leg of the riskless principal transaction was previously reported by an exchange, the member would be permitted, but not required, to report the second, non-media leg to the NASD/BSE TRF. Members that choose to report such transactions to the NASD/BSE TRF must include all data elements required under the rules. Members should note, however, that transactions reported by an exchange should not be reported to NASD/BSE TRF for media purposes, as that would result in double reporting of the same transaction.[17]

Finally, NASD will have the authority to halt trading otherwise than on an exchange reported to the NASD/BSE TRF. The scope of NASD's authority under proposed NASD Rule 4633D is identical to its authority to halt trading reported to the NASD/Nasdaq TRF and the ADF.

As described below, the proposed rules differ from the current NASD/Nasdaq TRF rules in certain respects. Proposed NASD Rules 4100D and 4200D(a)(2) define ''designated securities'' for purposes of reporting trades to the NASD/BSE TRF as ''all NMS stocks as defined in Rule 600(b)(47) of Regulation NMS under the Act.'' Currently, NASD Rules 4100 and 4200(a)(2) define ''designated securities'' for purposes of reporting trades to the NASD/Nasdaq TRF as all Nasdaq National Market (now Nasdaq Global Market) and Nasdaq Capital Market securities and convertible bonds listed on Nasdaq. NASD has filed a proposed rule change to expand reporting to the NASD/Nasdaq TRF to include all exchange-listed securities and to include a definition of ''designated securities'' in NASD Rules 4100 and 4200(a)(2) that is identical to the definition proposed herein.[18]

Pursuant to proposed NASD Rule 6120D, only members of NASD may use the NASD/BSE TRF. Non-members will not be permitted to submit trade reports to the NASD/BSE TRF. Under very limited circumstances, certain Non-Member Clearing Organizations are granted access to and participation in the NASD/Nasdaq TRF.

Pursuant to proposed NASD Rule 6140D, all trades submitted to the NASD/BSE TRF must be locked-in prior to entry into the System. The NASD/BSE TRF will have no trade comparison functionality. Thus, there are no proposed rules relating to trade matching, trade acceptance, or aggregate volume matching. Similarly, there will be no ''Browse'' function, meaning that participants will not be able to review or query for trades in the NASD/BSE TRF identifying the participant as a party to the transaction.

The NASD/BSE TRF will not be able to support trade reporting for certain transactions. Specifically, transactions executed outside of normal market hours cannot be reported to the NASD/BSE TRF on an ''as/of'' or next day (T+1) basis, pursuant to NASD Rule 4632D(a)(2). In addition, the NASD/BSE TRF will not support the .W or .PRP modifiers and, therefore, proposed NASD Rule 4632D(a)(7) provides that Stop Stock Transactions (as defined in NASD Rule 4200D), transactions at prices based on average-weighting or other special pricing formulae, and transactions that reflect a price different from the current market when the execution price is based on a prior reference point in time cannot be reported to the NASD/BSE TRF. Thus, proposed NASD Rules 4632D(a)(2) and (7) expressly require members to report such trades to NASD via an alternative electronic mechanism.

Similarly, proposed NASD Rule 4632D(a)(3) provides that participants must use an alternative electronic mechanism, and comply with all rules applicable to such alternative mechanism, to report transactions to NASD for which electronic submission to the NASD/BSE TRF is not possible. Where last sale reports of transactions in designated securities cannot be submitted to NASD via an alternative electronic mechanism, such as the ADF or another Trade Reporting Facility (for example, where the ticker symbol for the security is no longer available or a market participant identifier is no longer active), members shall report such transactions as soon as practicable to the NASD Market Regulation Department on Form T. Members are not to use Form T to report transactions that can be reported to NASD electronically, whether on trade date or on a subsequent date on an ''as of'' basis (T+N).

Unlike the NASD/Nasdaq TRF, participants will be able to use three-party reports for reporting trades to the

[14] As noted above, NASD/Nasdaq TRF participants may enter into ''give up'' arrangements; however, the NASD/Nasdaq TRF rules currently do not speak to such arrangements. NASD has submitted a proposed rule change to amend the NASD/Nasdaq TRF rules to include a provision that is substantially similar to proposed NASD Rule 4632D(h). *See* September 2006 Proposal, *supra* note 3.

[15] A riskless principal transaction is a transaction in which a member, after having received a customer order, executes an offsetting transaction, as principal, with another customer or broker-dealer to fill that customer order and both transactions are executed at the same price.

[16] Proposed NASD Rule 4632D(e)(3)(B) mirrors recently proposed amendments to NASD Rule 4632(d)(3)(B) of the NASD/Nasdaq TRF rules. *See* September 2006 Proposal, *supra* note 3.

[17] Proposed NASD Rule 4632D(f)(6) provides that transactions reported on or through an exchange shall not be reported to the NASD/BSE TRF for purposes of publication. This proposed rule mirrors NASD Rule 4632(e)(6) of the NASD/Nasdaq TRF rules. *See* NASD/Nasdaq TRF Approval Order, *supra* note 3; Securities Exchange Act Release Nos. 53977 (June 12, 2006), 71 FR 34976 (June 16, 2006) (order approving File No SR–NASD–2006–055); and 54318 (August 15, 2006), 71 FR 48959 (August 22, 2006) (notice of filing and immediate effectiveness of File No. SR–NASD–2006–098).

[18] *See* September 2006 Proposal, *supra* note 3.

NASD/BSE TRF. A three-party trade report is a single last sale trade report that denotes one Reporting Member (*i.e.*, the member with the obligation to report the trade under proposed NASD Rule 4632D(b)) and two contra parties. Registered ECNs may submit three-party trade reports. In addition, riskless principal trades may be submitted by Reporting Members as three-party trade reports. Proposed NASD Rule 4632D(c) sets forth the information requirements for two-party reports, while proposed NASD Rule 4632D(d) sets forth the information requirements for three-party reports. Members currently can use three-party reports for purposes of reporting trades to the ADF. Proposed NASD Rules 4632D(c) and (d) mirror the existing ADF reporting requirements relating to two- and three-party trade reports (*see* NASD Rules 4632A(c) and (d)).

As with the NASD/Nasdaq TRF, the NASD/BSE TRF will only accept non-media or clearing-only trade reports for certain transactions; members cannot submit reports for these transactions for publication. Proposed NASD Rule 4632D(f) sets forth the types of transactions that cannot be reported for purposes of publication to the NASD/BSE TRF. Proposed NASD Rule 4632D(f) mirrors current NASD Rule 4632(e) of the NASD/Nasdaq TRF rules and includes two additional categories of trades: (1) The acquisition of securities by a member as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange; and (2) purchases of securities off the floor of an exchange pursuant to a tender offer. NASD's proposed rule change to expand reporting to the NASD/Nasdaq TRF for all exchange-listed securities proposes to amend NASD Rule 4632(e) to include these two additional categories of transactions.[19] Thus, proposed NASD Rule 4632D(f) of the NASD/BSE TRF will be identical to NASD Rule 4632(e) of the NASD/Nasdaq TRF rules.

Cancellation of any trade that has been submitted to the NASD/BSE TRF must be reported in accordance with proposed NASD Rule 4632D(g). Unlike the NASD/Nasdaq TRF, members cannot electronically report trade cancellations to the NASD/BSE TRF. Members must contact NASD/BSE Trade Reporting Facility Operations, within the prescribed time periods, to report the cancellation of any trade previously submitted to the NASD/BSE TRF.

Finally, members will not be permitted to aggregate individual executions of orders in a security at the same price into a single transaction report submitted to the NASD/BSE TRF. Thus, the proposed rule change does not contain a counterpart to NASD Rule 4632(f) or NASD Rule 6130(e) permitting ''bunched'' trades to be reported to the NASD/Nasdaq TRF.

NASD notes that the proposed rule change does not include any proposed rules relating to fees, assessments, and credits specifically related to the NASD/BSE TRF. Fees, assessments, and credits, if any, with respect to the NASD/BSE TRF will be the subject of a future rule filing with the Commission.

Proposed Implementation

In light of the systems changes that are necessary for NASD to implement the NASD/BSE TRF for non-Nasdaq exchange-listed securities, NASD is proposing to implement the proposed rule change in two phases. Specifically, NASD proposes to implement the proposed rule change with respect to Nasdaq-listed equity securities and convertible debt on the first day of operation of the NASD/BSE TRF. NASD proposes to implement the proposed rule change with respect to non-Nasdaq exchange-listed securities at a later date.

NASD will announce the implementation date of the first phase of the proposed rule change no later than 30 days following Commission approval and the second phase no later than 90 days following Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[20] which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that establishment of the NASD/BSE TRF is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets because it will provide members another mechanism to report transactions in exchange-listed securities effected otherwise than on an exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*; or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NASD–2006–115 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–NASD–2006–115. 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

[19] *See* September 2006 Proposal, *supra* note 3.

[20] 15 U.S.C. 78o–3(b)(6).

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD. 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–NASD–2006–115 and should be submitted on or before November 8, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–17319 Filed 10–17–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54592; File No. SR–NYSE–2006–04]

Self-Regulatory Organizations; New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC); Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to NYSE Rule 116 (''Stop'' Constitutes Guarantee) and NYSE Rule 123B (Exchange Automated Order Routing Systems)

October 12, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 9, 2006, the New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC) (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE.[3] The NYSE filed Amendment Nos. 1 and 2 to the proposed rule change on April 5, 2006[4] and September 8, 2006,[5] respectively. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In the proposed rule change, the Exchange seeks to amend NYSE Rule 116 (''Stop'' Constitutes Guarantee) and NYSE Rule 123B (Exchange Automated Order Routing Systems) regarding a specialist's ability to ''stop'' stock and report such a transaction. The text of the proposed rule change is available on the NYSE's Web site (*www.nyse.com*), at the NYSE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The practice of stopping stock by specialists on the Exchange refers to a guarantee by the specialist that an order he or she receives will be executed at no worse a price than the contra side price in the market at the time the order was stopped, with the understanding that the order may in fact receive a better price. For example, the Exchange market in a stock is quoted at 20.00 bid, offered at 20.10, and the specialist receives a market order to buy. If the specialist ''stops'' the buy order, the specialist is guaranteeing that the order will receive no worse a price than 20.10, the then-prevailing offer price. The specialist would then make a bid on behalf of the market order to buy at a price above the prevailing bid, for example, at 20.05. If a sell order trades with this bid, the stopped order has received price improvement (as has the sell order trading with it). If, however, another buy order enters the market and executes at the offer price of 20.10, the stopped buy order will be executed at that same price pursuant to the specialist's guarantee as evidenced by the ''stop.''

The current Hybrid Market℠ is the result of a series of initiatives, approved by the Commission, to implement changes to the operation of the Exchange's market to expand access to automated trading while preserving the advantages of the agency auction market.[6] Customers and other market participants will have greater opportunities for speed and certainty of execution through the enhanced electronic trading. Opportunities for price improvement will continue to be available.

NYSE Rule 116 generally provides for the ability of a member to stop stock. Paragraph .30 in the Rule's Supplementary Material provides three circumstances in which a specialist may stop stock, including at the opening or reopening of trading in a stock, when a broker in the trading crowd is representing another order at the stop price or when requested to by another member. In the latter circumstance, the provisions of NYSE Rule 116.30 require that the quotation spread be not less than twice the minimum variation (currently one cent), or, if the quotation spread is the minimum variation, that the quote conditions (*i.e.*, an imbalance in the amount of shares bid for or offered) suggest the likelihood of price improvement, and that the order be under 2,000 shares. The rule further provides a limitation of a total of 5,000 shares for all stopped orders. A specialist may seek approval of a Floor Official to override these conditions. In

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that the rule text submitted by the Exchange contained minor, technical errors. Exchange staff has committed to address these errors following publication of this notice. In addition, certain technical corrections and clarifications were made throughout the discussion of the proposed rule change pursuant to a conversation with NYSE staff. Telephone conversation between Gillian Rowe, Principal Rule Counsel, Office of the General Counsel, NYSE Group, Inc., and Jennifer Colihan, Special Counsel, and Kate Robbins, Attorney, Division of Market Regulation, Commission, on October 2, 2006.

[4] In Amendment No. 1, the Exchange made technical and clarifying changes to the rule text and purpose section.

[5] In Amendment No. 2, which replaced the original filing in its entirety and incorporated Amendment No. 1, the Exchange proposed additional changes to NYSE Rule 116 regarding a specialist's ability to stop stock in the NYSE's Hybrid Market.

[6] *See* The Hybrid Market initiative proposed in SR–NYSE–2004–05 and Amendments Nos. 1, 2, 3, 5, 6, 7 and 8 thereto approved on March 22, 2006. *See* Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (''Hybrid Market Release''). *See also* Securities Exchange Act Release Nos. 52362 (August 30, 2005), 70 FR 53701 (September 9, 2005) (SR–NYSE–2005–57); 52954 (December 14, 2005), 70 FR 75519 (December 20, 2005) (SR–NYSE–2005–87); 53014 (December 22, 2005), 70 FR 77228 (December 29, 2005) (SR–NYSE–2005–89); 53359 (February 24, 2006), 71 FR 10736 (March 2, 2006) (SR–NYSE–2006–09); 53487 (March 15, 2006), 71 FR 14278 (March 21, 2006) (SR–NYSE–2006–21); 53780 (May 10, 2006), 71 FR 28398 (May 16, 2006) (SR–NYSE–2006–24); and 53791 (May 11, 2006), 71 FR 28732 (May 17, 2006) (SR–NYSE–2006–33).

addition, a specialist must take specific actions to reduce the spread in the quotation after the stop is granted, may not reduce the size of the market following the stop and must execute orders on the book entitled to priority against the stopped stock.

The Exchange generally believes that the practice of specialists stopping stock makes less sense in a hybrid market. This is primarily due to the dynamics of increased speed of trading and more effective functioning of the market through initiatives such as sweeps,[7] the discretionary e-Quotes℠ [8] and the ability of Exchange specialists to provide electronic price improvement.[9] Given the availability of these other avenues for price improvement, the Exchange believes that the procedures in NYSE Rule 116.30(3) for granting stops are a less attractive and efficient mechanism to seek price improvement in faster markets due to the time required to perform the procedures.

The Exchange further believes that in manually stopping stock there is a substantial risk that a stopped order would ''miss the market'' given the speed of automatic executions and the ''sweep'' functionality.

As a result, the Exchange seeks to remove the provisions in NYSE Rule 116.30 that permit stopping stock by a specialist in all situations. As explained above, the provisions for stopping stock in situations related to the quote spread and the procedures associated with these are not, in the Exchange's view, useful going forward in our Hybrid Market℠. Additionally, the Exchange no longer systemically supports a specialist's stopping stock in any situation,[10] which requires a specialist to execute stopped stock transactions manually. The Exchange believes these manual transactions are not conducive to efficient trading in our Hybrid Market℠. As such, the Exchange seeks to amend NYSE Rule 116.30 to eliminate a specialist's ability to stop stock.

The Exchange further seeks to amend subsection (b)(3) of NYSE Rule 123B (Exchange Automated Order Routing Systems) to remove references to the systemic reporting of executions of stopped orders now that Exchange systems no longer execute that function.

2. Statutory Basis

The basis under the Act [11] for this proposed rule change is the requirement under Section 6(b)(5) [12] that an Exchange have rules that are 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NYSE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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–NYSE–2006–04 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–NYSE–2006–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. 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–NYSE–2006–04 and should be submitted on or before November 8, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–17321 Filed 10–17–06; 8:45 am]

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[7] The ''sweep'' functionality will allow orders to automatically execute against contra side interest in the Display Book® System at and outside the Exchange best bid or offer until the order is filled.

[8] *See* Exchange Rule 70.25.

[9] *See* Exchange Rules 104(b)(i)(H) and 104(e). These rules were approved as part of the Hybrid Market initiative, *see* Hybrid Market Release, *supra* note 6, and became operative on October 6, 2006.

[10] As of December 13, 2005 the Exchange eliminated the systemic support for the reporting of executions of stopped orders. The Exchange continues to require manual reporting. *See* Member Education Bulletin 2005–25 (December 13, 2005) from the NYSE's Division of Market Surveillance.

[11] 15 U.S.C. 78a.

[12] 15 U.S.C. 78f(b)(5).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54590; File No. SR–NYSEArca–2006–73]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Create a Penny Pilot Program for Options Trading

October 12, 2006.

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 10, 2006, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca proposes to: (i) Clarify the language in NYSE Arca Rule 6.72; (ii) add a reference to a six month penny pilot in options classes in certain issues approved by the Commission (''Pilot Program''); and (iii) provide for an approved quote mitigation exception to NYSE Arca Rule 6.86. The text of the proposed rule is available on NYSE Arca's Web site at *http://www.nysearca.com,* at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Arca Rule 6.72(a) sets forth the trading increments for option contracts quoted on the Exchange. Currently, the minimum price variation (''MPV'') for option series that are quoted under $3.00 per contract is $0.05 and the MPV for option series that are quoted at $3.00 per contract or greater is $0.10. The Exchange is proposing to: (i) Clarify the language in NYSE Arca Rule 6.72; and (ii) add a reference to a six month penny pilot in options traded on a limited number of classes approved by the Commission.

The Exchange proposes to clarify existing language in NYSE Arca Rule 6.72 to continue a $0.05 MPV for quoting in all options series trading at less than $3.00, and $0.10 MVP for quoting in all options series trading at $3.00 or more, except those included in the Pilot Program described below.

Pilot Program

The Exchange proposes to provide for a penny MPV in options contracts in certain classes approved by the Commission. The Exchange believes that migrating to penny pricing in these classes will create tighter markets and thus reduce the overall cost of trading in options for investors. Despite the overall benefits provided to investors in migrating to penny pricing, the Exchange believes it is critical to introduce pennies in a measured approach that will not exacerbate the existing quote capacity limitations that currently exist.

The Exchange proposes that options classes in the following issues be approved for inclusion in a Penny Pilot:

QQQQ: Nasdaq-100 Index Tracking Stock
IWM: iShares Russell 2000 Index Fund
SMH: Semiconductor Holdrs Trust
GE: General Electric Company
AMD: Advanced Micro Devices, Inc.
MSFT: Microsoft Corporation
INTC: Intel Corporation
CAT: Caterpillar Inc.
WFMI: Whole Foods Market, Inc.
TXN: Texas Instruments Incorporated
GLG: Glamis Gold Ltd.
FLEX: Flextronics International Ltd.
SUNW: Sun Microsystems, Inc.

Under the proposed Pilot Program, the Exchange will allow trading and quoting in increments of $0.01 for all options on the QQQQ, and will allow trading and quoting in pennies for series in all other Pilot classes approved by the Commission that are trading below $3.00. Pilot classes with series trading at or above $3.00 would have a $0.05 quoting MPV. The Exchange anticipates the Commission will approve options classes in issues with a contrasting range of trading activity so that the Exchange and the industry may better understand the effects of the Pilot Program. The Exchange intends to include any option approved as eligible for the Pilot Program for penny trading and quoting. The Exchange believes the Commission should approve a variety of option classes for inclusion in a pilot broad enough to encompass differing quote and trade activity levels.

The Exchange will continue to abide by the existing Options Linkage Plan (''Linkage'') as described in NYSE Arca Rules 6.93 and 6.94 with respect to linkage operation and order protection. If the Exchange receives an order through Linkage in a Pilot Program series from another exchange not quoting and trading in pennies, the Exchange will fill the incoming order at a penny incremented price, as long as the execution price is equal to or better than the reference price of the Linkage order. In the event of a trade through by another Linkage Participant Market of a customer order in a Pilot Program issue that has been denominated and disseminated to the Options Price Reporting Authority (''OPRA'') in a penny increment, the Exchange will assign a reference price on an outbound Satisfaction order in the penny incremented price of the customer order. The Exchange believes that a Linkage Participant market that receives a Satisfaction order in a penny increment should be permitted to fill the Satisfaction order at its reference price; regardless of the actual MPV permitted at the recipient exchange. If a Participating Market is not capable of processing and reporting a transaction in a penny increment, the Exchange believes that it is consistent with the intent of the Linkage plan that the receiving market should fill the Satisfaction order at the next best MPV allowed in that series on the receiving exchange. The Exchange would accept an execution report at that price, and fill the customer order that had been traded through at the price received on the Satisfaction order.

As is widely acknowledged, the options industry is facing significant capacity issues related to excessive quoting rates. Peak quote rates[3] through April 2006 as reported by OPRA, the processor that disseminates quote and trade data for the options industry, have increased to 7 times the 2003 peak quote rates. In the last year, peak rates have more than doubled. In order to limit the capacity impact of migrating to penny trading, the Exchange proposes to limit the pilot to options on QQQQ and other issues approved by the Commission. This will allow the Exchange to carefully study the impact and assess the outcome of penny trading on data traffic. Further, in conjunction with the pilot, the Exchange proposes a strategy to mitigate the volume of data being processed and disseminated by OPRA.

Sixty days prior to the expiration of the Pilot Program, the Exchange agrees to submit a report to the Commission that includes: (i) Data and written

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Peak quote rates are measured in messages per second over a 1 minute period.

analysis on the number of quotations generated for options selected for the Pilot Program; (ii) an assessment of the quotation spreads for the options selected for the Pilot Program; (iii) an assessment of the impact of the Pilot Program on the capacity of the NYSE Arca's automated systems; (iv) any capacity problems or other problems that arose related to the operation of the Pilot Program and how the NYSE Arca addressed them; and (v) an assessment of trade through complaints that were sent by the NYSE Arca during the operation of the Pilot Program and how they were addressed. The report will study data produced in the first three months of the Pilot Program.

Quote Mitigation Strategy

NYSE Arca Rule 6.86 describes the obligations of the Exchange to collect, process and make available to quotation vendors the best bid and best offer for each option series that is a reported security. The Exchange proposes an exception to making quotes available to quotation vendors as part of an approved quote mitigation plan. The quote mitigation strategy proposed by the Exchange is intended to reduce the number of quotations generated by NYSE Arca for all option issues traded at NYSE Arca, not just issues included in the Pilot Program. NYSE Arca plans to reduce the number of quote messages it sends to OPRA by only submitting quote messages for ''active'' options series. Active options series are defined as the following: (i) The series has traded on any options exchange in the previous 14 calendar days; or, (ii) the series is solely listed on NYSE Arca; or (iii) the series has been trading ten days or less; or, (iv) the Exchange has an order in the series. For any options series that falls into one of the aforementioned categories, NYSE Arca will submit quotes to OPRA as it currently does. For any options series that falls outside of the above categories, NYSE Arca will still accept quotes from OTP Holders in these series; however, such quotes will not be disseminated to OPRA.

In addition, there are certain instances when a series would become active intraday. Such instances include: (i) The series trades at any options exchange; (ii) NYSE Arca receives an order in the series; or (iii) NYSE Arca receives a request for quote from a customer in that series. When one of the above circumstances exists, NYSE Arca would immediately begin disseminating quotes to OPRA in that particular series and would continue doing so until that series fell outside of the active series definition. If the series does not trade, and there are no orders in the series the next day, the series would no longer be considered active. Further, because NYSE Arca will continue to collect quotes from OTP Holders in inactive series, upon receiving an order in an inactive series, the Exchange will either execute that order against any marketable quotes in the trading system, or will link that order to the away market displaying the NBBO in that series. Accordingly, OTP Holders' orders will not be disadvantaged and will still have an opportunity to execute at the best price in such inactive series.

Based upon studies conducted by the Exchange, it appears less than 25% of the industry's available options series trade each day. In addition, on NYSE Arca on any given day, 75% of the trading volume occurs in options on 200 underlying securities out of a possible 2,000 underlying securities that have listed options contracts listed on NYSE Arca. Accordingly, the Exchange felt it was prudent to analyze the quoting behavior in such inactive series. Based upon the analysis, the Exchange determined that it was possible to reduce quote traffic by 20–30% by limiting quote dissemination to solely active series as described above. As a result, the Exchange believes its proposed data mitigation strategy will have a significant effect on reducing quote traffic and addressing the current capacity problems facing the industry.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with section 6(b) of the Act,[4] in general, and furthers the objectives of section 6(b)(5) of the Act,[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

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.

[4] 15 U.S.C. 78f(b).

[5] 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

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be approved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2006–73 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2006–73. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, Station Place, 100 F Street, NE., Washington, DC 20549–1090. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Arca. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2006–73 and should be submitted on or before November 8, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–17317 Filed 10–17–06; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 5583]

60-Day Notice of Proposed Information Collection: DS–5090e, Human Rights Abuses Reporting Site; OMB No. 1405–0175

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Human Rights Abuses Reporting Site.
- *OMB Control Number:* 1405–0175.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Western Hemisphere Affairs, Office of Cuban Affairs (WHA/CCA).
- *Form Number:* DS–5090e, Human Rights Abuses Reporting Site.
- *Respondents:* Victims of human rights abuses in Cuba.
- *Estimated Number of Respondents:* 7,300 annually.
- *Estimated Number of Responses:* 7,300 annually.
- *Average Hours Per Response:* 15 minutes per response.
- *Total Estimated Burden:* 1,825 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Voluntary.

DATE(S): The Department will accept comments from the public up to 60 days from October 18, 2006.

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

- E-mail: *CubaHRVL@state.gov.*
- Mail (paper, disk, or CD–ROM submissions): Coordinator of Cuban Affairs; Department of State; 2201 C Street, NW., Washington, DC 20520.
- Hand Delivery or Courier: Coordinator of Cuban Affairs; Department of State; 2201 C Street, NW., Washington, DC 20520.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to the Coordinator of Cuban Affairs; Department of State; 2201 C Street, NW., Washington, DC 20520, who may be reached at 202–647–9272, or by e-mail at *CubaHRVL@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The President has asked the interagency community to use the temporary transfer of power from Fidel Castro to his brother Raul Castro in August 2006 as an historic moment to work to encourage a democratic transition in Cuba. In keeping with the recommendations of the Commission for Assistance to a Free Cuba report, the State Department will seek information from the public about human rights abuses committed by Cuban authorities, including the military and members of the security forces. The information is sought in accordance with, *inter alia,* 22 U.S.C. 2656 and 2304(a)(1). The principal purpose for collecting the information is to prepare and maintain a database of human rights abusers in Cuba. The Department may use this information in connection with its responsibilities for the protection and promotion of human rights and for the conduct of foreign affairs, as well as for other appropriate purposes as a routine part of the Department's activities.

Methodology: Information will be collected through electronic submission.

Additional Information: None.

Dated: September 21, 2006.

Caleb McCarry,

Cuba Transition Coordinator, Bureau of Western Hemisphere Affairs, Department of State.

[FR Doc. E6–17339 Filed 10–17–06; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice 5567]

Establishment of the Advisory Committee on Democracy Promotion

SUMMARY: The Advisory Committee on Democracy Promotion was established in March 2006 to advise the Secretary of State and the Administrator of the U.S. Agency for International Development on the consideration of issues related to democracy promotion in the formulation and implementation of U.S. foreign policy and foreign assistance.

The Secretary of State will appoint the members of the committee, which will consist of up to 20 non-government members. The committee will follow the procedures prescribed by the Federal Advisory Committee Act (FACA). Meetings will be open to the public unless a determination is made in accordance with the FACA Section 10(d) and 5 U.S.C. 522b(c)(1) and (4) that a meeting or a portion of the meeting should be closed to the public. Notice of each meeting will be provided in the **Federal Register** at least 15 days prior to the meeting date.

For further information, contact Nicole Bibbins Sedaca, Senior Director of Strategic Planning and External Affairs, Bureau of Democracy, Human Rights, and Labor at (202) 647–3904.

Dated: October 11, 2006.

Barry Lowenkron,

Assistant Secretary of the Bureau of Democracy, Human Rights, and Labor, Department of State.

[FR Doc. E6–17338 Filed 10–17–06; 8:45 am]

BILLING CODE 4710–18–P

[6] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2006–23550]

Interstate Oasis Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA is issuing this approved final Interstate Oasis Program policy document. Section 1310 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Public Law 109–59, August 10, 2005) requires the Secretary of Transportation to develop standards for designating certain facilities as Interstate Oases and to design a uniform logo for such designated facilities. After consideration of public comments on a draft program and policy document, the FHWA has finalized the policies for the Interstate Oasis program.

DATES: *Effective Date:* October 18, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Hari Kalla, (202) 366–5915, Office of Transportation Operations, HOTO, or Mr. Robert Black, Office of the Chief Counsel, HCC–30, (202) 366–1359. The FHWA office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays. The offices are located at 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded Bulletin Board Service from the Office of the Federal Register's home page at *http://www.archives.gov* and the Government Printing Office's Web site at *http://www.access.gpo.gov*. An electronic version of the Interstate Oasis program document may be downloaded at the FHWA Web site: *http://mutcd.fhwa.dot.gov/res-policy.htm.*

Outline

Background on the Interstate Oasis Program

Prior to the enactment of SAFETEA–LU, the FHWA was in the process of investigating a number of issues relating to rest areas on the Interstate System, in response to a provision in the Joint Explanatory Statement of the Committee of Conference (House Report 106–355) that accompanied the Department of Transportation and Related Agencies Appropriations Act, 2000 (Pub. L. 106–69, 113 Stat. 986). Of particular concern is the limited availability in some areas of sufficient opportunities for road users to stop and rest that created safety concerns related to increased driver fatigue. Insufficient truck parking has also been found to be a significant problem in some States at rest areas on the Interstate system, on local road systems near interchanges with Interstate highways, and at adjoining businesses. Commercialization of existing Interstate highway public rest areas to allow private firms to provide services such as those found in ''service plazas'' on many toll roads and turnpikes, in exchange for private responsibility for maintenance and operation of the rest areas, has been advocated by some States and by the American Association of State Highway and Transportation Officials (AASHTO) to reduce the financial burden of maintaining public rest areas. However, such commercialization is not authorized by current laws and regulations and is strongly opposed by business interests located off the Interstate system.

In August 2005, SAFETEA–LU was enacted. Section 1310 of SAFETEA–LU, entitled ''Interstate Oasis Program,'' requires the FHWA to establish an Interstate Oasis program and, after providing an opportunity for public comment, develop standards for designating as an Interstate Oasis a facility that, at a minimum, offers products and services to the public, 24-hour access to restrooms, and parking for automobiles and heavy trucks. Section 1310 also requires the FHWA to design a logo to be displayed by a designated Interstate Oasis facility. Further, Section 1310 requires that, if a State elects to participate in the Interstate Oasis program, any facility meeting the standards for designation shall be eligible for designation as an Interstate Oasis.

The Interstate Oasis program is also expected to help further the goals of the Secretary of Transportation's new National Strategy to Reduce Congestion on America's Transportation Network, announced on May 16, 2006.[1] We anticipate that the Interstate Oasis program will increase the availability of truck parking, thereby reducing the occurrence of truck parking on the shoulders of Interstate highways that could be contributing to congestion.

Actions Taken to Date

On February 27, 2006, the FHWA published a notice in the **Federal Register** (71 FR 9855), providing a draft policy for the Interstate Oasis Program, posing nine specific questions to help refine and finalize the program, and requesting public comments (FHWA Docket No. FHWA–2006–23550). After careful analysis of all comments received, the FHWA has decided to finalize and issue the Interstate Oasis Program and Policy. A variety of relatively minor changes have been made in the program and policy to add clarity and incorporate suggested improvements from insightful comments regarding the draft. Also, the final Interstate Oasis Program and Policy reflects the legislated requirements of Section 1310 of SAFETEA–LU by use of the word ''shall'' where appropriate. The FHWA intends that the Interstate Oasis Program and Policy in its entirety be considered as the criteria for designating and signing a facility as an Interstate Oasis.

Comments and Responses on the Draft Interstate Oasis Program

The following discussion is a summary of significant comments received on the draft program document and the specific questions posed in the February 27, 2006, notice and the FHWA's responses on how the concerns and/or issues raised were considered and addressed.

We received comments from 39 entities, including eight national associations, 13 State transportation agencies, one State environmental agency, one State social services agency, one local government agency, three private companies, and 12 private individuals. The national associations included the Advocates for Highway and Auto Safety (AHAS), the American Association of State Highway and Transportation Officials (AASHTO), the International Association of Chiefs of Police (IACP), the Motorist Information Services Association (MISA), the National Association of County Engineers (NACE), the National Association of Truck Stop Operators (NATSO), the National Federation of the

[1] Speaking before the National Retail Federation's annual conference on May 16, 2006, in Washington, DC, former U.S. Transportation Secretary Norman Mineta unveiled a new plan to reduce congestion plaguing America's roads, rail, and airports. The National Strategy to Reduce Congestion on America's Transportation Network includes a number of initiatives designed to reduce transportation congestion. The transcript of these remarks is available at the following URL: *http://www.dot.gov/affairs/minetasp051606.htm*

Blind (NFB), and the Owner-Operator Independent Drivers Association (OOIDA).

Many comments were general in nature and are summarized and addressed collectively under the General Comments heading. Many comments included recommendations related to one or more of the potential eligibility criteria, certain potential signing practices, or recommended educational and marketing efforts, in response to the language of the draft program policy and/or the specific questions posed in the February 27, 2006, notice. These comments are summarized and addressed under the Eligibility Criteria, Signing, and Education and Marketing headings, as appropriate.

All comments and recommendations have been read and considered by the FHWA. A number of the comments received focused on the trend for some States to consider closing some of their public rest areas due to economic or other issues and expressed concerns that the designation of Interstate Oasis facilities off the Interstate highway rights-of-way might encourage further closures of public rest areas. Interstate Oases are not intended to replace public rest areas, and these concerns are beyond the scope of this effort and have not been addressed in this document.

General Comments

Many commenters expressed overall support for the program. They generally recognized and noted the potential benefits of the program, such as increased opportunities for stopping and using restroom facilities without the obligation to purchase anything, increased parking for heavy trucks to enable drivers to rest for up to 10 hours to satisfy legal requirements,[2] and improved safety due to reductions in driver fatigue accruing from the increased stopping opportunities.

Only four comments received can be characterized as in general opposition to this program. The NFB and the Louisiana Department of Social Services opposed the program because of the potential impacts to blind individuals who operate vending machines at public rest areas under the priority provisions of the Randolph-Sheppard Act (20 U.S.C. 107 *et seq.*) This concern, which is related to potential closures of public rest areas, is beyond the scope of this effort and has not been addressed in this document.

[2] The Federal Motor Carrier Safety Administration (FMCSA) regulates maximum hours of service by certain motor carriers and drivers. The regulations are contained in 49 CFR 395.

The Iowa Department of Transportation (IA DOT) opposed the program, stating a lack of need for it in view of the existing Specific Services Signing program for food, gas, and lodging, and the anticipated pressure on the agency to participate in the program if it is established. One individual opposed the program on the basis of concerns that truck stops are ''scary places'' for females. The FHWA believes that the eligibility criteria will result in various types of establishments, not just truck stops, being designated as Interstate Oases and that the States will assure that designated facilities provide a reasonable degree of safety and comfort for all users.

The AASHTO, AHAS, and Minnesota Department of Transportation (MN DOT) suggested that the policy should put more emphasis on the safety benefits of the program in providing for truck parking and driver rest. In response, the FHWA has added a paragraph to the program and policy to clarify its purpose.

The NACE expressed concern about the possible impacts of the program on local road agencies such as county governments, in terms of heavy truck traffic on local roads to access an Oasis, added workload for the local government if it is involved in the review and decisionmaking process for designation of a facility as an Oasis, and possible costs for trailblazing signs along local roads. The FHWA believes that States electing to participate in the Interstate Oasis program will work with their local government agencies as appropriate to ameliorate any of these potential impacts associated with local roads.

Comments on Eligibility Criteria

Maximum Distance from Interchange: There was not a clear consensus among the commenters regarding the proposed normal maximum distance of 3 miles from an interchange. Ten commenters were in favor of that distance while eight stated a preference for 1 mile, three suggested ½ mile, two favored some unspecified distance less than 3 miles, and one preferred some unspecified distance greater than 3 miles. Most commenters supported flexibility for States to extend the maximum distance in unusual circumstances, such as in very sparsely developed rural areas where the nearest eligible facility is not within 3 miles from the exit but road users would nevertheless benefit from the opportunity to park, use rest rooms, and rest to reduce fatigue, even if they must travel more than 3 miles off the Interstate highway to reach the Oasis. Many who supported the flexibility to extend the distance beyond 3 miles recommended signs on the ramp indicating the mileage to the Oasis and trailblazing signs along the access highway.

The FHWA believes that 3 miles is a reasonable maximum distance under most conditions and retains 3 miles as the normal maximum. The FHWA also believes the public will benefit from allowing extensions of this distance in some cases and therefore has added a provision to allow the States to consider greater distances, in 3-mile increments up to 15 miles, in such unusual rural circumstances. This approach is similar to that allowed for eligibility in the Specific Service Signing program. Distances on ramp signs and trailblazing on the access route are discussed under the Signing heading.

Adequacy of Access Route to Oasis: The draft policy stated that an Oasis facility must be safely and conveniently accessible, as determined by an engineering study, via highways that are unrestricted as to vehicle weight or type, size, or weight. In response to one of the questions posed in the February 27, 2006, notice, the majority of commenters indicated that more specific criteria should be stated for the States to use in their engineering studies to assess the safety and convenience of the access route.

The FHWA agrees and has modified the policy to indicate that the engineering study should take into consideration the Transportation Research Board's 2003 ''Access Management Manual'' [3] and the applicable criteria of AASHTO's ''Policy on Geometric Design of Highways and Streets'' [4] (Green Book) or, in the case of highways not on the National Highway System, the applicable State design standards. The FHWA believes that these documents contain the proper guidance and discussion of issues to consider for this kind of a study.

The AHAS objected to the draft criterion that the access route be unrestricted as to vehicle type, size, or weight, stating that this implies that current Federal and State size and weight restrictions can be disregarded for travel on access routes to Oases. The

[3] ''Access Management Manual,'' 2003, available for purchase from the Transportation Research Board at Keck Center of the National Academies, 500 Fifth Street, NW, Washington, DC 20001, or online at *http://gulliver.trb.org/bookstore/.*

[4] ''Policy on Geometric Design of Streets and Highways,'' fifth edition, 2004, available for purchase from the American Association of State Highway and Transportation Officials, 444 North Capitol Street, NW, Suite 249, Washington, DC 20001, or online at *https://bookstore.transportation.org/.*

AHAS further stated that this criterion would undermine or pre-empt State authority to preserve certain lower class roads from damage and safety concerns posed by certain heavy trucks.

The FHWA disagrees with that position and believes that the AHAS has misinterpreted the intent of the criterion. The policy intends that, if a State has enacted special restrictions on a particular section of highway or bridge, such as a maximum weight limit or maximum length of vehicle, that is more restrictive than what is legal in the State for unrestricted roads of that class, a facility that is accessible only via that specially restricted section or highway or bridge would not be eligible for designation as an Oasis. Some States may allow certain very heavy trucks to operate only on the Interstate and National Highway systems and not on roads of lesser classification. Such trucks would in many cases still be able to access an Oasis under rules of ''reasonable access'' to facilities for food, fuel, and rest as provided in the Code of Federal Regulations at 23 CFR 658.19, as long as a special weight limit, such as for a structurally substandard bridge, is not posted on the access route. We have clarified the language of the policy, indicating that the facility shall be accessible via a route that an engineering study determines can safely and conveniently accommodate vehicles of the types, sizes, and weights that would be traveling to the facility, and that the study should take into account the rules for reasonable access as per 23 CFR 658.19.

Adequacy of On-Site Circulation and Ingress/Egress: The draft policy also stated that an Oasis facility must have physical site geometry, as determined by an engineering study, to safely and efficiently accommodate all vehicles, including heavy trucks of the size and weight anticipated to use the facility. The majority of commenters indicated that more specific criteria should be stated for the States to use in their engineering studies to assess the safety and efficiency of the site geometry, including driveway access points.

The Minnesota Department of Transportation (MN DOT) recommended that a WB–62 design vehicle [5] be specified for the site assessment. The FHWA agrees with these points and has modified the policy to indicate that the engineering study should take into consideration the Transportation Research Board's 2003 ''Access Management Manual,'' the AASHTO ''Guide for Development of Rest Areas on Major Arterials and Freeways,'' [6] and other pertinent geometric design criteria for vehicles at least as large as a WB–62. These documents contain appropriate guidance for assessment of existing sites as well as design of new sites, and the WB–62 is the most commonly used truck size for geometric design.

Number of Parking Spaces: Seven commenters indicated that States should be given total flexibility to decide on a case-by-case basis how many parking spaces should be required for various vehicle types to qualify as an Oasis. However, 15 commenters stated that the determination of adequacy should be guided by the national criteria. Of those 15, most favored a formula-based approach rather than specific minimum numbers of spaces and some cited the AASHTO ''Guide for Development of Rest Areas on Major Arterials and Freeways'' as containing a well-researched formula for this specific purpose. The formula accounts for traffic volumes on the Interstate, percentage of trucks, length of stay, and other factors affecting demand.

The FHWA agrees with this approach and has modified the policy accordingly. The OOIDA and two States commented that the parking spaces at Oases should be free of charge. Although not specifically stated in the draft policy, that was intended and the FHWA has clarified the policy to specifically state that the parking spaces should be free of charge.

Required Products and Services: The draft policy stated that, to be eligible, a facility should provide a public telephone, food (vending, snacks, fast food, and/or full service), and fuel, oil, and water for automobiles and trucks. One of the questions in the February 27, 2006, notice asked whether there are other products or services that should be considered essential for designation as an Oasis. Some commenters suggested adding requirements, such as picnic tables, pet walk areas, wireless internet, cell phone service, security patrols, electrical power hookups for vehicle heating and air conditioning, etc. A few commenters suggested that requirements for food, fuel, and water should be deleted in the interest of making the Oases more like a public rest area and/or making it easier for potential facilities to qualify. Two States suggested eliminating the requirement for a public phone because of increasing cell phone use. However, the majority of commenters stated that the products and services outlined in the draft policy are appropriate, no others are essential, and individual operators of designated Oases will likely decide on their own to provide additional services or products as determined by the market.

The FHWA has decided to retain the products and services as stated in the draft policy, including public phone, and not add any others. Although cell phone use is increasing rapidly, it is by no means universal and there are many areas where cell phone service is unreliable or unavailable. Further, a public phone remains an essential service for those who do not have a cell phone.

Flexibility to Consider Combined Services of More than One Business: In response to a question posed in the February 27, 2006, notice, commenters were equally divided between allowing and not allowing States the flexibility to consider the products and services of a combination of two or more businesses at an interchange when all the criteria cannot be met by any one business at that interchange. The AASHTO, MISA, and eight State DOTs were among those opposed to this flexibility, while OOIDA, NATSO, and five State DOTs were among those in favor under at least some circumstances. Many of those in favor of flexibility recommended that the businesses be located immediately adjacent to each other and be easily accessible on foot from each other's parking lots without having to cross a public highway, such that a vehicle could park once and easily walk to obtain all services.

The FHWA believes it is in the best interest of the traveling public to allow States this flexibility and has modified the policy accordingly.

Additional State Criteria: The draft policy stated that States may impose additional minimum eligibility criteria beyond those of the national minimums. Several commenters objected to this, stating that allowing States to require the provision of additional products or services or to impose additional minimum requirements for eligibility would unduly limit participation by businesses and compromise uniformity in terms of meeting road user expectations. The FHWA agrees and has modified the policy to preclude States

[5] Information about the WB–62 design vehicle and how it is used in geometric design of highways and intersections is contained in ''Policy on Geometric Design of Streets and Highways,'' fifth edition, 2004, available for purchase from the American Association of State Highway and Transportation Officials, 444 North Capitol Street, NW, Suite 249, Washington, DC 20001, or online at *https://bookstore.transportation.org/*.

[6] ''Guide for Development of Rest Areas on Major Arterials and Freeways,'' third edition, 2001, available for purchase from the American Association of State Highway and Transportation Officials, 444 North Capitol Street, NW, Suite 249, Washington, DC 20001, or online at *https://bookstore.transportation.org/*.

from imposing additional eligibility criteria.

Comments on Signing

Interstate Oasis Name: In the February 27, 2006, notice, one of the questions asked whether the name ''Interstate Oasis'' will be readily understood by the public and identified with the types of service offered, or whether some other name for the facilities would better serve the public. Comments received on this question were nearly evenly divided. Eleven commenters, including AASHTO, favored ''Interstate Oasis'' while ten commenters, including NATSO and OOIDA, favored some other name. Among those favoring something other than ''Interstate Oasis,'' there was a wide variety of suggested names but no consensus. While some suggested that the Utah or Vermont names of ''Rest Stop'' or ''Rest Exit'' should be used, others stated that such names would be confusing because they are very similar to ''Rest Area'' but the facilities are much different from public rest areas. The California and Pennsylvania DOTs expressed concern that the word ''Interstate'' in the program name would preclude its application to non-Interstate freeways.

The FHWA believes that Interstate Oasis will, after an introductory acclimation period, become familiar to and understood by road users. The FHWA also believes the program should be limited, at least initially, to Interstate highways as directed in the SAFETEA–LU Section 1310 language. Therefore the FHWA retains the ''Interstate Oasis'' as the program name and signing designation.

Symbol or Logo: In response to the question about what symbol (logo) should be used to indicate an Interstate Oasis, 15 commenters, including AASHTO and 4 State DOTs, favored the use of some symbol. Eight of those 15 commenters suggested a palm tree, while others suggested a wide variety of different logos. Four of the 15 commenters recommended that the symbol should not be used alone and that it should be accompanied by words as an educational measure until the symbol becomes widely known. Seven commenters, including the AHAS, MISA, and three State DOTs, pointed out that any new symbol for use on official traffic signs cannot be adopted by FHWA unless the Manual on Uniform Traffic Control Devices (MUTCD)[7] is revised to include the new symbol, and that MUTCD revisions can only be made via the rulemaking process outlined in the Administrative Procedure Act (5 U.S.C. 551 et al.). Some commenters also recommended that human factors evaluations be conducted before a new symbol is proposed for addition to the MUTCD, in order to assure that a new symbol is optimized for conspicuity and legibility at freeway speeds.

The FHWA believes that the symbol to represent the Interstate Oasis should be some form of one or more palm trees, as eventually determined by human factors evaluations of various potential designs. However, the FHWA agrees that after such evaluations and refinement, the FHWA would propose to include the symbol in the MUTCD for use on guide signs through the rulemaking process. Therefore, the FHWA has determined that, for initial implementation by States, only the word message ''Interstate Oasis'' should be used on guide signs to indicate an exit with one or more Oasis facilities. The policy has been modified accordingly.

Signing on the Freeway: Several commenters expressed concerns about multiple methods of signing to denote the availability of an Oasis at an exit and the potential for the lack of a single uniform signing method to result in road user confusion or safety impacts. Many commenters specifically objected to the proposed signing option to use a ''patch'' on Specific Service sign business logos to denote designation as an Interstate Oasis. It was noted that the FHWA has already provided Interim Approval for use of a 12-inch circular yellow ''patch'' with the letters ''RV'' on business logos on gas, food, lodging, or camping Specific Services signs for businesses that meet ''RV-friendly'' criteria.[8] The patch is placed partly on the business logo and partly on the blue background of the larger sign panel. Concerns were expressed that extension of this concept to Interstate Oases and possibly for other purposes in the future would unduly clutter the Specific Services signs and compromise sign legibility and understanding by road users.

Also, one of the questions posed in the February 27, 2006, notice asked whether States should have the flexibility to include the name or logo of a business designated as an Oasis on a separate advance sign and, if such sign is provided, should the business be disqualified from having their business logos on any Specific Service signs at the interchange. Most responses to this question indicated that the States should have the flexibility to allow the business name or logo on any separate advance sign indicating availability of an Interstate Oasis at the exit and that the business should not be disqualified from the Specific Services signing program.

In consideration of the comments received and its own experience in signing, the FHWA has revised the final policy to eliminate the patch signing concept and simplify the signing elements. The FHWA has decided that States should not include the names or logos of the Oasis businesses on the separate advance sign, because such elements would lead to significant increases in the potential for information overload, particularly at interchanges with multiple designated Oases. The recommended practice, if adequate sign spacing allows, is for a separate blue sign in advance of the exit containing the exit number and only the words ''Interstate Oasis.'' If there is inadequate sign spacing to enable use of the separate sign, an existing Advance Guide sign or an existing D9–18 series General Services sign for the interchange may have a supplemental blue panel with the words ''Interstate Oasis'' appended above or below it. If Specific Services signing is provided at the interchange, a business designated as an Interstate Oasis that has its logo on a Specific Services sign may include the word ''Oasis'' within its logo panel. This use of words within a business logo is similar to existing provisions in the MUTCD that allow messages within logos such as ''24 Hours,'' ''Diesel,'' etc., and was a suggestion of many commenters as being preferable to the ''patch'' concept. The single word ''Oasis'' is specified rather than the two-word phrase ''Interstate Oasis'' in the interest of legibility, to maximize the size of the letters used within the business logo.

Ramp Signing and Trailblazing: The draft program and policy stated that signing should be provided near the exit ramp terminal and along the cross road to guide road users from the interchange to the Interstate Oasis and back to the interchange. As noted previously in the discussion of maximum distance from the interchange under the Eligibility Criteria heading, there were many comments suggesting that road users should be provided with information about the distance they must travel from the ramp terminal to the Interstate

[7] The MUTCD, approved by the FHWA, is the national standard for all traffic control devices installed on any street, highway, or bicycle trail open to public travel. The MUTCD is available for viewing and printing online at *http://mutcd.fhwa.dot.gov*.

[8] This Interim Approval may be viewed at *http://mutcd.fhwa.dot.gov/res-mem_rvf.htm*.

Oasis, particularly in cases where the Oasis is located more than 3 miles away.

The MUTCD recommends that Specific Service signs on exit ramps should include the distances to the facilities, and the FHWA believes that this practice should be extended to exit ramp signs for Oasis facilities. Accordingly, the FHWA has included language in the final policy to recommend that the distance be included on the ramp signs and on any cross road trailblazing signs that are provided. The FHWA has also made other minor modifications to the language to stipulate the colors and legend size for these signs and clarify that, if the Interstate Oasis is clearly visible from the exit ramp and/or if Specific Services signs containing logos of Oasis businesses are provided on the ramp, ramp signs and trailblazing signs may not be needed.

Private signing: Comments from the NATSO suggested that the policy should clearly indicate that the Interstate Oasis logo may be displayed by designated businesses on their on-site facility and private signs, as well as their advertising media, including billboards. Although only the words ''Interstate Oasis'' will be used to designate a facility until such time as a symbol (logo) is adopted in the MUTCD, the need to limit the use of the official designation to those facilities approved by the State and allowing those facilities to use the designation on their private signs and advertising media is nevertheless still pertinent. The FHWA has added text to the final policy to recommend that States participating in the Interstate Oasis program should enact appropriate legislation or rules to implement these controls.

Comments on Education and Marketing

In the February 27, 2006, notice, we invited comments regarding educational and marketing efforts that may be necessary to familiarize travelers and businesses with the Interstate Oasis program. Nine of the 11 comments on this question stated the opinion that considerable or extensive marketing efforts will be needed. The suggested methods included brochures, radio and television public service announcements, flyer handouts in rest areas, weigh stations, motor vehicle licensing and permitting offices, and including information in State highway maps and commercial maps and atlases. Many commenters noted that the individual States establishing an Interstate Oasis program in their State would be in the best position to provide the educational and marketing efforts, as a part of their routine public relations programs. Commenters also recommended that the trucking industry and travel industry (including such organizations as the American Automobile Association) be involved in the educational and marketing efforts, in view of their established means of communicating with their members. The FHWA agrees with these comments and has added language to the program and policy recommending that educational and marketing efforts be undertaken by participating States, in cooperation with trucking and travel industry partners as appropriate.

Acknowledgement

The FHWA recognizes and appreciates the effort of all parties who provided comments for consideration in the development and finalization of the Interstate Oasis program.

(Authority: Sec. 1305, Pub. L. 105–59, 119 Stat. 1144; 23 U.S.C. 109(d), 315, and 402; 23 CFR 1.32 and 655.603; and 49 CFR 1.48(b).)

Issued on: October 10, 2006.

J. Richard Capka,

Federal Highway Administrator.

The text of the FHWA Interstate Oasis Program and Policy is as follows:

U.S. Department of Transportation

Federal Highway Administration (FHWA)

Final

Interstate Oasis Program and Policy

Purpose

The purpose of the Interstate Oasis program is to enhance safety and convenience for Interstate highway users by allowing States, in accordance with this policy, to designate and provide signing to certain facilities off the freeway that will provide increased opportunities for stopping to rest, using restroom facilities, and obtaining basic services.

Definition of Interstate Oasis

An Interstate Oasis shall be defined as a facility near an Interstate highway but not within the Interstate right-of-way, designated by a State after meeting the eligibility criteria of this policy, that provides products and services to the public, 24-hour access to public restrooms, and parking for automobiles and heavy trucks.

Eligibility Criteria

Interstate Oasis facilities shall comply with laws concerning:

1. The provisions of public accommodations without regard to race, religion, color, age, sex, national origin, or disability; and

2. The licensing and approval of such service facilities.

If a State elects to provide or allow Interstate Oasis signing, there should be a statewide policy, program, procedures, and criteria for the designation and signing of a facility as an Interstate Oasis. To qualify for designation and signing as an Interstate Oasis, a facility:

1. Shall be located no more than 3 miles from an interchange with an Interstate highway, except that:

a. A lesser distance may be required when a State's laws specifically restrict truck travel to lesser distances from the Interstate system; and

b. Greater distances, in 3-mile increments up to a maximum of 15 miles, may be considered by States for interchanges in very sparsely developed rural areas where eligible facilities are not available within the 3-mile limit;

2. Shall be accessible via a route that an engineering study determines can safely and conveniently accommodate vehicles of the types, sizes, and weights that would be traveling to the facility, entering and leaving the facility, returning to the Interstate highway, and continuing in the original direction of travel. The engineering study should take into consideration the processes and criteria contained in the Transportation Research Board's ''Access Management Manual'' [1] (2003 or latest edition) and the applicable criteria of the most recent edition of the AASHTO ''Policy on Geometric Design of Highways and Streets'' [2] (Green Book) or, in the case of highways not on the National Highway System, the applicable State highway design standards. The engineering study should also take into account the provisions for reasonable access by heavy vehicles to facilities for food, fuel, and rest as per 23 CFR 658.19;

3. Shall have physical geometry of site layout, including parking areas and ingress/egress points, that an engineering study determines can safely and efficiently accommodate movements into and out of the site, on-site circulation, and parking by all vehicles, including heavy trucks of the types, sizes, and weights anticipated to use the facility. The engineering study should assume a design vehicle at least

[1] ''Access Management Manual,'' 2003, available for purchase from the Transportation Research Board at Keck Center of the National Academies, 500 Fifth Street, NW., Washington, DC 20001, or online at *http://gulliver.trb.org/bookstore/*.

[2] ''Policy on Geometric Design of Streets and Highways,'' fifth edition, 2004, available for purchase from the American Association of State Highway and Transportation Officials, 444 North Capitol Street, NW., Suite 249, Washington, DC 20001, or online at *https://bookstore.transportation.org/*.

as large as a WB–62 truck.[3] The engineering study should also take into consideration the applicable criteria of the Transportation Research Board's ''Access Management Manual'', the AASHTO ''Guide for Development of Rest Areas on Major Arterials and Freeways'' [4] (2001 or latest edition), and other pertinent geometric design criteria;

4. Shall have restrooms available to the public at all times (24 hours per day, 365 days per year). Restrooms should be modern and sanitary and should have drinking water. The restrooms and drinking water should be available at no charge or obligation;

5. Shall have parking spaces available to the public for automobiles and heavy trucks. The parking spaces should be well lit and should be available at no charge or obligation for parking durations of up to 10 hours or more, in sufficient numbers for the various vehicle types, including heavy trucks, to meet anticipated demands based on volumes, the percentage of heavy vehicles in the Interstate highway traffic, and other pertinent factors as described in formulas contained in the AASHTO ''Guide for Development of Rest Areas on Major Arterials and Freeways'' (2001 or latest edition);

6. Shall provide products and services to the public. These products and services should include:

a. Public telephone;

b. Food (vending, snacks, fast food, and/or full service); and

c. Fuel, oil, and water for automobiles, trucks, and other motor vehicles; and

7. Should be staffed by at least one person on duty at all times (24 hours per day, 365 days per year).

In cases where no single business near an interchange meets all the eligibility criteria, a State policy may allow the criteria to be satisfied by a combination of two or more businesses located immediately adjacent to each other and easily accessible on foot from each other's parking lots via pedestrian walkways compliant with the Americans for Disabilities Act (ADA) and that do not require crossing a public highway.

If a State elects to provide or allow Interstate Oasis signing, any facility meeting the criteria described above shall be eligible for designation as an Interstate Oasis. Statewide criteria shall not impose additional criteria beyond those listed above to qualify for designation as an Interstate Oasis. However, a business designated as an Interstate Oasis may elect to provide additional products, services, or amenities.

Signing

States electing to provide or allow Interstate Oasis signing should use the following signing practices on the freeway for any given exit to identify the availability of an Interstate Oasis:

1. If adequate sign spacing allows, a separate sign should be installed in an effective location with a spacing of at least 800 feet from other adjacent guide signs, including any Specific Service signs. This sign should be located in advance of the Advance Guide sign or between the Advance Guide sign and the Exit Direction sign for the exit leading to the Oasis. The sign should have a white legend (minimum 10 inch letters) and border on a blue background and should contain the phrase ''Interstate Oasis'' and the exit number or, for an unnumbered interchange, an action message such as ''Next Exit''. Names or logos of businesses designated as Interstate Oases should not be included on this sign.

2. If the spacing of other guide signs precludes use of a separate sign as described in item 1 above, a supplemental panel with a white legend (''Interstate Oasis'' in minimum 10 inch letters) and border on a blue background may be appended above or below an existing Advance Guide sign or D9–18 series General Service sign for the interchange.

3. If Specific Service signing (See MUTCD Chapter 2F) is provided at the interchange, a business designated as an Interstate Oasis and having a business logo on the Food and/or Gas Specific Service signs may use a bottom portion of the business's logos to display the word ''Oasis.''

4. If Specific Services signs containing the ''Oasis'' legend as a part of the business logo(s) are not used on the ramp, a sign with a white legend (minimum 6 inch letters) and border on a blue background should be provided on the exit ramp to indicate the direction and distance to the Interstate Oasis, unless the Interstate Oasis is clearly visible and identifiable from the exit ramp. Additional guide signs may be used, if determined to be necessary, along the cross road to guide road users to an Oasis.

A State's policy, program, and procedures should provide for the enactment of appropriate legislation or rules to limit the use of the phrase ''Interstate Oasis'' on a business'' premises, on-site private signing, and advertising media to only those businesses approved by the State as an Interstate Oasis.

Education and Marketing

If a State elects to provide or allow Interstate Oasis signing, the State should undertake educational and marketing efforts, in cooperation with trucking and travel industry partners as appropriate, to familiarize travelers and businesses with the program before it is implemented and during the initial period of implementation.

[FR Doc. E6–17367 Filed 10–17–06; 8:45 am]
BILLING CODE 4910–22–P

[3] Information about the WB–62 design vehicle and how it is used in geometric design of highways and intersections is contained in ''Policy on Geometric Design of Streets and Highways,'' fifth edition, 2004, available for purchase from the American Association of State Highway and Transportation Officials, 444 North Capitol Street, NW., Suite 249, Washington, DC 20001, or online at *https://bookstore.transportation.org/*.

[4] ''Guide for Development of Rest Areas on Major Arterials and Freeways,'' third edition, 2001, available for purchase from the American Association of State Highway and Transportation Officials, 444 North Capitol Street, NW., Suite 249, Washington, DC 20001, or online at *https://bookstore.transportation.org/*.

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Transfer of Federally Assisted Land or Facility

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to transfer federally assisted land or facility.

SUMMARY: Section 5334(g) of the Federal Transit Laws, as codified, 49 U.S.C. 5301 *et seq.*, permits the Administrator of the Federal Transit Administration (FTA) to authorize a recipient of FTA funds to transfer land or a facility to a public body for any public purpose with no further obligation to the Federal Government if, among other things, no Federal agency is interested in acquiring the asset for Federal use. Accordingly, FTA is issuing this notice to advise Federal agencies that New Jersey Transit (NJT) intends to transfer the Union City Bus Maintenance Facility on New York Avenue in Union City, New Jersey, to the City of Union City. The property comprises one entire block and is bounded by Bergenline Avenue on the west, New York Avenue on the east, 29th Street on the north and 27th Street on the south. NJT no longer has a need for, and has not occupied the property for some time. Union City intends to use the property as a department of public works consolidated maintenance and storage facility for its fleet of vehicles, as well as create structured public parking and other uses.

EFFECTIVE DATE: Any Federal agency interested in acquiring the land or facility must notify the FTA Region II Office of its interest by November 17, 2006.

ADDRESSES: Interested parties should notify the Regional Office by writing to Letitia A. Thompson, Regional Administrator, Federal Transit Administration, 1 Bowling Green, Room 428, New York, NY 10004.

FOR FURTHER INFORMATION CONTACT: Hans Point Du Jour, FTA, Region II, (212) 668–2170.

SUPPLEMENTARY INFORMATION:

Background

49 U.S.C. 5334(g) provides guidance on the transfer of capital assets. Specifically, if a recipient of FTA assistance decides an asset acquired under this chapter at least in part with that assistance is no longer needed for the purpose for which it was acquired, the Secretary of Transportation may authorize the recipient to transfer the asset to a local government authority to be used for a public purpose with no further obligation to the Government. 49 U.S.C. 5334(g)(1).

Determinations

The Secretary may authorize a transfer for a public purpose other than mass transportation only if the Secretary decides:

(A) The asset will remain in public use for at least 5 years after the date the asset is transferred;

(B) There is no purpose eligible for assistance under this chapter for which the asset should be used;

(C) The overall benefit of allowing the transfer is greater than the interest of the Government in liquidation and return of the financial interest of the Government in the asset, after considering fair market value and other factors; and

(D) Through an appropriate screening or survey process, that there is no interest in acquiring the asset for Government use if the asset is a facility or land.

Federal Interest in Acquiring Land or Facility

This document implements the requirements of 49 U.S.C. 5334(g)(1)(D) of the Federal Transit Laws. Accordingly, FTA hereby provides notice of the availability of the land or facility further described below. Any Federal agency interested in acquiring the affected land or facility should promptly notify the FTA. If no Federal agency is interested in acquiring the existing land or facility, FTA will make certain that the other requirements specified in 49 U.S.C. 5334(g)(1)(A) through (C) are met before permitting the asset to be transferred.

Additional Description of Land or Facility

The subject building is located at 2701 New York Avenue, Union City, New Jersey, on approximately 3 acres of land. The property comprises one entire block and is bounded by Bergenline Avenue on the west, New York Avenue on the east, 29th Street on the north and 27th Street on the south. The building was built in stages between 1896 and 1928 as a trolley maintenance facility. It has approximately 135,000 square feet of building area overall, with 7 bus bays available for storage and service and is in a deteriorating condition. The structure currently houses the City of Union City Department of Public Works operations, in addition to smaller City offices. Prior to its use by NJT, the site was formerly occupied by Public Service Gas and Electric Company.

Issued on: October 12, 2006.

Anthony G. Carr,

Deputy Regional Administrator.

[FR Doc. E6–17264 Filed 10–17–06; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of applications for modification of special permit.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Request of modifications of special permits (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for special permits to facilitate processing.

DATES: Comments must be received on or before November 2, 2006.

ADDRESS COMMENTS TO: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT:

Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of special permits is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on October 12, 2006.

Delmer E. Billings,

Director, Office of Hazardous Materials, Special Permits & Approvals.

MODIFICATION SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
11650–M	.....	Autoliv ASP, Inc. Ogden, UT.	49 CFR 173.301; 173.302; 178.65–9.	To modify the special permit to allow a failure to occur at a gage pressure less than 2.0 times the test pressure as provided by 49 CFR 178.65(f)(2)(i) or the pressure required to demonstrate a 1.5 times Safety Factor per the USCAR specifications.

MODIFICATION SPECIAL PERMITS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
12030–M	RSPA–1998–3389	East Penn Manufacturing Company, Inc., Lyon Station, PA.	49 CFR 173.159(h)	To modify the special permit to authorize cargo vessel and cargo air as approved modes of transportation.
12046–M	RSPA–1998–3614	University of Colorado at Denver Health Sciences Center Aurora, CO.	49 CFR 171 to 178	To modify the special permit to authorize additional academic/health institutions which are affiliated with UCDHSC and located within a forty mile radius of the Aurora Campus.
12084–M	RSPA–1998–3941	Honeywell International, Inc., Morristown, NJ.	49 CFR 180.209	To modify the special permit to authorize the transportation in commerce of additional Division 2.2 gases in DOT 4B, 4BA and 4BW cylinders.
12207–M	RSPA–1999–5047	EMD Chemicals, Inc., Cincinnati, OH.	49 CFR 171.1(a)(1); 172.200(a); 172.302(c).	To modify the special permit to increase the size of the containers from 250 gallons to 331 gallons and to increase the quantity allowed on a pallet from 24 to 35.
12283–M	RSPA–1999–5767	Interstate Battery of Alaska, Anchorage, AK.	49 CFR 173.159(c)(1); 173.159(c).	To modify the special permit to authorize medium density polyethylene boxes as authorized packaging.
12412–M	RSPA–2000–6827	ChemStation International, Lima, OH.	49 CFR 177.834(h); 172.203(a); 172.302(c).	To modify the special permit to allow the attendance requirements in 49 CFR 177.837(d) for Class 8 materials described as ''Compounds, cleaning liquid.''
14250–M	PHMSA–2006–25473	Daniels Sharpsmart, Inc., Dandenong, Australia.	49 CFR 172.301(a)(1); 172.301(c).	To reissue the special permit originally issued on an emergency basis for the transportation in commerce of a Division 6.2 material in packagings marked within an unauthorized proper shipping name.
14333–M	PHMSA–2006–24382	The Columbiana Boiler Co., Columbiana, OH.	49 CFR 179.300–13(b)	To modify the special permit to authorize the transportation in commerce of additional Division 6.1, Class 8 and other hazardous materials authorized in DOT Specification 4BW cylinder in DOT Specification 110A500W tank care tanks.
14355–M	PHMSA–2006–25012	Honeywell International Inc., Morristown, NJ.	49 CFR 173.31(b)(3); 173.31(b)(4).	To reissue the special permit originally issued on an emergency basis for the transportation in commerce of nine DOT Specification 112 tank cars without head and thermal protection for use in transporting certain Division 2.2 material by extending the date for retrofitting beyond July 1, 2006.

[FR Doc. 06–8748 Filed 10–17–06; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Application for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before November 17, 2006.

ADDRESS COMMENTS TO: Record Center Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT:

Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington DC or at *http://dms.dot.gov.*

This notice of receipt of applications for special permits is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on October 12, 2006.

Delmer F. Billings,

Director, Office of Hazardous Materials Safety, Special Permits & Approvals.

NEW SPECIAL PERMIT

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
14405–N	PHMSA–26003	True Drilling LLC Casper, NY.	49 CFR 173.5a	To authorize the transportation in commerce of certain Class 3 hazardous materials in a truck-mounted meter prover without draining to 10% capacity. (mode 1).
14406–N	PHMSA–26001	Equa-Chlor Longview, WA.	49 CFR 172.203; 179.13; 173.31(c)(1).	To authorize the transportation in commerce of a DOT specification 105J600W tank car having a gross weight on rail of 286,000 pounds, for use in transportation of chlorine, Division 2.3, Posion-Inhalation Hazard/Zone B. (mode 2).
14407–N	PHMSA–25999	ITW Section Decatur, AL	49 CFR 173.304a	To authorize the manufacture, marking, sale and use of a non-DOT specification cylinder to be used for the transportation in commerce of certain Division 2,2 materials. (modes 1, 2, 3, 4).
14410–N		Voltaix, LLC North Branch, NJ.	49 CFR 180.209(a)	To authorize the transportation in commerce of DOT Specification 4BW cylinders that are in dedicated use for trimethylchlorosilane, dimethyldichlorosilane and trimethylsilane service and have been visually inspected instead of hydrostatically tested for periodic requalification. (modes 1. 2).
14411–N		OPW Fueling Components Cincinnati, OH.	49 CFR 173.150	To authorize the transportation in commerce of gasoline nozzles (fueling components) containing the residue of gasoline. (modes 1, 2).

[FR Doc. 06–8749 Filed 10–17–06; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 11, 2006.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 17, 2006 to be assured of consideration.

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0004.
Type of Review: Revision.
Title: Currency Transaction Reports.
Form: FinCEN 104.
Description: Financial institutions file form 104 for currency transaction in excess of $10,000 a day pursuant to 31 U.S.C. 5313(a) and 31 CFR 103.22(a)(b). The form is used by criminal investigators, and taxation and regulatory enforcement authorities, during the course of investigations involving financial crimes.
Respondents: Business and other for profit and not for profit institutions.
Estimated Total Reporting Burden: 7,499,995 hours.
Clearance Officer: Russell Stephenson (202) 354–6012, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183.
OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,
Treasury PRA Clearance Officer.

[FR Doc. E6–17303 Filed 10–17–06; 8:45 am]
BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, § 109(a)(2), that a meeting will be held at the Hay-Adams Hotel, 16th Street and Pennsylvania Avenue, NW., Washington, DC, on October 30, 2006 at 3:30 p.m. of the following debt management advisory committee:

Treasury Borrowing Advisory Committee of The Bond Market Association (''Committee'').

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues, and a working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, § 10(d) and Public Law 103–202, § 202(c)(1)(B) (31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, § 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, § 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, § 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

Treasury staff will provide a technical briefing to the press on the day of the Committee meeting, following the release of a statement of economic conditions, financing estimates and technical charts. This briefing will give the press an opportunity to ask questions about financing projections and technical charts. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Jeff Huther, Director, Office of Debt Management, at (202) 622–1868.

Dated: October 12, 2006.

Emil W. Henry, Jr.,

Assistant Secretary, Financial Institutions.

[FR Doc. 06–8732 Filed 10–17–06; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 06–13]

Privacy Act of 1974; Altered System of Records

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of alteration to a Privacy Act System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Office of the Comptroller of the Currency (OCC) is altering its system of records Treasury/Comptroller .600—Consumer Complaint and Inquiry Information System.

DATES: Comments must be received no later than November 17, 2006. The proposed altered systems will become effective November 27, 2006, unless the OCC receives comments which would result in a contrary determination.

ADDRESSES: You should include OCC and Docket Number 06–13 in your comment. You may submit comments by any of the following methods:

OCC Web Site: http://www.occ.treas.gov. Click on ''Contact the OCC,'' scroll down and click on ''Comments on Proposed Regulations.''

E-mail address: regs.comments@occ.treas.gov.

Fax: (202) 874–4448.

Mail: Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.

Hand Delivery/Courier: 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: All submissions received must include the agency name (OCC) and docket number for this notice. In general, OCC will enter all comments received into the docket without change, including any business or personal information that you provide. You may review comments and other related materials by any of the following methods:

Viewing Comments Personally: You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874–5043.

Viewing Comments Electronically: You may request e-mail or CD–ROM copies of comments that the OCC has received by contacting the OCC's Public Information Room at *regs.comments@occ.treas.gov.*

Docket: You may also request available background documents and project summaries using the methods described above.

FOR FURTHER INFORMATION CONTACT: Frank Vance, Jr., Disclosure Officer, Communications Division, (202) 874–4700, or Harold J. Hansen, Senior Counsel, Administrative and Internal Law Division, (202) 874–4460.

SUPPLEMENTARY INFORMATION: The system notice for the Consumer Complaint and Inquiry Information System was last published in its entirety in the **Federal Register** on July 11, 2005, at 70 FR 39853.

At present, the sixth routine use of records maintained in this system provides for the disclosure of complaint and inquiry information to ''[a] Congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained.'' While continuing to authorize these disclosures, the proposed amendment or alteration of this routine use would extend this authority to the making of comparable disclosures to governmental or tribal organizations that have referred complaints and inquiries to the OCC on behalf of individuals who have sought these organizations' assistance with respect to OCC-regulated entities. An additional routine use would authorize disclosures to governmental or tribal organizations when such an organization is in communication with the OCC concerning a complaint or inquiry it has received concerning the actions of an OCC-regulated entity. These uses of information maintained in this system are consistent with the OCC's Customer Assistance Program in that these disclosures will facilitate and enhance the receipt of public sector assistance by individuals in resolving their complaints and inquiries regarding concerning the actions of OCC-regulated entities.

As required by 5 U.S.C. 552a(r) and Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000, a report of an altered system of records has been submitted to the Committee on Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget.

For the above reasons, the OCC proposes to alter its system of records notice by revising routine use (6), redesignating routine uses (7) and (8) as, respectively, (8) and (9), and adding a new routine use (7) as set forth below:

Treasury/Comptroller .600

SYSTEM NAME:

Consumer Complaint and Inquiry Information System.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Description of change: Remove the current routine uses (6), (7) and (8) and in their place add the revised and new routine uses (6), (7), (8) and (9) to read as follows:

''(6) A Congressional office or appropriate governmental or tribal organization when the information is relevant to a complaint or inquiry referred to the OCC by that office or organization on behalf of the individual about whom the information is maintained;

(7) An appropriate governmental or tribal organization in communication with the OCC about a complaint or inquiry the organization has received concerning the actions of an OCC-regulated entity. Information that may be disclosed under this routine use will ordinarily consist of a description of the conclusion made by the OCC concerning the actions of such an entity and the corrective action taken, if any;

(8) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(9) Third parties when mandated or authorized by statute.''

* * * * *

Dated: October 10, 2006.

Sandra L. Pack,

Assistant Secretary for Management and Chief Financial Officer.

[FR Doc. E6–17300 Filed 10–17–06; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Notice of Rate for Use in Federal Debt Collection and Discount and Rebate Evaluation

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: Pursuant to Section 11 of the Debt Collection Act of 1982, as amended, (31 U.S.C. 3717), the Secretary of the Treasury is responsible for computing and publishing the percentage rate to be used in assessing interest charges for outstanding debts owed to the Government. Treasury's Cash Management Requirements (1 TFM 6–8000) prescribe use of this rate by agencies as a comparison point in evaluating the cost-effectiveness of a cash discount. In addition, 5 CFR 1315.8 of the Prompt Payment rule on ''Rebates'' requires that this rate be used in determining when agencies should pay purchase card invoices when the card issuer offers a rebate. Notice is hereby given that the applicable rate is 4.00 percent for calendar year 2007.

DATES: The rate will be in effect for the period beginning on January 1, 2007, and ending on December 31, 2007.

FOR FURTHER INFORMATION CONTACT: Inquiries should be directed to the Agency Enterprise Solutions Division, Financial Management Service, Department of the Treasury, 401 14th Street, SW., Washington, DC 20227 (Telephone: 202–874–6650).

SUPPLEMENTARY INFORMATION: The rate reflects the current value of funds to the Treasury for use in connection with Federal Cash Management systems and is based on investment rates set for purposes of Pub. L. 95–147, 91 Stat. 1227. Computed each year by averaging Treasury Tax and Loan (TT&L) investment rates for the 12-month period ending every September 30, rounded to the nearest whole percentage, for applicability effective each January 1, the rate is subject to quarterly revisions if the annual average, on a moving basis, changes by 2 percentage points. The rate in effect for the calendar year 2007 reflects the average investment rates for the 12-month period that ended September 30, 2006.

Dated: October 12, 2006.

Gary Grippo,

Assistant Commissioner, Federal Finance.

[FR Doc. 06–8751 Filed 10–17–06; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The TAP will be discussing issues pertaining to increasing compliance and lessening the burden for Small Business/Self Employed individuals.

DATES: The meeting will be held Tuesday, November 7, 2006.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel will be held Tuesday, November 7, 2006 from 3:30 p.m. ET to 4:30 p.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write to Marisa Knispel, TAP Office, 10 Metro Tech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: October 10, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–17290 Filed 10–17–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the AD Hoc Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the AD Hoc Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, November 9, 2006 at 2 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Inez De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be held Thursday, November 9, 2006 at 2 p.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez De Jesus, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: October 10, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–17292 Filed 10–17–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee.

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, November 14, 2006.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 (toll-free), or 718–488–2085 (non toll-free).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Tuesday, November 14, 2006 from 12 p.m. to 1 p.m. ET via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. For information or to confirm attendance, notification of intent to attend the meeting must be made with Audrey Y. Jenkins. Ms. Jenkins may be reached at 1–888–912–1227 or (718) 488–2085, send written comments to Audrey Y. Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201 or post comments to the Web site: *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance.

The agenda will include various IRS issues.

Dated: October 10, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–17294 Filed 10–17–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via teleconference. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, November 1, 2006, at 1 p.m., Eastern Time.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or (414) 231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Wednesday, November 1, 2006, at 1 p.m. Eastern Time via a telephone conference call. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or (414) 231–2360, or write Barbara Toy, TAP Office, MS–1006–MIL, PO Box 3205, Milwaukee, WI 53203–2221, or FAX to (414) 231–2363, or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Barbara Toy. Ms. Toy can be reached at 1–888–912–1227, or (414) 231–2360, or by FAX at (414) 231–2363.

The agenda will include the following: monthly committee summary report, discussion of issues brought to the joint committee, office report, and discussion of next meeting.

Dated: October 4, 2006.

Rena Girinakis,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–17295 Filed 10–17–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance (VITA) Issue Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel VITA Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, November 7, 2006, at 3 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or (414) 231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel VITA Issue Committee will be held Tuesday, November 7, 2006, at 3 p.m., Eastern Time via a telephone conference call. You can submit written comments to the panel by faxing to (414) 231–2363, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, P.O. Box 3205, Milwaukee, WI 53203–2221, or you can contact us at *http://www.improveirs.org.* Public comments will also be welcome during the meeting. Please contact Barbara Toy at 1–888–912–1227 or (414) 231–2360 for additional information.

The agenda will include the following: Various VITA Issues.

Dated: October 10, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–17308 Filed 10–17–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, and Texas)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy

Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, November 14, 2006, at 9:30 a.m. Central Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Tuesday, November 14, 2006, at 9:30 a.m. Central Time via a telephone conference call. You can submit written comments to the panel by faxing to (414) 231–2363, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, PO Box 3205, Milwaukee, WI 53203–2221, or you can contact us at *http://www.improveirs.org.* This meeting is not required to be open to the public, but because we are always interested in community input, we will accept public comments. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 231–2360 for additional information.

The agenda will include the following: Various IRS issues.

Dated: October 10, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–17309 Filed 10–17–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 7 committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Wednesday, November 15, 2006.

FOR FURTHER INFORMATION CONTACT: Dave Coffman at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held Wednesday, November 15, 2006 from 2 p.m. Pacific Time to 3:30 p.m. Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Dave Coffman, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Dave Coffman. Mr. Coffman can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: October 10, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–17310 Filed 10–17–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee November 2006 Public Meeting

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for November 2, 2006.

Date: November 2, 2006.

Time: Public Meeting Time: 10 a.m. to 2 p.m.

Location: United States Mint; 801 Ninth Street, NW.; Washington, DC; 2nd floor.

Subject: Review 2008 Presidential $1 Coin designs, the FY06 CCAC Annual Report, and other business.

Interested persons should call 202–354–7502 for the latest update on meeting time and room location.

Public Law 108–15 established the CCAC to:

- Advise the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advise the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Make recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: Cliff Northup, United States Mint Liaison to the CCAC; 801 Ninth Street, NW.; Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6830.

Authority: 31 U.S.C. § 5135(b)(8)(C).

Dated: October 10, 2006.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. E6–17296 Filed 10–17–06; 8:45 am]

BILLING CODE 4810–37–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Meeting To Finalize Annual Report; Advisory Committee

ACTION: Notice of open meeting to prepare Annual Report—October 23–27, 2006, Washington, DC.

SUMMARY: Notice is hereby given of a meeting of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, evaluate and report to Congress annually on the U.S.-China economic and security relationship. The mandate specifically charges the Commission to prepare an annual report to the Congress ''regarding the national security implications and impact of the bilateral trade and economic relationship between the United States and the People's Republic of China * * * [that] shall include a full analysis, along with conclusions and recommendations for legislative and administrative actions * * *''

Purpose of Meeting: Pursuant to this mandate, the Commission will meet in Washington, DC October 23–27, 2006, to conduct a final review of the 2006 Annual Report to Congress, make final modifications, and formally approve the Report for printing.

Topics to be Discussed: The Commissioners will be considering

Report sections addressing the following topics:

- China's Regional Activities.
- China's Energy Activities.
- China's Enforcement of Intellectual Property Rights and Its Production of Counterfeit Goods.
- China's Financial System and Its Effect on the United States.
- China's Proliferation To and Relationships With North Korea and Iran.
- China's Media Control Activities.
- China's Internal Challenges and Their Impact on China's Actions Affecting Other Nations Including the United States.
- China's Military Modernization.
- The Effect of U.S. and Multilateral Export Controls on China's Military Modernization.
- The Military Balance Across the Taiwan Strait.
- China's WTO Compliance, Industrial Expansion, and Industrial Subsidies and their Effects on the United States.
- China's Impact on the U.S. Auto and Auto Parts Industries.

Date and Time: Monday through Friday, October 23–27, 2006, 9:30 a.m. to 4:30 p.m.

Place of Meeting: On Monday and Tuesday, October 23–24, the meetings will occur in Conference Room 333 of the Hall of the States, 444 North Capitol Street, NW., Washington, DC 20001. On Wednesday, Thursday and Friday, October 25–27, the meetings will occur in Conference Room 385 of the same building. Public seating is limited, and will be available on a ''first-come, first-served'' basis. Advance reservations are not required.

Accessibility Statement:

- The entirety of this Commission meeting will be open to the public.
- Any member of the public is permitted to file a written statement with the Commission. Such statements may be left with the Commission's Executive Director during the meeting, or mailed or delivered to him at the Commission's office address: 444 North Capitol Street, Suite 602, Washington, DC 20001.
- The Commission's procedures for conducting its Annual Report preparation meetings do not provide for members of the public to speak during these meetings.
- The drafts prepared for Commissioners' use and consideration during the meeting are available for public inspection in the Commission's offices (see address above) during its normal office hours of 9 a.m. to 5:30 p.m., Monday through Friday. Any member of the public may request copies of any of these materials, which shall be provided at the Commission's actual cost for photocopying—10 cents per page—with payment to be made in cash in advance.
- During the meeting, at various points the Commission may take breaks from work on its Annual Report to deal with various administrative matters, such as budgetary, scheduling, and personnel matters. Those matters are not subject to the open meeting requirements of the Federal Advisory Committee Act and at those times, all members of the public will be asked to depart the room.
- The circumstances under which the Commission is permitted to use appropriated funds to pay for food or beverages are limited, and this meeting does not qualify. Therefore, Commissioners have paid out of their own pockets for coffee and other refreshments for their consumption during the meeting, and for lunch; these will not be available to guests. Members of the public may obtain refreshments in a carry-out store on the ground floor of the building in which the meeting will be conducted, or may bring refreshments to the meeting from other sources.

FOR FURTHER INFORMATION CONTACT: Kathy Michels, Associate Director, U.S.-China Economic and Security Review Commission, 444 North Capitol Street, NW., Suite 602, Washington, DC 20001; phone 202–624–1409; e-mail *kmichels@uscc.gov.*

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005).

Dated: October 11, 2006.

Kathleen J. Michels,

Associate Director, U.S.-China Economic and Security Review Commission.

[FR Doc. E6–17306 Filed 10–17–06; 8:45 am]

BILLING CODE 1137–00–P

Corrections

Federal Register

Vol. 71, No. 201

Wednesday, October 18, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–69]

Notice of Submission of Proposed Information Collection to OMB; Application for the Transfer of Physical Assets

Correction

In notice document E6–16716 beginning on page 59805 in the issue of Wednesday, October 11, 2006, make the following correction:

On page 59806, in the first column, under the heading **DATES**, ''October 11, 2006'' should read ''November 13, 2006''.

[FR Doc. Z6–16716 Filed 10–17–06; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
October 18, 2006

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for Piperia yadonii (Yadon's piperia); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU34

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Piperia Yadonii* (Yadon's Piperia)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the endangered *Piperia yadonii* (Yadon's piperia) pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 2,306 acres (ac) (930 hectares (ha)) fall within the boundaries of the proposed critical habitat designation. The proposed critical habitat is located in Monterey County, California.

DATES: We will accept comments from all interested parties until December 18, 2006. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by December 4, 2006.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (VFWO), 2493 Portola Road, Suite B, Ventura, California 93003.

2. You may hand-deliver written comments to our Ventura Fish and Wildlife Office, at the above address.

3. You may send comments by electronic mail (e-mail) to *fw8piya@fws.gov*. Please see the Public Comments Solicited section below for file format and other information about electronic filing.

4. You may fax your comments to (805) 644–3958.

5. You may go to the Federal eRulemaking Portal: *http://www.regulations.gov*.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at our VFWO, at the above address (telephone (805) 644–1766).

FOR FURTHER INFORMATION CONTACT: Diane Noda, Field Supervisor, VFWO, at the above address (telephone (805) 644–1766, ext. 319; facsimile (805) 644–3958).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of *Piperia yadonii* habitat, what areas should be included in the designations that were occupied at the time of listing and contain the features that are essential for the conservation of the species and why, and what areas that were not occupied at the listing are essential to the conservation of the species and why;

(3) Our mapping methodology and criteria used for determining critical habitat as well as any additional information on features essential for the conservation of the species;

(4) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) The existence of conservation agreements, management plans, or strategies that should be considered in determining whether to exclude lands from the designation. If the Secretary determines the benefits of excluding lands outweigh the benefits of including them, lands will be excluded from the final critical habitat designation;

(6) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities; and

(7) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Please submit electronic comments to *fw8piya@fws.gov* in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Attn: Yadon's piperia'' in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our VFWO at phone number (805) 644–1766, ext. 333. Please note that the e-mail address *fw8piya@fws.gov* will be closed out at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their names and/or home addresses, etc. but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rational must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service Office at the above address.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

Attention to and protection of habitat is paramount to successful conservation actions. The role that designation of critical habitat plays in protecting habitat of listed species, however, is often misunderstood. As discussed in more detail below in the discussion of exclusions under section 4(b)(2) of the Act, there are significant limitations on the regulatory effect of designation under section 7(a)(2) of the Act. In brief, (1) designation provides additional protection to habitat only where there is a federal nexus; (2) the protection is relevant only when, in the absence of designation, destruction or adverse modification of the critical habitat would in fact take place (in other words, other statutory or regulatory protections, policies, or other factors relevant to

agency decision-making would not prevent the destruction or adverse modification); and (3) designation of critical habitat triggers the prohibition of destruction or adverse modification of that habitat, but it does not require specific actions to restore or improve habitat.

Currently, only 475 species, or 36 percent of the 1,311 listed species in the U.S. under the jurisdiction of the Service, have designated critical habitat. We address the habitat needs of all 1,311 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, the section 10 incidental take permit process, and cooperative, nonregulatory efforts with private landowners. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

In considering exclusions of areas proposed for designation, we evaluated the benefits of designation in light of *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F.3d 1059 (9th Cir 2004) (hereinafter *Gifford Pinchot*). In that case, the Ninth Circuit invalidated the Service's regulation defining ''destruction or adverse modification of critical habitat.'' In response, on December 9, 2004, the Director issued guidance to be considered in making section 7 adverse modification determinations. This proposed critical habitat designation does not use the invalidated regulation in our consideration of the benefits of including areas in this proposed designation. The Service will carefully manage future consultations that analyze impacts to designated critical habitat, particularly those that appear to be resulting in an adverse modification determination. Such consultations will be reviewed by the Regional Office prior to finalizing to ensure that an adequate analysis has been conducted that is informed by the Director's guidance.

On the other hand, to the extent that designation of critical habitat provides protection, that protection can come at significant social and economic cost. In addition, the mere administrative process of designation of critical habitat is expensive, time-consuming, and controversial. The current statutory framework of critical habitat, combined with past judicial interpretations of the statute, make critical habitat the subject of excessive litigation. As a result, critical habitat designations are driven by litigation and courts rather than biology, and made at a time and under a timeframe that limits our ability to obtain and evaluate the scientific and other information required to make the designation most meaningful.

In light of these circumstances, the Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an increasing series of court orders and court-approved settlement agreements, which complying with now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court-ordered designations have left the Service with limited ability to provide for public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals, due to the risks associated with noncompliance with judicially imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, and is very expensive, thus diverting resources from conservation actions that may provide relatively more benefit to imperiled species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA). These costs, which are not required for many other conservation actions, directly reduce the funds available for direct and tangible conservation actions.

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this proposed rule and that clarify the species description and biology provided in the final listing rule. For more information on *Piperia yadonii*, refer to the final listing rule published in the **Federal Register** on August 12, 1998 (63 FR 43100).

Piperia yadonii is a perennial herb in the Orchidaceae (Orchid family), which produces one or two basal strap-shaped leaves that grow from an underground tuber (the storage organ which persists when the species is not present aboveground). *P. yadonii* leaves emerge in late fall or winter, after the soils are saturated by the onset of California's wet season rains. Small tubers produce a single leaf, which may resemble a grass blade when small (Graff 2006, p. 12). Larger tubers produce two basal leaves, often 4 to 6 inches (10 to 15 centimeters (cm)) long and about 1 inch (2 to 3 cm) wide, at maturity. Emergence of the single flowering stalk above ground typically begins in April (Doak and Graff 2001, p. 2). As the inflorescence grows to its full height, usually 8 to 20 inches (20 to 50 cm) tall, the plant's basal leaves wither (Morgan and Ackerman 1990, p. 209). Flowering occurs in the summer, typically from June to August. The average number of flowers recorded on inflorescences in a recent study was 56 (Doak and Graff 2001, p. 3). Similar to other orchid species, only a small proportion of the plants that produce leaves in a given year will produce an inflorescence. Recorded flowering rates for *P. yadonii* plants that have one or more leaves range from 0.4 to 22 percent, and vary by site and year (Allen 1996, unpaginated; Doak and Graff 2001, pp. 14–15; EcoSystems West Consulting Group (Ecosystems West) 2006, pp. 71–72). Like other orchid species, the ability to produce flowering stalks may be a function of tuber size (indicative of energy reserves), rather than age (Wells 1981, pp. 291–293; Rasmussen 1995, pp. 197–200). Consequently, an individual that flowers in one year may not be able to flower in subsequent years.

Piperia yadonii requires pollinators to produce seeds. Flowers that are not visited by pollinators do not produce seed. Flowers that are visited by pollinators and receive self pollen from other flowers on the same plant will produce seeds, although they produce

significantly fewer seeds than result from cross pollinations between plants. This is an expression of inbreeding depression in seed set (Doak and Graff 2001, pp. 12–15). The presence of inbreeding depression in later stages, such as seed germination and establishment, has not been studied in *P. yadonii*. In Monterey pine (*Pinus radiata*) forest habitats, the most abundant insects that have been collected and observed visiting *P. yadonii* flowers are nocturnal short-tongued moths in the families Pyralidae, Geometridae, Noctuidae, and Pterophoridae. Six moth species in these families had *Piperia yadonii* pollen attached to their bodies, confirming that they transport, and can potentially transfer, pollen between flowers (Doak and Graff 2001, pp. 8–25). Nocturnal moths are a commonly reported pollinator of other *Piperia* species (Ackerman 1977a, pp. 256–257). None of the nocturnal moth visitors are thought to be rare. Of the moths carrying *P. yadonii* pollen, two species are known to be generalist feeders in the larval stage and are found on a variety of native plants and agricultural crops. Three species have more exclusive larval feeding habits, having been recorded on native shrubs (e.g., coyote brush (*Baccharis pilularis*); California lilac (*Ceanothus spp.*)) and members of the mint family (*Lamiaceae*) (Doak and Graff 2001, pp. 8–25; Graff 2005). A bumble bee (*Bombus* sp.) and one mosquito (species unknown) were also collected among *P. yadonii* flowering plants and had pollen attached to their bodies (Doak and Graff 2001, pp. 8–25; Graff 2005). Bumblebees have been identified as a diurnal visitor by other observers, as well (Yadon 2001, unpaginated). In maritime chaparral, rates of insect visitation to *Piperia yadonii* populations were so low that no pollinator data was collected (Doak and Graff 2001, pp. 8–37). Nonnative earwigs (*Forficula auricularia*) have been documented to consume substantial amounts of pollen from *P. yadonii* flowers in several populations found in Monterey pine forest (Doak and Graff 2001, p. 9). It is not known if this pollen theft results in depressed seed set.

Each successfully maturing seed capsule of *Piperia yadonii* can contain hundreds of seeds, so a single plant can produce several thousand seeds (Doak and Graff 2001, pp. 13–31). Orchid seeds are typically minute, with a large volume of air compared to the size of the embryo. These attributes make the seeds particularly buoyant, promoting wind dispersal (Healey et al. 1980, pp. 508, 516; Rasmussen 1995, pp. 7–10). The distance seeds routinely travel is unknown. In a study of an epiphytic (tree growing) orchid, most seeds landed within meters of the plant (Ackerman et al. 1996, pp. 195–197). However, others have noted that orchids may be one of the earliest colonizers of new island habitats hundreds of kilometers from other land masses, suggesting that occasional very long distance dispersal can occur (Healy et al. 1980, p. 516). Data on many terrestrial orchids indicates low genetic differentiation between populations, suggesting that either seeds or pollen are moving between populations (Ackerman 1997b).

In general, orchid seeds lack a sufficient internal food source to sustain a germinating seedling. Instead, their nutritional needs are fulfilled by an association with a soil fungus (a mycorrhizal association) (Hadley 1982, pp. 96–101). Nothing specific has been published on the mycorrhizal fungal symbionts of *Piperia yadonii*, nor their distribution in the forest and maritime chaparral soils where this orchid grows. In other temperate North American orchid species, the primary fungal associates are described as belonging to the genus *Rhizoctonia* or being *Rhizoctonia*-like fungi (Hadley 1982, pp. 96–99; Hadley and Pegg 1989, pp. 61–63). The specificity of the association between orchids and their mycorrhizal fungi is a field of active study (e.g., Otero et al. 2002, pp. 1852–1858). No broad consensus is apparent on whether or not the distributions of temperate North American orchids might be limited by their dependence on specific fungal symbionts. Once the mycorrhizal association between the orchid seed and its fungal partner is established, the orchid tuber continues to develop underground. If not established, orchid seeds typically fail to germinate or seedlings die at an early subterranean phase of development (Rasmussen and Whigham 1998, pp. 61–63). The length of time needed for the subterranean *P. yadonii* tuber to develop, prior to the emergence of the first leaf above ground, is unknown. In other orchid species, this subterranean phase lasts from 1 to 15 years, with 2 to 4 years the most common among those reported (Wells 1981, pp. 282–283; Rasmussen 1995, pp. 197–200; Rasmussen and Whigham 1998, p. 50).

In addition to its essential mycorrhizal fungal associates, *Piperia yadonii* is also affected by other fungal infections (tentatively identified as *Rhizoctonia* spp.) that can result in reproductive failure. In a study of several populations, fewer of the diseased plants set seed, compared to healthy plants, and diseased plants set significantly fewer seed than healthy plants (Doak and Graff 2001, p. 14). Populations differed in their disease incidence. In 2003 at Manzanita County Park, of the 100 flowering individuals sampled, 94 percent appeared affected by disease and consequently set no to little fruit (2 to 4 small seed capsules) (Graff 2003). Of 90 *P. yadonii* plants that flowered and were examined on the Monterey Peninsula, about 9 percent exhibited tip wilt and complete reproductive failure (EcoSystems West 2006, p. 57).

Orchid seeds are not known to have any physical dormancy mechanisms (Baskin and Baskin 1998, pp. 146–147; 482–484) and are thought to be relatively short-lived, although recent research indicates that some species may form persistent soil seedbanks (Whigham et al. 2006, pp. 24–30). After seed production, mature *Piperia yadonii* plants persist as dormant tubers in the soil through the late summer and early fall. The tuber is the primary form of persistence from year to year and it likely regenerates annually during the growing season, as in related orchids (USFWS 1996, p. 7). Leaves emerge again above ground after the first significant fall rains saturate the soil. No evidence of asexual reproduction through tuber division has been reported or was present in an examination of 13 excavated tubers (Doak and Graff 2001, pp. 12–17).

Following emergence of the first leaf above ground, an unknown number of years are required before the tubers are large enough to flower. Annually, a proportion of the tubers in any given population remain dormant underground, producing neither leaves nor flowers. This prolonged dormancy appears to be fairly common among orchids, and in some species, individuals remain dormant for multiple years before appearing again above ground (Hutchings 1987, pp. 715–716; Kery et al. 2005, pp. 311–319). We have no demographic data on the proportion of plants that actually reach flowering size in their lifetime or the average number of years an individual may flower in a life time. The lifespan of *Piperia yadonii* has not been studied. Few studies of other temperate terrestrial orchids have tracked populations for a decade or more; those that have, note that some individuals continued to appear above ground for the duration of the 8 to15 years of study (Wells 1981, pp. 289–292; Hutchings 1987, pp. 719–720; USFWS 1996, p. 9).

Within occurrences, *Piperia yadonii* plants often grow in dense clusters, sometimes containing hundreds of

plants. Up to 70 plants per square meter were recorded during a habitat characterization in Monterey pine forest (EcoSystems West 2006, p. 55). Allen (1996, unpaginated) noted that the continuous canopy of Monterey pine forest enables more continuous plant aggregations than maritime chaparral, where the chaparral shrubs are separated by bare ground.

The recorded range of *Piperia yadonii* extends from the hills around Prunedale and in the Elkhorn Slough watershed, south to the Palo Colorado Canyon area of the Big Sur coast, in northern Monterey County, California. This is the same geographic range known at the time of listing eight years ago (63 FR 43100). Surveys conducted within this range since that time have provided more detailed information on the distribution of plants at specific locations and about annual variability in plant expression above ground.

Allen (1996, unpaginated) estimated that about 70 percent of the total known population of *Piperia yadonii* is found near the center of this range in the Monterey pine forest of the Monterey Peninsula. Recent surveys on the Monterey Peninsula identified greater concentrations of *P. yadonii* in forested areas of the Monterey Peninsula (Zander Associates and WWD Corporation 2004, all pp.; EcoSystems West 2005, p. 3), so the proportion of plants in that area may be greater. While censuses of comparable detail to those recently conducted on the Monterey Peninsula have not been completed in maritime chaparral, Allen's estimate is not likely to have overestimated the importance of the Monterey Peninsula forests to this species. *P. yadonii* is primarily found in two habitat types, central maritime chaparral and Monterey pine forest. It also grows in the Bishop Pine—Gowen cypress (*Pinus muricata—Cupressus goveniana* ssp. *goveniana*) forest community which occurs within the Monterey pine forest on the Monterey Peninsula and at Point Lobos Ranch.

Piperia yadonii is present in some locations where disturbance has occurred previously, such as abandoned dirt roads, old trails or trail margins, and cut slopes created by past road construction (Allen 1996, unpaginated; Doak and Graff 2001, pp. 4–5; Graff et al. 2003), but that are not affected by ongoing foot and vehicle traffic. Graff (2006, p. 5) has noted that when surrounding forest canopies or undergrowth is dense, P. yadonii may be primarily found along trails and abandoned roads, presumably in response to greater available light levels.

The primary threats to *Piperia yadonii* are loss and fragmentation of habitat from commercial, agricultural, residential, and intensive recreational development (e.g., golf courses, manicured ball fields). The historical distribution of *P. yadonii* prior to being described in 1990 is unknown, but it likely included much of the historical extent of the Monterey pine forest where the species is presently known to occur. Logging of the Monterey pine forest began in the late 1700s with the arrival of the Spanish in the Monterey Bay area; over the last 200 years, the forest continued to be logged and converted to agriculture and other human uses. Recent estimates of the historical and current extent of Monterey pine forest indicate that 37 to 50 percent of the Monterey pine forest once found in the Monterey region has been eliminated (Huffman and Associates 1994, p. iii; Jones and Stokes Associates 1994a, pp. 8–14; Monterey County Planning and Building Inspection Department (Monterey County) 2005, p. 3–72). On the Monterey Peninsula, the proportion of Monterey pine forest eliminated is greater. On those marine terraces and old dune soils that underlie most of the Peninsula, less than 20 percent of the historical extent of Monterey pine forest is estimated to remain, much of it in fragmented and increasingly isolated stands (Jones and Stokes Associates 1994a, pp. 14, 34–37).

Although no comparable acreage estimates have been made for maritime chaparral habitats in the northern distribution of *P. yadonii*, these shrublands have been reduced and fragmented by rural residential development and conversion of native vegetation to row crops on deeper valley soils. The extent of maritime chaparral destruction in the Monterey Bay area was recognized and discussed 30 years ago (Griffin 1978, p. 78). To the west of Prunedale, most development is apparent in the valleys, leaving the vegetation on the shallow soils of ridgelines relatively intact, but isolated (aerial photography; Van Dyke et al. 2001, pp. 221, 226–227). North and east of Prunedale, greater amounts of residential development appear to have occurred on the ridgetops. Consequently, maritime chaparral patches exist there as smaller fragments than they do to the west (mapping by Van Dyke and Holl 2003).

Maritime chaparral in the Elkhorn-Prunedale region of Monterey County is also changing as a result of plant succession and an absence of fire. A recent study of maritime chaparral sites first sampled 30 years ago found that changes in community composition, seedling abundance, and canopy cover are occurring after a 70-year absence of fire. Shrub diversity appears to be declining and canopy cover is increasing as coast live oak (*Quercus agrifolia*) or large canopied manzanitas become dominant (Van Dyke et al. 2001, pp. 225–227). This conversion is likely to be slower in the shallow ridgetop soils where *Piperia yadonii* occurs than it is on slopes and more mesic (moist) sites, but coast live oak are present now even on these ridgelines (Van Dyke et al. 2001, pp. 226–227). Continued fragmentation and isolation of ridgetop maritime chaparral habitats in a matrix of residential development will reduce the likelihood that fire can be used as a management tool in these habitats in the future.

Other threats that have been identified include invasive nonnative plant species and factors that reduce reproduction, such as herbivory, disease, and mowing for fuel reduction purposes. The most common invasive plant species found in *Piperia yadonii* habitat throughout its range are jubata or pampass grass (*Cortaderia jubata*) and French broom (*Genista monspessulana*). These are large plants that can form high dense canopies, reducing light and space. Jubata grass invades openings in maritime chaparral in the Elkhorn-Prunedale region and the Huckleberry Hill Reserve on the Monterey Peninsula. French broom is more common in Monterey pine forest habitats and was dense in *Piperia yadonii* occurrences at the Naval Postgraduate School and Point Lobos Ranch, when abatement was initiated (Graff 2006, appendices IV, VI; Greening Associates 1999, p. 4). Other invasive nonnative plants documented from occurrences of *P. yadonii* include rattlesnake grass (*Briza maxima*) and iceplant (*Carpobrotus edulis*) (Allen 1996; Doak and Graff 2001, pp. 4–5). Approximately 20 invasive nonnative plant species have been identified spreading in the Monterey pine forests in Monterey County (Rogers 2002, pp. 58–59).

Herbivory of *Piperia yadonii* leaves and flowering stalks by deer and rabbits has been frequently reported (Allen 1996, unpaginated, Yadon 1997; Doak and Graff 2001, pp. 10–17). Deer are abundant on the Monterey Peninsula and reports from a decade ago estimated that herbivory removed about 85 percent of the flowering stalks of uncaged plants (Allen 1996, unpaginated). In a study of reproduction in seven occurrences, herbivory and disease combined caused reproductive failure in about 73 percent of monitored plants (Doak and Graff 2001, p. 17). More recent herbivory estimates from both maritime chaparral and Monterey pine forest range from 0 percent to 78

percent, with the highest herbivory rates (73 percent in 2003, 78 percent in 2005) in the Monterey pine forest (Graff 2006, p. 11, Appendix VI). EcoSystems West (2006, pp. 54–58) reported that about 26 percent of vegetative *P. yadonii* and about 62 to 70 percent of flowering stalks were browsed in Monterey pine forest on the Monterey Peninsula.

Mowing for fuel reduction purposes has repeatedly removed the flowering stalks of some *Piperia yadonii* occurrences in the Monterey Peninsula region (Yadon 1997, 2000, unpaginated; Environmental Science Associates 2004, pp. 3–14, 3–15, 3–16). Expanded fuel breaks are planned for the maritime chaparral in which one occurrence is found at Manzanita Park.

Previous Federal Actions

For more information on previous Federal actions concerning *Piperia yadonii*, refer to the final listing rule published in the **Federal Register** on August 12, 1998 (63 FR 43100). At the time of listing, we found the designation of critical habitat for *P. yadonii* to be not prudent because: (1) There would be no additional benefit beyond listing from doing so, and (2) it would increase the risk of overcollection. In August 2004, we published a recovery plan for *P. yadonii* and four other plant taxa from Monterey County, California (USFWS 2004).

On August 13, 2004, our decision not to designate critical habitat for *Piperia yadonii* was challenged in *Center for Biological Diversity and the California Native Plant Society* v. *Norton* (Case No. C 04–3240 (N.D.Cal.). On December 21, 2004, the Court issued a settlement agreement, in which the Service agreed to submit for publication a proposal to withdraw the existing ''not prudent'' determination together with a new proposed critical habitat determination for *P. yadonii* by October 5, 2006.

Prudency Determination

Section 4(a)(3) of the Act and its implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time a species is listed as endangered or threatened. Our regulations at 50 CFR 424.12(a)(1) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species. In our August 12, 1998 final rule (63 FR 43100), we determined that designation of critical habitat for *P. yadonii* was not prudent based on both reasons. Specifically, we stated that *P. yadonii* occurs predominantly on private lands where Federal involvement is unlikely. Furthermore, we stated that a majority of *P. yadonii* individuals are on lands of a single private landowner, who commissioned the studies that documented the species' range and population status; because this landowner is well aware of the presence and location of the species on its property, there would be no additional benefit to the species from providing the same location information to the landowner.

In addition, we stated that publication of precise maps and descriptions of critical habitat would make these plants more vulnerable to incidents of vandalism which could contribute to the decline of the species and therefore such designation would provide little conservation benefit over that provided by listing. However, in the past few years, several of our determinations that the designation of critical habitat would not be prudent have been overturned by court decisions. For example, in Conservation Council for Hawaii v. Babbitt, the United States District Court for the District of Hawaii ruled that the Service could not rely on the ''increased threat'' rationale for a ''not prudent'' determination without specific evidence of the threat to the species at issue (2 F. Supp. 2d 1280 [D. Hawaii 1998]).

Additionally, in *Natural Resources Defense Council* v. *U.S. Department of the Interior*, the United States Court of Appeals for the Ninth Circuit ruled that the Service must balance, in order to invoke the ''increased threat rationale,'' the threat against the benefit to the species of designating critical habitat (113 F. 3d 1121, 1125 [9th Cir. 1997]).

We have reconsidered our evaluation of the threats posed by vandalism and overcollection in the prudency determination. Since the time of listing in 1998, we have gathered information indicating that populations of *Piperia yadonii* continue to be directly and indirectly affected by destruction and alteration of habitat due to residential development. However, we have no credible information that this species has been threatened from vandalism and overcollection, nor can we say that critical habitat would not be a benefit to the species. Accordingly, we withdraw our previous determination that the designation of critical habitat is not prudent for *P. yadonii*, and determine that the designation of critical habitat is prudent for *P. yadonii*. At this time, we have sufficient information necessary to identify specific areas that contain features essential to the conservation of the species and are, therefore, proposing critical habitat (see ''Methods'' sections below for a discussion of information used in our reevaluation).

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Conservation, as defined under section 3 of the Act means to use and the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point when measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that ''may affect'' critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands. Section 7 is a purely protective measure and does not require implementation of restoration, recovery, or enhancement measures.

To be included in a critical habitat designation, the habitat within the area occupied by the species must first have features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the

primary constituent elements, as defined at 50 CFR 424.12(b)).

Habitat occupied at the time of listing may be included in critical habitat only if the essential features thereon may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2).) Areas outside the geographic area occupied by the species at the time of listing may only be included in critical habitat if they are essential for the conservation of the species. Accordingly, when the best available scientific data do not demonstrate that the conservation needs of the species require additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species at the time of listing. An area currently occupied by the species but was not known to be occupied at the time of listing will likely, but not always, be essential to the conservation of the species and, therefore, typically included in the critical habitat designation.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific data available. They require Service biologists to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat a primary source of information is generally the listing package for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, and other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(2) of the Act, we use the best scientific data available in determining areas that contain features that are essential to the conservation of *Piperia yadonii.* This includes information from the final listing rule; data from research and survey observations published in peer-reviewed articles; reports and survey forms prepared for Federal, state, local agencies, and private corporations; site visits; regional Geographic Information System (GIS) layers, including soil and species coverages; and data submitted to the California Natural Diversity Database (CNDDB). We have also reviewed available information that pertains to the ecology, life history, and habitat requirements of this species. This material included information and data in peer-reviewed articles, reports of monitoring and habitat characterizations, reports submitted during section 7 consultations, our recovery plan, and information received from local species experts. We are not proposing to designate as critical habitat any areas outside the geographical area presently occupied by the species.

The range of *Piperia yadoni* extends from the Los Lomos area near the Santa Cruz County border in the north to approximately 15 miles (25 kilometers) south of the Monterey Penninsula near Palo Colorado Canyon (Morgan and Ackerman 1990, 208–210; Allen 1996, unpaginated). This range has been divided into the following 5 geographic areas for the purposes of recovery planning efforts: (1) The Monterey Peninsula, (2) the area interior of the Monterey Peninsula, (3) northern Monterey County-Prunedale-Elkhorn, (4) the Point Lobos Ranch area, and (5) the Palo Colorado Canyon area (USFWS 2004, pp. 16–26, 50–52). We make reference to these geographic areas when describing the locations of *P. yadoni* populations and lands proposed for critical habitat designation.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features (PCEs) that are essential to the conservation of the species, and within areas occupied by the species at the time of listing, that may require special management considerations and protection. These include, but are not limited to space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The specific PCEs required for *Piperia yadonii* are derived from the biological needs of *P. yadonii* as described in the Background section of this proposal and below.

Space for Individual and Population Growth, Including Sites for Seed Dispersal and Germination

Piperia yadonii depends on adequate space for growth, reproduction between near and far neighbors, and for movement of seeds via wind to unoccupied microsites within populations, to population boundaries, and to new sites. Once dispersed, seeds must settle into sites with characteristics appropriate for germination, including the presence of fungal associates necessary for post-germination development. Maritime chaparral and pine forest communities in which *P. yadonii* and its fungal symbionts occur, exhibit considerable

variability in vegetation density, species composition, and unvegetated gaps such that microsites appropriate for germination and growth are distributed unevenly throughout this mosaic.

Plant communities such as maritime chaparral, Monterey pine forest, and coast live oak woodland are dynamic; in the absence of fire, maritime chaparral succeeds to oak woodland in mesic sites and to low-diversity stands of large old-age manzanitas in drier sites (Van Dyke et al. 2001). The patchy distribution of *P. yadonii* in a given forest or chaparral site in a single year is a reflection of the habitat conditions at that particular time. Habitat sites that contain the same soil characteristics and plant community may become suitable and occupied in future decades as vegetation structure changes due to shrub or tree death and growth or herbivore population sizes or movements. In the same manner, a currently occupied location may diminish in value due to these changing conditions. The mosaic of vegetation height, density, and species composition in a given area provides opportunities for gene flow between occurrences of *P. yadonii* through seed dispersal on prevailing winds, and promotes continuation of ecosystem processes, such as the biological interactions necessary to maintain forest canopy and dominant manzanita species, and pollinator assemblages.

Maintaining large and small populations of *Piperia yadonii* is essential for the long-term conservation of the species. Large occurrences of plants and those with higher densities of individuals, are more likely to attract insect pollinators necessary for the production of viable seed and promote gene flow (Kunin 1997, p. 232–233), to withstand periodic extreme environmental stresses (e.g., drought, disease), and may act as important ''source'' populations to allow recolonization of surrounding areas following periodic extreme environmental stresses. Small populations of plants may serve as corridors for gene flow between larger populations, and may harbor greater levels of genetic diversity than predicted for their size (Lesica and Allendorf 1995, pp. 172–175).

Nutritional and Physiological Requirements, Including Light and Soil Requirements

Piperia yadonii occurs in maritime chaparral, a coastal shrub association dominated by endemic species of manzanitas. It is most often found on ridges where exposed sandstone or decomposed granitic soils are shallow and where the dominant manzanita species are low-growing (preliminary measurements indicate an average of 6 inches (15 cm) tall (Graff 2006, pp. 5–6)), allowing *P. yadonii* leaves to receive filtered sun and the inflorescence to extend above the decumbent manzanita branches. In the Elkhorn-Prunedale area, the transition from the low-growing manzanitas of the ridgetops to the surrounding slopes that support deeper soils and higher vegetation canopies is often abrupt (Van Dyke et al. 2001, p. 222).

Although *Piperia yadonii* grows among manzanitas, the specific manzanita species vary among the geographic areas within the species range. Hooker's manzanita (*Arctostyphylos hookeri* ssp. *hookeri*) is the manzanita species with which *P. yadonii* most commonly grows at its most northern distribution in the hills around Prunedale. Pajaro manzanita (*Arctostaphylos pajaroensis*) and chamise (*Adenostoma fasciculatum*) are other dominant shrubs in maritime chaparral there. On and south of the Monterey Peninsula, several manzanitas (*A. hookeri, A. tomentosa,* and *A. glandulosa* ssp. *zacaensis*) are reportedly the dominant shrubs among which it grows (Graff 2006, p. 4; EcoSystems West 2006, p. 64). Other species of manzanitas (*A. glandulosa*) and manzanita hybrids are the dominant low-growing forms at the southernmost occurrence of *P. yadonii* near Palo Colorado Canyon, where Hooker's manzanita is absent (Norman 1995, Graff 2006, p. 4).

In Monterey pine forest, *Piperia yadonii* grows through pine needle duff where the native herbaceous vegetation cover is typically sparse, but diverse, and the Monterey pine canopy is of moderate density (20 to 70 percent, on the Monterey Peninsula), providing filtered sunlight to the forest floor (EcoSystems West 2006, pp. 43, 62–68). The understory plant species most frequently associated with *P. yadonii* in the Monterey pine forest are the perennial herb common sanicle (*Sanicula laciniata*), leafy bent grass (*Agrostis pallens*), and spindly forms of bush monkey flower (*Mimulus aurantiacus*). In a habitat characterization of *P. yadonii* on the Monterey Peninsula, microsites occupied by *P. yadonii* had five times greater cover by other native geophytes (perennial plants with underground storage organs, such as bulbs, tubers or corms), such as golden brodiaea (*Tritelia ixiodes*), blue dicks (*Dichelostemma capitatum*), and mariposa lilies (*Calochortus* spp.) than did microsites lacking *P. yadonii*. Where a maritime chaparral understory exists with scattered pines, *P. yadonii* occurs with other native herbs in gaps between the shrubs. It occurs in similar gaps associated with trails and fire roads in the Bishop pine—Gowen cypress forest stand within the Monterey pine forest on the Monterey Peninsula. It is not typically found in areas with a coast live oak canopy or those with high understory cover of shrubs or vines (EcoSystems West 2006, pp. 50–51, 62–68).

It is likely that in some areas the composition and cover of the Monterey pine herbaceous understory may remain relatively stable for decades due to abiotic factors (e.g., soils, hydrology) and in others these appropriate microhabitats may be ephemeral, disappearing as shrubs establish or increase in size and appearing elsewhere when understory fire; burrowing, trailing, and browsing animals; or shrub death, create new gaps. Areas should be of sufficient size to sustain the plant communities in which *Piperia yadonii* grows, and have appropriate soil moisture, and mycorrhizal associates (Perry et al. 1990, pp. 266–274; Field et al. 1999, pp. 1–3; Noss 2001, pp. 581–586).

Although soils supporting native mycorrhizal symbionts are believed to be a requirement for successful growth in *Piperia yadonii*, this is not a habitat feature easily observable in the field or about which we have specific information. Therefore, we have not included it as a primary constituent element of critical habitat, but assume that mycorrhizal associates will be represented in areas which encompass appropriate vegetation and soils.

Piperia yadonii occupies soils that are primarily characterized as sands, fine sands, and sandy loams by the Soil Conservation Service mapping (United States Department of Agriculture (USDA) 1978, maps; EcoSystems West 2006, pp. 23–26). Soils where *P. yadonii* occurs in the Monterey pine forest are typically characterized as sands, rather than loams and, on the Monterey Peninsula, soils are frequently underlain by a claypan that is 1 to 5 feet (0.3 to 1.5 m) below the surface (USDA 1978, pp. 53–54; Jones and Stokes Associates 1994b, pp. 16–21; EcoSystems West 2006, pp. 23–26)). In a comparison of Monterey pine forest sites on and east of the Monterey Peninsula, *P. yadonii* was present in soils that tended to have lower organic matter, lower nutrient levels, and lower summer soil moisture levels than areas where it was absent (EcoSystems West 2006, pp. 43, 59–61). It is not known if *P. yadonii* actually prefers nutrient-poor soils or if it is

unable to compete with the denser understory vegetation found on more nutrient-rich soils. *P. yadonii* presence is correlated with the drier of the forest soils. It is not found in riparian areas or wetlands on the Monterey Peninsula (Allen, unpaginated; EcoSystems West 2006, pp. 59–61, 64–65).

In the maritime chaparral at its northern distributional limit, *Piperia yadonii* occurs on ridges supporting shallow, weathered, sandy soils with sandstone outcrops, where shrubs are small-statured (USDA 1978, pp. 10–11; Allen 1996 unpaginated; Graff 2006, p. 4). The average shrub canopy height in areas where *P. yadonii* occurs on these ridges is about 6 inches, according to preliminary sampling (Graff 2006, pp 5–6). Soils in this region are typically derived from weathered marine deposits. These sites often support cryptogamic soil crusts (soil surface communities primarily composed of cyanobacteria, lichens, mosses, and algae) (Graff 2006, p. 4). Cryptogamic crusts have been found to increase nutrient availability to plants, reduce erosion, improve plant-water relations, and provide germination and seedling growth sites (USDA 1997, pp. 8–11).

Pollinators

Piperia yadonii also requires pollinators for the production of viable seeds (PCE 2) (Doak and Graff 2001, p. 15). Size and configuration of plant populations, and associated flowering species, may influence the degree to which pollinators are attracted to an area (Sipes and Tepedino 1995, p. 937). The abundance of pollinators may affect reproductive success and persistence of small plant populations (Groom 1998, pp. 487–495). As a group, the reproductive output of orchids is limited by pollinator availability or activity (Tremblay et al. 2005, p. 24) and *P. yadonii* had reduced seed set under natural pollination as compared to manual pollination (Doak and Graff 2001, p. 12–13), an indication that seed set in this species may be pollinator limited. When populations of flowering individuals are small or flowering is restricted to a specific season, the individual plant population may not be able to sustain a population of insect pollinators by itself (Groom 1998, pp. 493–495); therefore, habitats that support a variety of other flowering plant species that provide nectar and pollen sources throughout spring and summer for pollinator populations are likely needed to sustain *P. yadonii* populations.

Doak and Graff (2001, p. 13) found that pollinators of *Piperia yadonii* are predominantly nocturnal, short-tongued moths e.g., in the families Pyralidae, Geometridae, Noctuidae, Pterophoridae) that are most active between the hours of 8:30 p.m. and 10:00 p.m. Some of these pollinator species (e.g., *Agrotis ipsilon, Udea profundalis*) are generalists regarding larval host plants, but others (e.g., *Elpiste marcescaria, Drepanulatrix baueraia*) feed on specific host plants in the larval stage (e.g., coyote bush, wild lilac, respectively). *P. yadonii* exists within several plant communities which sustain insect pollinators. They do so by supporting those flowering plant species needed by pollinators as larval hosts or nectar sources (e.g., coyotebush, wild lilac, and species in the mint family).

Primary Constituent Elements for Piperia yadonii

Pursuant to our regulations, we are required to identify the known physical and biological features (Primary Constituent Elements; PCEs) essential to the conservation of *Piperia yadonii*. All areas proposed as critical habitat for *P. yadonii* are occupied, within the species' historic geographic range, and contain sufficient PCEs to support life history functions for this species.

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that the *Piperia yadonii* PCEs are:

1. A vegetation structure providing filtered sunlight on sandy soils:

a. Pine forest (primarily Monterey pine) with a canopy cover of 20 to 70 percent, and a sparse herbaceous understory on Baywood sands, Narlon loamy fine sands, Sheridan coarse sandy loams, Tangair fine sands, Santa Lucia shaly clay loams and Chamise shaley clay loams underlain by a hardpan.

b. Maritime chaparral ridges with dwarfed shrub (primarily Hooker's manzanita) on Reliz shaly clay loams, Sheridan sandy loams, Narlon sandy loams, Arnold loamy sands and soils in the Junipero-Sur complex, Rock Outcrop-Xerorthents Association, and Arnold-Santa Ynez complex often underlain by rock outcroppings.

2. Presence of nocturnal, short-tongued moths in the families Pyralidae, Geometridae, Noctuidae, and Pterophoridae.

This proposed designation is designed for the conservation of those areas containing PCEs necessary to support the life history functions that were the basis for the proposal. Because not all life history functions require all the PCEs, not all proposed critical habitat will contain all the PCEs.

Units are designated based on sufficient PCEs being present to support one or more of the species's life history functions. Some units contain all PCEs and support multiple life processes, while some units contain only a portion of the PCEs necessary to support the species' particular use of that habitat. Where a subset of the PCEs is present at the time of designation, this rule protects those PCEs and thus the conservation function of the habitat.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available in determining areas that contain features that are essential to the conservation of *Piperia yadonii*. This includes information from the final listing rule; data from research and survey observations published in peer-reviewed articles; reports and survey forms prepared for Federal, state, and local agencies, and private corporations; site visits; regional Geographic Information System (GIS) layers, including soil and species coverages; and data submitted to the California Natural Diversity Database (CNDDB). We are not proposing to designate as critical habitat any areas outside the geographical area presently occupied by the species.

We have also reviewed available information that pertains to the ecology, life history, and habitat requirements of this species. This material included information and data in peer-reviewed articles, reports of monitoring and habitat characterizations, reports submitted during section 7 consultations, our recovery plan, and information received from local species experts.

We are proposing to designate critical habitat on lands within the geographic area occupied by the species at the time of listing and continue to be occupied to date. All proposed units contain habitat with features essential to the conservation of *Piperia yadonii*. We are not proposing any units that are unoccupied.

We used a multi-step process to identify and delineate proposed critical habitat units. First, we mapped and reviewed all known occurrences of *Piperia yadonii*, using the best available information. To be meaningful for the purposes of determining proposed critical habitat units, survey information had to be evaluated in light of the species' life history. Not all individuals produce leaves or flower every year. A below-ground *P. yadonii* tuber can do one of four things in any given year: die, remain dormant, send up leaves but not

flower, or leaf out and flower (Graff 2006, pp. 7 and 8). The length of tuber dormancy is not known, but may be from 1 to 4 years based upon data from other orchid species with a similar life history. The *P. yadonii* flower is diagnostic (with regard to other *Piperia* species), and the proportion of vegetative plants that flower in any given year has been estimated to be from 0.4 percent to 22 percent (Graff 2006, p. 8), with the lowest estimates coming from the chaparral community. Thus it is difficult to precisely determine the extent and abundance of the species both within individual occurrences and throughout its geographic range. Because a positive identification requires a flowering individual, we did not include any occurrences in this proposed designation that had not been identified during the flowering season as *Piperia yadonii*.

Occurrence information included the results of several different types of surveys for the species in various locations within its range. Allen (1996, unpaginated) conducted a two consecutive year survey to better understand the extent of the range, distribution, and overall population size of the species. The Allen (1996) study estimated populations of *Piperia yadonii* within polygons overlaid on topographic maps, but did not indicate areas where the author looked for, but did not find occurrences. Graff (2006, (e.g., pp. 14 and 15) developed a long-term monitoring program for *P. yadonii*, using specific test plots in several areas featuring known occurrences, and georeferenced individual patches of *P. yadonii*. Various other surveys were designed and conducted for specific purposes, including assessing potential land subdivisions/development projects and potential state highway realignment. In the case of Pebble Beach Company lands on the Monterey Peninsula and areas inland from the peninsula, intensive surveys have been conducted in multiple years to aid in planning their Del Monte Forest Preservation and Development Plan.

Next, we evaluated which occupied areas were most likely to contribute to the long-term persistence of the species. We focused on locations with larger occurrences in larger areas of contiguous native habitat (greater than 5 acres (2 ha), *see* below) that are more likely to support intact ecosystem processes and biotic assemblages, provide areas for population growth, and opportunities for colonization of adjacent areas. These areas also have the highest likelihood of persisting through the environmental extremes that characterize California's climate and of retaining the genetic variability to withstand future introduced stressors (e.g., new diseases, pathogens, or climate change). We believe that areas less than 5 acres in size that are surrounded by high-density development (e.g., office parks, residential neighborhoods, commercial buildings, and parking lots) and have become isolated as a result of development may contribute to the conservation of the species through educational, research, and other mechanisms, but overall have a lower potential for long-term preservation and lesser conservation value to the species. Therefore, we did not further consider these areas in the proposal. Although we have not included these areas within the proposed critical habitat designation, because they are, occupied they may still receive indirect protection under the Act.

We then selected sites from among the data set resulting from the above evaluation that contain the features essential to the conservation of *Piperia yadonii*, need special management, and would result in a designation that: (a) Represents the geographic range of the species; (b) captures peripheral populations; (c) includes the range of plant communities and soil types in which *P. yadonii* is found; (d) encompasses the elevation range over which the species occurs; and (e) maintains the connectivity of occurrences that grow on a continuous ridgeline.

Species and plant communities that are protected across their ranges are expected to have lower likelihoods of extinction (Soule and Simberloff 1986; Scott et al. 2001, p. 1297–1300); therefore, essential habitat should include multiple locations across the entire range of the species to prevent range collapse. Protecting peripheral or isolated populations is highly desirable because they may contain genetic variation not found in core populations. The genetic variation results from the effects of population isolation and adaptation to locally distinct environments (Lesica and Allendorf 1995, pp. 754–757; Fraser 2000, pp. 49–51; Hamrick and Godt, pp. 291–295). We also sought to include the range of plant communities, soil types, and elevational gradients in which *P. yadonii* is found to preserve the genetic variation that may result from adaptation to local environmental conditions, documented in other plant species (e.g. see Hamrick and Godt pp. 299–301; Millar and Libby 1991 pp. 150, 152–155). Finally, habitat fragmentation can result in loss of genetic variation (Young et al. 1996, pp. 413–417); therefore, we sought to maintain connectivity between patches of plants distributed along ridgetops.

In determining the extent of lands necessary to ensure the conservation and persistence of this species, we identified all areas which contain those biological and physical features essential to the conservation of the species and are either already protected, managed, or otherwise unencumbered by conflicting use (e.g. undeveloped County or City parks, proposed preservation areas). These populations are most likely to persist into the future and to contribute to the species' survival and recovery. We added ownership categories to the proposed designation in the following manner: First we included undeveloped Federal and State lands, then local agency and private lands with recognized resource conservation emphasis (e.g., lands owned by a conservation-oriented organization, undeveloped County or City parks), and finally other agency and private lands.

As a result of the above process, we did not include all occupied areas in proposed critical habitat. About 13 occurrences or parts of occurrences, beyond those in the Pebble Beach Company's proposed development areas, are known to the Service and are not included in proposed critical habitat: two of these are in the Elkhorn-Prunedale area, 10 are on the Monterey Peninsula or interior of the Monterey Peninsula, and one is in the Point Lobos Ranch area. These were not included in the designation due to the above discussed reasons of small size, lack of surrounding native or appropriate habitat, or because we lacked evidence that they are extant or accurately identified.

Mapping

To map the proposed units of critical habitat, we overlaid *Piperia yadonii* records on soil series data, topographic contours and, where available, vegetation data (e.g., maritime chaparral mapped by Van Dyke and Holl (2003)). Although *P. yadonii* occurs predominately on soils with a substantial sand component (e.g., Arnold and Narlon series), the mapped distribution of such soils extends well beyond the species' range. *Piperia yadonii* also frequently occurs in areas of relatively low relief (typically less than 30 percent slope) along ridge tops or in patches of low relief amid steeper slopes. Using digital elevation data, we mapped the distribution of *P. yadonii* relative to areas with low relief and found that topographic relief, when combined with soils and plant

community data, is a more accurate predictor of the species distribution. Therefore, as a first step, we tailored proposed unit boundaries using geomorphologic features, vegetation data, and soil series data.

In areas dominated by maritime chaparral, such as the Elkhorn-Prunedale area, *Piperia yadonii* occurs primarily among low-growing manzanitas on ridgelines underlain by sandstone. In areas with this geomorphic setting, we determined that digitizing the centerline of the ridgetops where *P. yadonii* occurs and adding 150 meters (492 feet) on either side of the centerline most consistently encompassed known *P. yadonii* occurrences, appropriate soils, and suitable habitat contiguous with known occurrences. The resulting 300 meter-(984 foot-) wide area encompasses the flat or gently sloping ridgetops with low-growing manzanitas and the adjacent slopes supporting maritime chaparral. These ridgetops support the *P. yadonii* occurrences, areas for population expansion, germination sites for wind-dispersed seeds, and appropriate soils. When maritime chaparral did not extend 150 meters from the centerline of the ridgetop, we used closer geographic (e.g., streams) and manmade features (e.g., roads, development boundaries, farmed land) to constrain and more accurately delineate a unit area boundary.

In areas dominated by Monterey pine forest, particularly on the Monterey Peninsula, topographic features are less distinct, and consequently less useful for mapping purposes than in the chaparral-covered hills of northern Monterey County. The Monterey Peninsula's Monterey pine and Gowen cypress-Bishop pine forest stands exist in an expanse of residential and recreational development. Additional residential and recreational development is proposed. As a consequence, on the Monterey Peninsula, we began by delineating the occurrences as defined by the most recent set of comprehensive surveys. We then encompassed the forested stands and fragments that were within existing or proposed conservation or open space areas. In two locations where forest connections still existed between forest stands, we included these to help maintain continued gene flow between Yadon's piperia occurrences. We also used landscape features such as streams, roads, and developed areas to delineate unit boundaries on appropriate soils.

Using the above criteria we identified 8 units that contain features essential to the conservation of *Piperia yadonii*: Three units are in north Monterey County in the Elkhorn-Prunedale area; one is on the Monterey Peninsula; two units are interior from the Monterey Peninsula; one unit is at Point Lobos Ranch; and the most southerly unit is near Palo Colorado Canyon.

When determining proposed critical habitat boundaries, we made every effort to avoid including within the boundaries of the maps contained within this proposed rule developed areas, tilled fields, row crops, golf course turfgrass, buildings, paved areas, and other areas that lack PCEs for *Piperia yadonii*. The scale of the maps prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of all such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, Federal actions limited to these structures and underlying lands would not trigger section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

We are proposing to designate critical habitat in areas that we have determined were occupied at the time of listing, and that contain sufficient primary constituent elements (PCEs) to support life history functions essential for the conservation of the species. Lands are proposed for designation based on sufficient PCEs being present to support the life processes of the species. Some lands contain all PCEs and support multiple life processes. Some lands contain only a portion of the PCEs necessary to support the particular use of that habitat.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas determined to be occupied at the time of listing and to contain the primary constituent elements may require special management considerations or protections. Many of the known occurrences of *Piperia yadonii* are threatened by one or a combination of the following: Habitat fragmentation or loss due to residential, commercial, or recreational development; competition with nonnative plants for light, space, or water; deer and rabbit herbivory; vegetation cutting for fire prevention; changes in light, space, and soil moisture availability due to loss or alteration of adjacent vegetation or forest canopy; changes in fecundity (number and viability of offspring) or genetic variability resulting from loss and fragmentation of populations or potentially low pollinator abundance or activity; disease; and trampling. In maritime chaparral associations of the Prunedale-Elkhorn region where fire has not occurred in many decades, shrub diversity appears to be declining as coast live oak or large canopied manzanitas become dominant (Van Dyke et al. 2001, pp. 225–227). This conversion may be slow in the shallow ridgetop soils where *P. yadonii* occurs, but increasing development surrounding these ridgetops reduces the opportunity to use fire as a management tool should it be deemed necessary to maintain the open, low canopy conditions of *P. yadonii*'s preferred habitat. These threats may require special management and are addressed under the critical habitat unit descriptions below.

Proposed Critical Habitat Designation

We are proposing 8 units as critical habitat for *Piperia yadonii*. The critical habitat areas described below constitute our best assessment at this time of areas determined to be occupied at the time of listing, that contain the primary constituent elements, and that may require special management. Table 1, below, identifies the approximate area exempt from proposed critical habitat for *P. yadonii* pursuant to section 4(a)(3) of the Act. Exemptions are discussed later in this proposed rule under the section *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act.*

TABLE 1.—APPROXIMATE AREA EXEMPT FROM PROPOSED CRITICAL HABITAT FOR PIPERIA YADONII PURSUANT TO SECTION 4(A)(3) OF THE ACT

Location (unit)	Definitional area (acres/ hectares)	Proposed exemption area (acres/ hectares)
Presidio of Monterey, Monterey Peninsula	121 ac (49 ha)	121 ac (49 ha)

The approximate area encompassed within each proposed critical habitat unit is shown in Table 2.

TABLE 2.—CRITICAL HABITAT UNITS PROPOSED FOR PIPERIA YADONII

[Area estimates reflect all land within critical habitat unit boundaries in ac (ha)]

Critical habitat unit and subunit	State	Local agency	Private		Total
			Conservation-oriented NGO	Other private	
Unit 1: Blohm Ranch					128 (52)
subunit 1a	0	0	72 (29)	0	72 (29)
subunit 1b	0	0	56 (23)	0	56 (23)
Unit 2: Manzanita Park					498 (201)
subunit 2a	0	0	231 (93)	0	231 (93)
subunit 2b	0	0	0	83 (34)	83 (34)
subunit 2c	0	183 (74)	0	0	183 (74)
Unit 3: Vierra Canyon					50 (20)
subunit 3a	0	0	0	17 (7)	17 (7)
subunit 3b	12 (5)	0	0	0	12 (5)
subunit 3c	21 (8)	0	0	0	21 (8)
Unit 4: Aguajito					157 (64)
subunit 4a	0	0	0	77 (31)	77 (31)
subunit 4b	0	0	0	80 (32)	80 (32)
Unit 5: Old Capitol	0	0	0	16 (6)	16 (6)
Unit 6: Monterey Peninsula					1059 (428)
subunit 6a	0	0	17 (7)	888 (359)	905 (366)
subunit 6b	0	0	0	9 (4)	9 (4)
subunit 6c	0	0	23 (9)	47 (19)	70 (28)
subunit 6d	0	0	12 (5)	0	12 (5)
subunit 6e	0	19 (7)	29 (12)	15 (6)	63 (25)
Unit 7: Point Lobos	228 (93)	0	97 (39)	0	325 (131)
Unit 8: Palo Colorado	0	0	0	73 (29)	73 (29)
Total	261 (105)	202 (81)	537 (217)	1305 (527)	2306 (931)

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for *Piperia yadonii*, below.

Unit 1: Blohm Ranch

Unit 1 consists of 128 ac (52 ha) of private lands in northern Monterey County in the Elkhorn Slough watershed. It is divided into two ridgeline subunits, separated by intervening agricultural fields. The two subunits support similar plant communities and need similar types of special management; therefore, we discuss them as a unit, except to differentiate land ownership. Unit 1 was known to be occupied at the time of listing (Service 1998) and is currently occupied. It supports one of the two largest occurrences of *Piperia yadonii* plants in the Prunedale-Elkhorn area (several thousand plants (Allen 1996 unpaginated)) and the northernmost occurrences in the known range of the species. This unit contains features that are essential for the conservation of *P. yadonii*, including soils from weathered marine sediments that are classified as an Arnold-Santa Ynez complex on the ridgetops and as Arnold series soils on the slopes (PCE 1). Vegetation is primarily high quality maritime chaparral, with ridgetops dominated by low-growing Hooker's manzanita. This unit provides habitat that supports germination, growth, and reproduction of *P. yadonii*. It contains ridgetop habitat openings, between and among patches of *P. yadonii*, to allow for population expansion and for shifts in population location, should successional vegetation or other changes occur that alter microhabitat conditions. Threats that may require special management in this unit are: the growth and spread of invasive plant species (such as jubata grass); erosion from old roadbeds or past earth-moving activities; removal of the *P. yadonii* occurrence or its associated natural community to accommodate road construction, agricultural, or other facilities (reservoirs, housing sites); and herbivory. Herbivory of flowering stalks was 36 percent in 1999, although predators (mountain lion (*Puma concolor*)) of herbivores were recently sighted on these lands. Jubata grass is present on surrounding properties and continued colonization of these lands by this species is likely. Given that pollen deposition rates and seed production were low for the one site studied in this unit, special management may also be needed to ensure that the abundance of

potential pollinators, such as moths or bees, are maintained or enhanced.

Subunit 1a: This subunit consists of 72 ac (29 ha) of private land owned by the Elkhorn Slough Foundation and The Nature Conservancy. Although restoration and removal of nonnative invasive plant populations are ongoing, a management plan specifically addressing *Piperia yadonii* on properties owned by the Elkhorn Slough Foundation and The Nature Conservancy has not yet been developed (Hayes 2006).

Subunit 1b: This subunit consists of 56 ac (23 ha) of land owned by The Nature Conservancy and managed by the Elkhorn Slough Foundation, or owned and managed by the Elkhorn Slough Foundation. A management plan specifically addressing *Piperia yadonii* has not yet been developed.

Unit 2: Manzanita Park

Unit 2 consists of 498 ac (201 ha) of Monterey County lands north of Prunedale. It is divided into 3 subunits that support similar soils and vegetation communities and need similar types of special management; therefore, we discuss these characteristics for the whole unit. Unit 2 was known to be occupied at the time of listing (Service 1998) and is currently occupied. The lands in this unit support several thousand *Piperia yadonii* plants scattered along the ridges, separated by intervening lower elevation areas of oak woodland, farmed lands, and residential development (Allen 1996 unpaginated; Environmental Science Associates 2003; CNDDB 2005; Graff 2006 appendix IV). This unit contains features that are essential for the conservation of *P. yadonii*, including soils from weathered marine sediments that are classified as an Arnold-Santa Ynez complex on the ridgetops and as Arnold series soils on the slopes and on more undulating topography within Manzanita County Park (PCE 1). Vegetation within the subunits is primarily maritime chaparral, with some coast live oak woodland at the lower elevations. The ridgetops are dominated by low-growing Hooker's manzanita. This unit contains the PCEs for *P. yadonii* that promote germination, growth, and reproduction. This unit encompasses a cluster of three ridgelines primarily oriented east-west that rise in elevation from west to east, and which support *P. yadonii* and which may be close enough for genetic exchange via wind-dispersed seed. In conjunction with the Blohm Ranch unit, this unit will encompass the majority of the *P. yadonii* plants known in the northern half of the range of *P. yadonii*. The ridgetop habitat openings, between and among patches of *P. yadonii*, allow for population expansion and for shifts in population location, should successional vegetation or other changes occur that alter microhabitat conditions. This unit is the central of the three in the Elkhorn-Prunedale geographic area. This unit supports one of the two largest occurrences in the species northern range and they include the largest occupied ridgelines relatively unfragmented by residential development in the heart of the species northern distribution. Due to their relatively unfragmented condition, lands in this unit may support dormant plants among the patches of recorded *P. yadonii*. Threats that may require special management in this unit are: the growth and spread of invasive plant species, such as jubata grass, French broom, and eucalyptus; elimination or further fragmentation of habitat from residential, recreational, or agricultural development; vegetation removal for fuel reduction purposes; disease; and herbivory. Special management may also be needed to ensure the abundance of potential pollinators, such as moths or bees, are maintained or enhanced, to ensure the production of sufficient viable seed.

Subunit 2a: This subunit consists of 231 ac (93 ha) of land owned and managed by the Elkhorn Slough Foundation.

Subunit 2b: This subunit consists of 83 ac (34 ha) of private lands. Some of the lands in this subunit were proposed for a 10 lot subdivision, residential development, and open space designation in 2000 (Mercurio 2000, p. 2); this project may be moving forward in the near future (Schubert 2006).

Subunit 2c: This subunit consists of 183 ac (74 ha) within Manzanita County Park, owned and managed by the County of Monterey. Part of the park has been developed into a sports complex and is not part of the proposed designation. A portion of the park within the proposed unit is used for hiking and equestrian use. Although volunteers have recently begun removing nonnative invasive plants from the park, we are not aware of the existence of any management plan that specifically addresses *Piperia yadonii* on properties owned by Monterey County.

Unit 3: Vierra Canyon

Unit 3 consists of 50 ac (20 ha) consisting primarily of State lands in northern Monterey County north of Prunedale. It is divided into 3 subunits with similarities in vegetation and special management needs. Unit 3 was known to be occupied at the time of listing (Service 1998) and is currently occupied (Childs 2004). The easternmost *Piperia yadonii* occurrences in unit 3 (subunit 3b and 3c) are reported to be small, with fewer than 10 flowering individuals; this likely represents up to several hundred individuals, based on the observed proportion of flowering to vegetative individuals (Doak and Graff 2001). This unit contains features that are essential for the conservation of *P. yadonii*, including the following: lands in this unit support soils from weathered marine sediments that are classified as an Arnold-Santa Ynez complex on the ridgetops and the Arnold series on the slopes (PCE 1). Vegetation is primarily maritime chaparral, with coast live oak woodland in the lower elevation areas. The ridgetops are dominated by low-growing Hooker's manzanita. The lands surrounding these subunits are more extensively developed for residential use, than are those to the west, severing the once continuous maritime chaparral that dominated the ridges. Consequently the subunits are smaller and lack the additional habitat for population expansion found in the other northern units. This unit contains the PCEs for *P. yadonii* that promote germination, growth, and reproduction. It supports the easternmost occurrences of *P. yadonii* in the Elkhorn-Prunedale region, on the northeast periphery of the species' range. Lands in these units have the features that are essential to the conservation of the species. Threats that may require special management in this unit are elimination or further fragmentation of habitat from development; grading or other vegetation removal (e.g., for fuel reduction purposes or roads); and the spread of invasive plant species.

Subunit 3a: This subunit consists of 17 ac (7 ha) of private lands that are overlain by a Pacific Gas and Electric Company easement. The occurrence in this subunit is the largest documented in the unit, numbering several thousand plants (Childs 2004).

Subunit 3b: This subunit consists of 12 ac (5 ha) of State lands (California Department of Transportation (Caltrans)). The lands in this subunit and in subunit 3c were part of a previous study area for a highway alignment. This alignment was eventually excluded from further consideration and the State retains the lands (Robison 2006). We are not aware of any management plan that addresses *Piperia yadonii* on these State properties.

Subunit 3c: This subunit consists of 21 ac (8 ha) of State lands.

Unit 4: Aguajito

Unit 4 consists of 157 ac (64 ha) of private land east of the Monterey Peninsula and north of Jack's Peak County Park. It is divided into 2 subunits separated by lower elevation lands. Unit 4 was known to be occupied at the time of listing (Service 1998) and is currently occupied. *Piperia yadonii* occurs in these subunits on ridgetops, where it grows with Hooker's manzanita (EcoSystems West 2006, p. 61). This unit contains features that are essential for the conservation of *P. yadonii*, including the following: soils in this unit are classified as the Santa Lucia—Reliz Association, where Reliz series soils occur on the ridgetops and Santa Lucia series soils on surrounding slopes (PCE 1). Reliz series soils are characterized as excessively drained shaley clay loams underlain by shale or sandstone (USDA 1978, p. 64). The vegetation in the unit is a mix of Monterey pine forest and maritime chaparral. Griffin (1978, p. 69) commented that this area was one of the only ones in the Monterey Bay area where maritime chaparral grows on shale. He also noted that sandstones exist within the shale beds and produce sandy loam soils. A related species, *Piperia elegans* is more abundant in the surrounding Monterey pine forest (EcoSystems West 2005b, p. 7). This unit provides habitat that support germination, growth, and reproduction. Unit 4 represents one of only two units proposed in the region interior to the Monterey Peninsula. It supports the largest undeveloped easternmost occurrence of *P. yadonii* in the central and southern half of the species range. Its preservation would help avoid range collapse. Threats that may require special management in this unit are fragmentation of habitat from development and the colonization and spread of invasive plant species.

Subunit 4a: This subunit consists of 77 ac (31 ha) of private lands (owned by the Pebble Beach Company). Lands in and/or adjacent to this subunit and subunit 4b are proposed for preservation in the Pebble Beach Company's recent development plan, but the configuration of the preservation areas is not yet determined (Monterey County 2005, pp. 2–89, 2–90).

Subunit 4b: This subunit consists of 80 ac (32 ha) of private lands (owned by the Pebble Beach Company) and proposed for preservation (see above), and 3 ac (1ha) of Monterey County road right-of-way.

Unit 5: Old Capitol

Unit 5 consists of 16 ac (7 ha) of private land (owned by the Pebble Beach Company) east of the Monterey Peninsula. Unit 5 was known to be occupied at the time of listing (Service 1998) and is currently occupied. Surveys in 2005 revealed that the dominant *Piperia* species at this location is *P. elegans*, which number in the thousands; however, several hundred *P. yadonii* co-occur with *P. elegans* throughout the unit (EcoSystems West 2005b, pp. 5–7). This unit contains features that are essential for the conservation of *P. yadonii*, including the Chamise shaley clay loam (PCE 1) soil type. The vegetation is Monterey pine forest and coast live oak woodland. This unit provides habitat that supports germination, growth, and reproduction of *P. yadonii*. It is the only unit proposed between the Monterey Peninsula (Unit 6) and Aguajito (Unit 4) to the east, and therefore provides connectivity between these other two units. Threats that may require special management in this unit are fragmentation or loss of habitat from development, habitat degradation by motorized vehicles and encampments, debris dumping, and competition from nonnative invasive plants. The land in Unit 5 is proposed for preservation in the Pebble Beach Company's recent development plan (Monterey County 2005, pp. 2–89, 2–90).

Unit 6: Monterey Peninsula

Unit 6 consists of 1,058 ac (428 ha) of private and City lands on the Monterey Peninsula. This unit is divided into 5 subunits due to intervening development. Most of the lands surrounding this unit are developed for residential and recreational (golf) use. The similarities among the subunits in soils and vegetation community are discussed here; subunit specific details are discussed below. Unit 6 was known to be occupied at the time of listing (Service 1998) and is currently occupied. It supports the greatest abundance and largest aerial extent of *Piperia yadonii* in the species' range, with close to 100,000 vegetative plants (Zander Associates and WWD Corporation 2004 all pp.; EcoSystems West 2004, pp. 1–9; EcoSystems West 2005a, 2005b all pp.). This unit contains features that are essential for the conservation of *P. yadonii* including sands or sandy loam soils that belong to at least 5 soil series on the Monterey Peninsula unit (Baywood sands, Narlon loamy fine sands, Sheridan coarse sandy loams, Tangair fine sands, and Santa Lucia shaley clay loam). Vegetation in this unit is primarily Monterey pine forest, with maritime chaparral, and Bishop pine/Gowen cypress forest in two subunits (PCE 1). Pollinator observations and collections were made on lands in this unit (PCE 2) (Doak and Graff 2001). This unit provides habitat that supports germination, growth, reproduction, and space for shifts in the location of *P. yadonii*, as microhabitat conditions change. Threats that may require special management in this unit are: Adverse effects from adjacent existing and future development, including the loss of adjacent forest canopy, increased trampling, potential hydrologic changes, overspray of pesticides, the introduction of pathogens or disease, mowing, and the introduction and spread of invasive plant species; continuing high and/or increasing deer populations resulting in high herbivory levels; and increased growth of understory vegetation due to exclusion of wildfire.

Subunit 6a: This subunit consists of 904 ac (366 ha) of private lands owned by the Pebble Beach Company and other private owners, including 80 ac (33 ha) owned by the Del Monte Forest Foundation (DMFF). Protected lands in this subunit include the SFB Morse Botanical Reserve (owned by the DMFF) and the Huckleberry Hill Natural Reserve (easement held by the DMFF). It also includes lands identified in the Pebble Beach Company's most recent development proposal for preservation or conservation: Areas PQR, G, H, I, the Corporate Yard Preservation Area, and Area D (Monterey County 2005). The Department of the Army's Presidio of Monterey is contiguous with the northeastern edge of this subunit; those lands are exempted from this proposed designation, as described later in this rule. Plant communities in the Huckleberry Hill Natural Area and SFB Morse Botanical Preserve are Gowen cypress/Bishop pine forest, maritime chaparral, and Monterey pine forest. The remaining lands support primarily Monterey pine forest. Lands in this subunit support about 90,000 vegetative *Piperia yadonii* plants (Zander Associates and WWD Corporation 2004 all pp.; EcoSystems West 2004, pp. 1–9; EcoSystems West 2005a, 2005b all pp.). Although the DMFF conducts some monitoring and removal of nonnative invasive plant populations, a management plan specifically addressing *P. yadonii* on properties owned by the DMFF has not been developed.

Subunit 6b: This subunit consists of 9 ac (4 ha) of private lands. It is identified in the Pebble Beach Company's most recent development proposal as the

Bristol Curve Conservation Area (Monterey County 2005 Fig. ES–2). Vegetation in this subunit is Monterey pine forest with an herbaceous understory.

Subunit 6c: This subunit consists of 70 ac (28 ha) of private lands, of which about 23 acres (9 ha) are owned by the Del Monte Forest Foundation (DMFF). Lands within this unit are referred to as Indian Village (owned by the DMFF) and, in the Pebble Beach Company's recent development proposal, as Conservation Area K and Preservation Areas J and L (Monterey County 2005 Fig. ES–2). Adjacent lands that are proposed for development are not included in this subunit. The vegetation in this subunit is primarily Monterey pine forest. This subunit supports several thousand *Piperia yadonii* plants. Along with subunit 6b and 6d, it encompasses lands in the westernmost region of the Monterey Peninsula.

Subunit 6d: This subunit consists of 13 ac (5 ha) of private lands owned by the Del Monte Forest Foundation. It encompasses the Crocker Grove, an area of Monterey cypress forest with some adjacent Monterey pine forest (PCE 1). This is the westernmost subunit on the peninsula, closest to the ocean, and lands it occurs on are mapped as marine terrace 2 (Jones and Stokes 1994b, p. 11). It has been documented to support about 50 flowering *Piperia yadonii* plants, which typically equates to several hundred vegetative plants.

Subunit 6e: This subunit consists of 44 ac (18 ha) of private lands and 19 ac (7 (ha) owned by the City of Pacific Grove. About 29 ac (12 ha) of the private lands are owned by the Del Monte Forest Foundation. Lands within this unit are referred to as the Navajo tract and as Preservation Area B in the Pebble Beach Company's most recent development proposal (Monterey County 2005 Fig. ES–2). The vegetation in this subunit is a mix of coast live oak and Monterey pine forest (PCE 1). It is the northernmost unit we are proposing on the Peninsula. It supports several hundred plants of *Piperia yadonii.*

Unit 7: Point Lobos Ranch

Unit 7 consists of 228 ac (92 ha) of State land south of the Monterey Peninsula on the Big Sur coast, and 97 ac (39 ha) owned by the Big Sur Land Trust that are intended to be added to the State Parks system in the future. Unit 7 was known to be occupied at the time of listing (Service 1998) and is currently occupied. The lands in this unit support several thousand *Piperia yadonii* plants (Graff *et al.* 2003, Nedeff *et al.* 2003). This unit contains features that are essential for the conservation of *P. yadonii*, including the sandy loam soils in the Sheridan, Narlon, Junipero-Sur complex series, underlain by granitic substrates from which terrace sands have been eroded (Griffin 1978, p. 69, USDA 1978 map no. 35). Vegetation is a composite of Monterey pine forest, maritime chaparral, Gowen cypress-Bishop pine forest, with some redwood forest. *Piperia yadonii* occurs in this unit in Monterey pine forest; on exposed granitic soils in maritime chaparral dominated by Hooker's manzanita; and under a canopy of Monterey pine, Gowen cypress, and redwood (*Sequoia sempervirens*) (PCE 1). This unit provides habitat that supports germination, growth, and reproduction of *P. yadonii*, as well as population expansion and shifts in population location. This unit supports *P. yadonii* growing on soils not found in other units and in association with a varied mix of forest tree species. This is the second highest unit in elevation and supports the largest occurrence of *P. yadonii* south of the Monterey Peninsula. Threats that may require special management in this unit are: The growth and spread of invasive plant species, such as French broom; loss of habitat from residential development; and erosion. Access by park visitors may need to be managed to avoid trailing in Monterey pine forest populations and use of herbicides should be controlled to avoid or minimize effects to *P. yadonii*.

Unit 8: Palo Colorado

Unit 8 consists of 73 ac (29 ha) of private land on the Big Sur coast. Unit 8 was known to be occupied at the time of listing (Service 1998) and is currently occupied. The lands in this unit were reported to support 38 flowering *Piperia yadonii* plants (Norman 1995) which likely represents a population of several hundred to several thousand vegetative individuals, based on the observed proportions of flowering to vegetative individuals (Doak and Graff 2001). This unit contains features that are essential for the conservation of *P. yadonii* including the following: A mix of sandy loam soils, shallow soils less than 20 inches deep, and rock outcrops classified as the Junipero-Sur complex and Rock Outcrop-Xerorthents Association (PCE 1) (USDA 1978, p. 38). Vegetation in this unit has been described as a unique association of maritime chaparral, with low-growing hybrid *Arctostaphylos glandulosa* as the dominant manzanita under which *P. yadonii* occurs (Norman 1995). This unit provides habitat that supports germination, growth, and reproduction of *P. yadonii*. This unit supports the most southern and highest elevation (1000 to 1400 feet (300 to 430 m)) occurrence in the species' range. Threats that may require special management in this unit are habitat fragmentation and habitat degradation from road and trail grading and from future development, such as the introduction and spread of nonnative plants, removal of native vegetation, erosion, and hydrologic changes.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' However, recent decisions by the 5th and 9th Circuit Court of Appeals have invalidated this definition (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir 2004) and *Sierra Club v. U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir 2001)). Pursuant to current national policy and the statutory provisions of the Act, destruction or adverse modification is determined on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. This is a procedural requirement only. However, once a proposed species becomes listed, or proposed critical habitat is designated

as final, the full prohibitions of section 7(a)(2) apply to any Federal action. The primary utility of the conference procedures is to maximize the opportunity for a Federal agency to adequately consider proposed species and critical habitat and avoid potential delays in implementing a proposed action as a result of the section 7(a)(2) compliance process, should those species be listed or the critical habitat designated.

Under conference procedures, the Service may provide advisory conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The Service may conduct either informal or formal conferences. Informal conferences are typically used if the proposed action is not likely to have any adverse effects to the proposed species or proposed critical habitat. Formal conferences are typically used when the Federal agency or the Service believes the proposed action is likely to cause adverse effects to proposed species or critical habitat, inclusive of those that may cause jeopardy or adverse modification.

The results of an informal conference are typically transmitted in a conference report; while the results of a formal conference are typically transmitted in a conference opinion. Conference opinions on proposed critical habitat are typically prepared according to 50 CFR 402.14, as if the proposed critical habitat were designated. We may adopt the conference opinion as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). As noted above, any conservation recommendations in a conference report or opinion are strictly advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, compliance with the requirements of section 7(a)(2) will be documented through the Service's issuance of: (1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or (2) a biological opinion for Federal actions that may affect, but are likely to adversely affect, listed species or its critical habitat.

When we issue a biological opinion concluding that a project is likely to result in jeopardy to a listed species or the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid jeopardy to the listed species or destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where a new species is listed or critical habitat is subsequently designated that may be affected and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect *Piperia yadonii* or its designated critical habitat will require section 7 consultation under the Act. Activities on State, tribal, local or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act or a permit under section 10(a)(1)(B) of the Act from the Service) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local or private lands that are not federally-funded, authorized, or permitted, do not require section 7 consultations.

Application of the Jeopardy and Adverse Modification Standards for Actions Involving Effects to Piperia Yadonii and Its Critical Habitat

Jeopardy Standard

The Service has applied an analytical framework for *Piperia yadonii* jeopardy analyses that relies heavily on the importance of core area populations to the survival and recovery of *P. yadonii*. The section 7(a)(2) analysis is focused not only on these populations but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of *Piperia yadonii* in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, if a proposed Federal action is incompatible with the viability of the affected core area population(s), inclusive of associated habitat conditions, a jeopardy finding is considered to be warranted, because of the relationship of each core area population to the survival and recovery of the species as a whole.

Adverse Modification Standard

For the reasons described in the Director's December 9, 2004 memorandum, the key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species. Generally, the conservation role of *P. yadonii* critical habitat units is to support viable core area populations.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of the species.

Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that the conservation value of critical habitat for *Piperia yadonii* is appreciably reduced. Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore result in

consultation for *P. yadonii* include, but are not limited to:

(1) Actions that would remove or destroy *Piperia yadonii* plants or remove flowering stalks. Such activities could include, but are not limited to, grading, plowing, mowing, burning during the growing or flowering season, driving over plants, unrestricted creation of trails through occurrences, unrestricted mechanical weed control, and/or unlimited use of herbicides.

(2) Actions that would increase the establishment and spread of invasive nonnative species in *Piperia yadonii* habitat or increase the invasability of the plant community within which *P. yadonii* occurs. Such activities could include, but are not limited to: grading; plowing; road building and maintenance; introducing seeds or other propagules of invasive species during erosion-control practices and/or landscaping practices; isolating habitat patches within a matrix of residential or other development; off road vehicle traffic; and/or livestock grazing. These activities could encourage the establishment and spread species such as French broom or jubata grass, which can compete with *P. yadonii* for light and other resources.

(3) Actions that would directly remove or destroy the low-growing maritime chaparral and Monterey pine forest plant communities on which *Piperia yadonii* depends. Such activities could include, but are not limited to: road construction; grading; development; plowing; burning out-of-season or too frequently; and/or off-road vehicle traffic. These activities could reduce or eliminate space and the appropriate light and hydrologic conditions for *P. yadonii* germination, growth, and reproduction.

(4) Actions that would indirectly reduce the presence of low-growing manzanitas in maritime chaparral, openings in maritime chaparral, or forested areas with a diverse assemblage (but low cover) of native herbs. Such activities could include, but are not limited to: those that isolate or fragment habitat through development; road construction that promotes such development; exclusion of fire; reduced opportunity for prescribed burns during the fall season; and/or increased potential for human-caused fire during the growing season of *Piperia yadonii*. These activities could result in less diverse, consistently old-age maritime chaparral stands with fewer openings or areas that support low-growing manzanitas and reduced abundance of forest patches with filtered light canopies and low cover by vines and shrubs.

(5) Actions that would alter the soil hydrology in *Piperia yadonii* habitat. Such activities could include, but are not limited to: grading or excavation that disrupts subsurface hardpan layers that influence soil saturation; conversion to agricultural lands; development of golf courses, ball fields, or other areas that require irrigation; and/or development which increases impermeable surfaces. These activities could result in soils that do not retain sufficient moisture through the growing season, excessive irrigation that influences *P. yadonii* through altered water availability or indirectly through changes in associated vegetation, and changes in drainage patterns which influence soil saturation during the growing season.

(6) Actions that would increase the abundance of herbivores of *Piperia yadonii* leaves and flowers (such as deer and rabbits) or encourage the spread and abundance of nonnative species that consume pollen (e.g., nonnative earwigs). Such activities could include, but are not limited to: residential or commercial development that introduces landscaping that favors nonnative garden invertebrates but not their predators (e.g., lizards); and/or fencing that excludes predators, but not herbivores. These actions could result in increased levels of herbivory of *P. yadonii* leaves and flowers and correspondingly reduced levels of reproduction.

(7) Actions that would diminish the variety or abundance of pollinators needed for seed set in *Piperia yadonii*. Such actions could include, but are not limited to: removal of the native maritime chaparral and forest plant communities within which *P. yadonii* grows, night-lighting adjacent to areas supporting *P. yadonii*, and/or unlimited pesticide applications. These actions could indirectly reduce reproduction in *P. yadonii* through reduced pollen transfer and could alter gene flow between occurrences through changes in pollinator composition.

All of the units proposed as critical habitat, as well as that portion of one which has been exempted under 4(a)(3) of the Act contain features essential to the conservation of *Piperia yadonii*. All units are within the geographic range of the species and all units were occupied by the species at the time of listing. In some cases, the level of detail regarding the precise location of plants within the units was not documented until after the listing. All units are occupied by *P. yadonii*. Because all proposed critical habitat units are occupied, Federal agencies already consult with us on activities in areas currently occupied by *P. yadonii*, or if the species may be affected by their actions, to ensure that their actions do not jeopardize the continued existence of *P. yadonii*.

Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act

Section 4(a)(3)

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resource Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes an assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management, fish and wildlife habitat enhancement or modification, wetland protection, enhancement, and restoration where necessary to support fish and wildlife and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.

We consult with the military on the development and implementation of INRMPs for installations with listed species. INRMPs developed by military installations located within the range of the proposed critical habitat designation for *Piperia yadonii* were analyzed for exemption under the authority of 4(a)(3) of the Act.

The Presidio of Monterey (POM) has an INRMP and Endangered Species

Management Plan (ESMP) in place that provides a benefit for *Piperia yadonii*. The ESMP and INRMP were completed, and the Army began implementing each of them, in 1999 and 2001, respectively (Harding ESE 1999; Harding ESE 2001; Cairns 2006). The conservation goal of the ESMP that addresses *P. yadonii* is to maintain the two occurrences on POM lands and protect them from impacts during use of the nearby obstacle/orienteering course. The plan identifies the following actions that will benefit *P. yadonii:* Monitoring; protecting the populations from foot traffic by installing signs and by other means; removing nonnative plant species from documented and potential habitat; monitoring deer browsing and providing caging, if necessary; and establishing a propagation program, if necessary. The POM has carried out the following in the past 5 years: Annual population monitoring since 2000, installation and maintenance of educational signs, creation of an educational brochure highlighting *P. yadonii,* construction and installation of outdoor bulletin boards on which the brochures are posted, and removal of infestations of nonnative French broom in over 13 acres of Monterey pine forest habitat (Cairns 2006).

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that conservation efforts identified in the ESMP and INRMP will provide benefits to *Piperia yadonii* occurring in habitats within the POM. Therefore, we are not including approximately 121 acres (49 ha) of habitat for *P. yadonii* within the POM in this proposed critical habitat designation pursuant to section 4(a)(3) of the Act.

Section 4(b)(2)

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the Secretary is afforded broad discretion and the Congressional record is clear that in making a determination under the section the Secretary has discretion as to which factors and how much weight will be given to any factor.

Under section 4(b)(2), in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If an exclusion is contemplated, then we must determine whether excluding the area would result in the extinction of the species. The Service is conducting an economic analysis of the impacts of the proposed critical habitat designation and related factors, which will be available for public review and comment. Based on public comment on that document, the proposed designation itself, and the information in the final economic analysis, areas may be excluded from critical habitat by the Secretary under the provisions of section 4(b)(2) of the Act. This is provided for in the Act, and in our implementing regulations at 50 CFR 424.19.

Conservation Partnerships on Non-Federal Lands

Most federally listed species in the United States will not recover without the cooperation of non-Federal landowners. More than 60% of the United States is privately owned (National Wilderness Institute 1995) and at least 80% of endangered or threatened species occur either partially or solely on private lands (Crouse et al. 2002). Stein et al. (1995) found that only about 12% of listed species were found almost exclusively on Federal lands (90–100% of their known occurrences restricted to Federal lands) and that 50% of federally listed species are not known to occur on Federal lands at all.

Given the distribution of listed species with respect to land ownership, conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-federal landowners (Wilcove and Chen 1998, Crouse et al. 2002, James 2002). Building partnerships and promoting voluntary cooperation of landowners is essential to understanding the status of species on non-federal lands and is necessary to implement recovery actions such as reintroducing listed species, habitat restoration, and habitat protection.

Many non-Federal landowners derive satisfaction in contributing to endangered species recovery. The Service promotes these private-sector efforts through the Four Cs philosophy—conservation through communication, consultation, and cooperation. This philosophy is evident in Service programs such as HCPs, Safe Harbors, CCAs, CCAAs, and conservation challenge cost-share. Many private landowners, however, are wary of the possible consequences of encouraging endangered species on their property, and there is mounting evidence that some regulatory actions by the Federal Government, while well-intentioned and required by law, can under certain circumstances have unintended negative consequences for the conservation of species on private lands (Wilcove et al. 1996, Bean 2002, Conner and Mathews 2002, James 2002, Koch 2002, Brook et al. 2003). Many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found. Consequently, harboring endangered species is viewed by many landowners as a liability, resulting in anti-conservation incentives because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main et al. 1999, Brook et al. 2003).

The purpose of designating critical habitat is to contribute to the conservation of threatened and endangered species and the ecosystems upon which they depend. The outcome of the designation, triggering regulatory requirements for actions funded, authorized, or carried out by Federal agencies under section 7 of the Act, can sometimes be counterproductive to its intended purpose on non-Federal lands. According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main et al. 1999, Bean 2002, Brook et al. 2003). The magnitude of this negative outcome is greatly amplified in situations where active management measures (e.g., reintroduction, fire management, control of invasive species) are necessary for species conservation (Bean 2002).

The Department of the Interior's ''4Cs'' philosophy—conservation through communication, consultation, and cooperation—is the foundation for developing the tools of conservation. These tools include conservation grants, funding for Partners for Fish and Wildlife Program, the Coastal Program, and cooperative-conservation challenge cost-share grants. Our Private Stewardship Grant program and Landowner Incentive Program provide assistance to private landowners in their

voluntary efforts to protect threatened, imperiled, and endangered species, including the development and implementation of HCPs.

Conservation agreements with non-Federal landowners (e.g., Habitat Conservation Plans (HCPs), contractual conservation agreements, easements, and stakeholder-negotiated State regulations) enhance species conservation by extending species protections beyond those available through section 7 consultations. In the past decade we have encouraged non-Federal landowners to enter into conservation agreements, based on a view that we can achieve greater species conservation on non-Federal land through such partnerships than we can through coercive methods (61 FR 63854; December 2, 1996).

There are currently no conservation plans for lands supporting *Piperia yadonii* that we have determined contain the features essential for its conservation.

The Pebble Beach Company has submitted a draft conservation strategy for some of its lands that are within *P. yadonii* proposed critical habitat units on the Monterey Peninsula (Unit 6), and interior to the Monterey Peninsula (Unit 4 and Unit 5). We are continuing to work with the Pebble Beach Company to refine that strategy. We also invite discussion with other landowners within proposed Critical Habitat that have an interest in developing conservation strategies that we would evaluate to determine if they provide a greater benefit to Yadon's piperia than could be achieved through the final designation of critical habitat See more on the section 4(b)(2) balancing process, described below.

We anticipate no impact to national security, Tribal lands, or habitat conservation plans from this proposed critical habitat designation. The information provided in the section below provides the framework for our consideration of Exclusions under 4(b)(2) of the Act.

General Principles of Section 7 Consultation Used in the 4(b)(2) Balancing Process

The most direct, and potentially largest, regulatory benefit of critical habitat is that federally authorized, funded, or carried out activities require consultation pursuant to section 7 of the Act to ensure that they are not likely to destroy or adversely modify critical habitat. There are two limitations to this regulatory effect. First, it only applies where there is a Federal nexus—if there is no Federal nexus, designation itself does not restrict actions that destroy or adversely modify critical habitat. Second, it only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure those areas that contain the physical and biological features essential to the conservation of the species or unoccupied areas that are essential to the conservation of the species are not eroded. Critical habitat designation alone, however, does not require specific steps toward recovery.

Once consultation under section 7 of the Act is triggered, the process may conclude informally when the Service concurs in writing that the proposed Federal action is not likely to adversely affect the listed species or its critical habitat. However, if the Service determines through informal consultation that adverse impacts are likely to occur, then formal consultation would be initiated. Formal consultation concludes with a biological opinion issued by the Service on whether the proposed Federal action is likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of critical habitat, with separate analyses being made under both the jeopardy and the adverse modification standards. For critical habitat, a biological opinion that concludes in a determination of no destruction or adverse modification may contain discretionary conservation recommendations to minimize adverse effects to primary constituent elements, but it would not contain any mandatory reasonable and prudent measures or terms and conditions. Mandatory measures and terms and conditions to implement such measures are only specified when the proposed action would result in the incidental take of a listed animal species. Reasonable and prudent alternatives to the proposed Federal action would only be suggested when the biological opinion results in a jeopardy or adverse modification conclusion.

We also note that for 30 years prior to the Ninth Circuit Court's decision in *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir 2004) (hereinafter *Gifford Pinchot*), the Service conflated the jeopardy standard with the standard for destruction or adverse modification of critical habitat when evaluating federal actions that affect currently occupied critical habitat. The Court ruled that the two standards are distinct and that adverse modification evaluations require consideration of impacts on the recovery of species. Thus, under the *Gifford Pinchot* decision, critical habitat designations may provide greater benefits to the recovery of a species. However, we believe the conservation achieved through implementing habitat conservation plans (HCPs) or other habitat management plans is typically greater than would be achieved through multiple site-by-site, project-by-project, section 7 consultations involving consideration of critical habitat. Management plans commit resources to implement long-term management and protection to particular habitat for at least one and possibly other listed or sensitive species. Section 7 consultations only commit Federal agencies to prevent adverse modification to critical habitat caused by the particular project, and they are not committed to provide conservation or long-term benefits to areas not affected by the proposed project. Thus, any HCP or management plan which considers enhancement or recovery as the management standard will often provide as much or more benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the *Gifford Pinchot* decision.

The information provided in this section applies to all the discussions below that discuss the benefits of inclusion and exclusion of critical habitat in that it provides the framework for the consultation process.

Educational Benefits of Critical Habitat

A benefit of including lands in critical habitat is that the designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for *Piperia yadonii*. In general the educational benefit of a critical habitat designation always exists, although in some cases it may be redundant with other educational effects. For example, HCPs have significant public input and may largely duplicate the educational benefit of a critical habitat designation. This benefit is closely related to a second, more indirect benefit: that designation of critical habitat would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

Benefits of Excluding Lands With HCPs or Other Approved Management Plans From Critical Habitat

The benefits of excluding lands with HCPs or other approved management plans from critical habitat designation include relieving landowners, communities, and counties of any

additional regulatory burden that might be imposed by a critical habitat designation. Most HCPs and other conservation plans take many years to develop and, upon completion, are consistent with the recovery objectives for listed species that are covered within the plan area. In fact, designating critical habitat in areas covered by a pending HCP or conservation plan could result in the loss of some species' benefits if participants abandon the planning process, in part because of the strength of the perceived additional regulatory compliance that such designation would entail. Although plants are not subject to the prohibition on take in Section 9 of the Act, the Service encourages applicants to include them as covered species in HCPs by incorporating measures to protect them and their habitat under the plans. If as a result of the federal nexus created by such inclusion, plants are subjected to increased numbers of consultations under Section 7 due to designation of critical habitat, applicants will likely be discouraged from incorporating conservation measures for plants in their HCPs. The time and cost of regulatory compliance for a critical habitat designation do not have to be quantified for them to be perceived as additional Federal regulatory burden sufficient to discourage continued participation in plans targeting listed species' conservation.

The benefits of excluding lands within approved management plans from critical habitat designation include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed by critical habitat. Many conservation plans provide conservation benefits to unlisted sensitive species. Imposing an additional regulatory review as a result of the designation of critical habitat may undermine conservation efforts and partnerships in many areas. Designation of critical habitat within the boundaries of management plans that provide conservation measures for a species could be viewed as a disincentive to those entities currently developing these plans or contemplating them in the future, because one of the incentives for undertaking conservation is greater ease of permitting where listed species are affected. Addition of a new regulatory requirement would remove a significant incentive for undertaking the time and expense of management planning.

A related benefit of excluding lands within management plans from critical habitat designation is the unhindered continued ability to seek new partnerships with future plan participants including States, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. If lands within approved management plan areas are designated as critical habitat, it would likely have a negative effect on our ability to establish new partnerships to develop these plans, particularly plans that address landscape-level conservation of species and habitats. By preemptively excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

As noted above, there are currently no approved HCPs or management plans in place that provide conservation benefits to *P. yadonii.* However, The Pebble Beach Company has submitted a draft conservation strategy for some of its lands that are within *P. yadonii* proposed critical habitat units on the Monterey Peninsula (Unit 6), and interior to the Monterey Peninsula (Unit 4 and Unit 5), and we are continuing to work with the Pebble Beach Company to refine that strategy. If the strategy is finalized and assured of implementation prior to final critical habitat designation, we will evaluate it to determine whether it provides a greater benefit to Yadon's piperia than could be achieved through the final designation of critical habitat.

Economic Analysis

An analysis of the economic impacts of proposing critical habitat for *Piperia yadonii* is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.fws.gov/ventura/,* or by contacting the Ventura Fish and Wildlife Office directly (see **ADDRESSES** section).

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made in writing at least 15 days prior to the close of the public comment period. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov*.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. We are preparing a draft economic analysis of this proposed action, which will be

available for public comment, to determine the economic consequences of designating the specific area as critical habitat. This economic analysis also will be used to determine compliance with Executive Order 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 12630.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are listed above in the section on Section 7 Consultation. The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers, so that it is available for public review and comments. The draft economic analysis can be obtained from the Internet Web site at *http://www.fws.gov/ventura/* or by contacting the Ventura Fish and Wildlife Office directly (see **ADDRESSES** section).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, the Service lacks the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic analysis prepared pursuant to section 4(b)(2) of the Act and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, the Service will publish a notice of availability of the draft economic analysis of the proposed designation and reopen the public comment period for the proposed designation for an additional 60 days. The Service will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. The Service has concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that the Service makes a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for *Piperia yadonii* is not a significant regulatory action under Executive Order 12866, and it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because only 7 percent (209 ac/84 ha) of the total proposed critical habitat designation for *Piperia yadonii* is owned by small government entities; these entities include the City of Pacific Grove and Monterey County. Furthermore, a large portion of these lands are designated as parks or open space and managed at least in part for conservation of natural resources. As such, Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Federalism

In accordance with Executive Order 13132, the rule does not have significant

Federalism effects. A Federalism assessment is not required. In keeping with DOI policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by *Piperia yadonii* imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Endangered Species Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Piperia yadonii*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F. 3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no tribal lands occupied at the time of listing or currently that contain the features essential for the conservation of *Piperia yadonii* and no tribal lands that are unoccupied that are essential for the conservation of *Piperia yadonii*. Therefore, critical habitat for *Piperia yadonii* has not been proposed for designation on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author(s)

The primary author of this package is the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.12(h), revise the entry for ''*Piperia yadonii*'' under ''FLOWERING PLANTS'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Piperia yadonii	Yadon's piperia	U.S.A. (CA)	Orchidaceae (Orchid).	E	1998	17.96(a)	NA
*	*	*	*	*	*	*	

3. In § 17.96(a), add an entry for *Piperia yadonii* under family Orchidaceae'' in alphabetical order to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Orchidaceae:

Piperia yadonii (Yadon's piperia)

(1) Critical habitat units are depicted for Monterey County, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Piperia yadonii* are the habitat components that provide:

(i) A vegetation structure providing filtered sunlight on sandy soils.

(A) Pine forest (primarily Monterey pine) with an open canopy and sparse herbaceous understory on Baywood sands, Narlon loamy fine sands, Sheridan coarse sandy loams, Tangair fine sands, Santa Lucia shaly clay loams, and Chamise shaley clay loams underlain by a hardpan; and

(B) Maritime chaparral ridges with dwarfed shrubs (primarily Hooker's manzanita) on Reliz shaly clay loams, Sheridan sandy loams, Narlon sandy loams, Arnold loamy sands and soils in the Junipero-Sur complex, Rock Outcrop-Xerorthents Association, and Arnold-Santa Ynez complex often underlain by rock outcroppings.

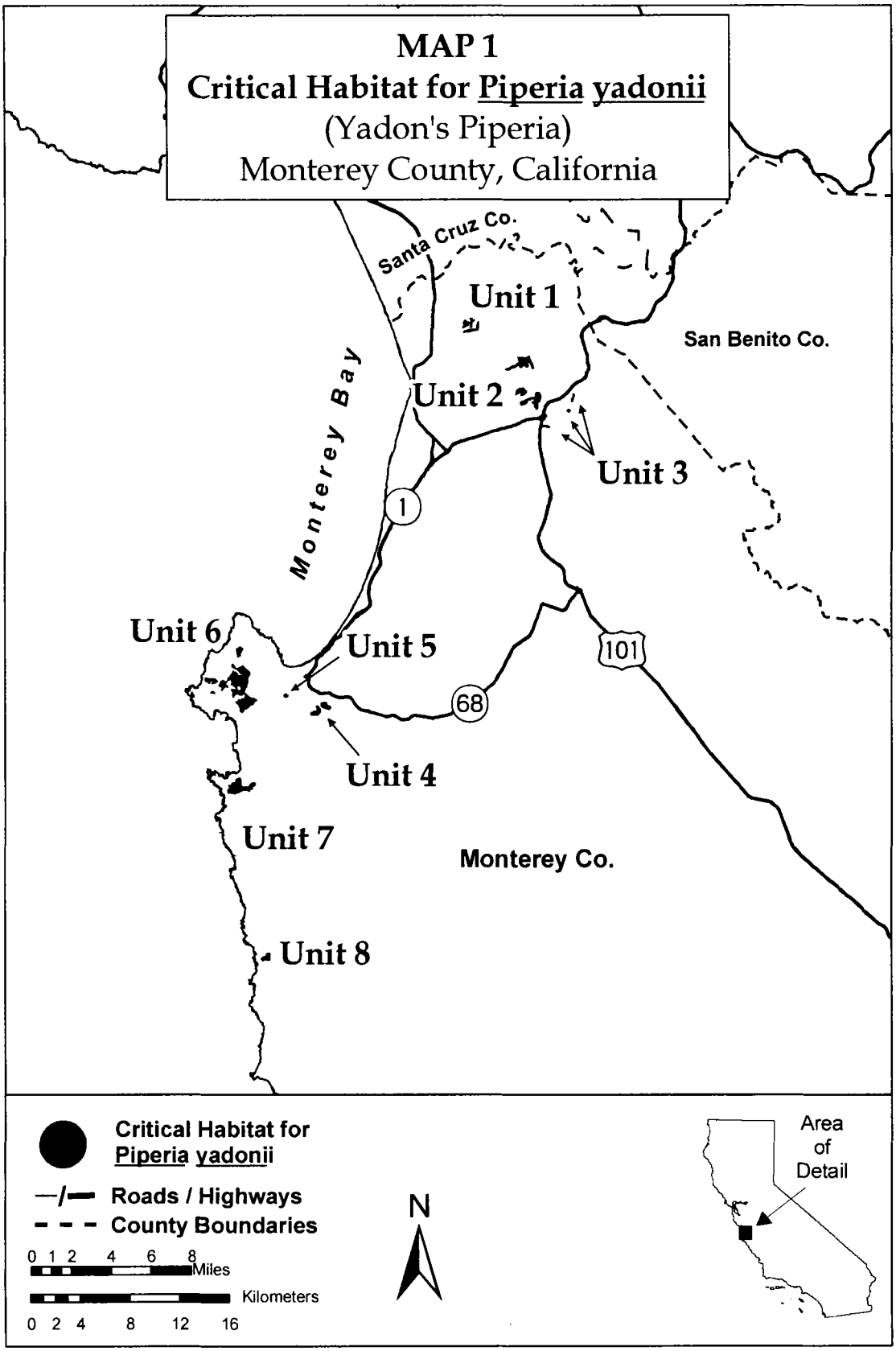
(ii) Presence of nocturnal, short-tongued moths in the families Pyralidae, Geometridae, Noctuidae, and Pterophoridae.

(3) Critical habitat does not include man-made structures existing on the effective date of this rule and not containing one or more of the primary constituent elements. Such structures include buildings, aqueducts, airports, and roads, and the land on which they are located.

(4) Critical Habitat Map Units—Data layers defining map units were created on base maps using aerial imagery from the National Agricultural Imagery Program; aerial imagery captured June 2005. Data were project to Universal Transverse Mercator (UTM) zone 11, North American Datum (NAD) 1983.

(5) **Note:** (Index map) of critical habitat for *Piperia yadonii* (Map 1) follows:

BILLING CODE 4310–55–P

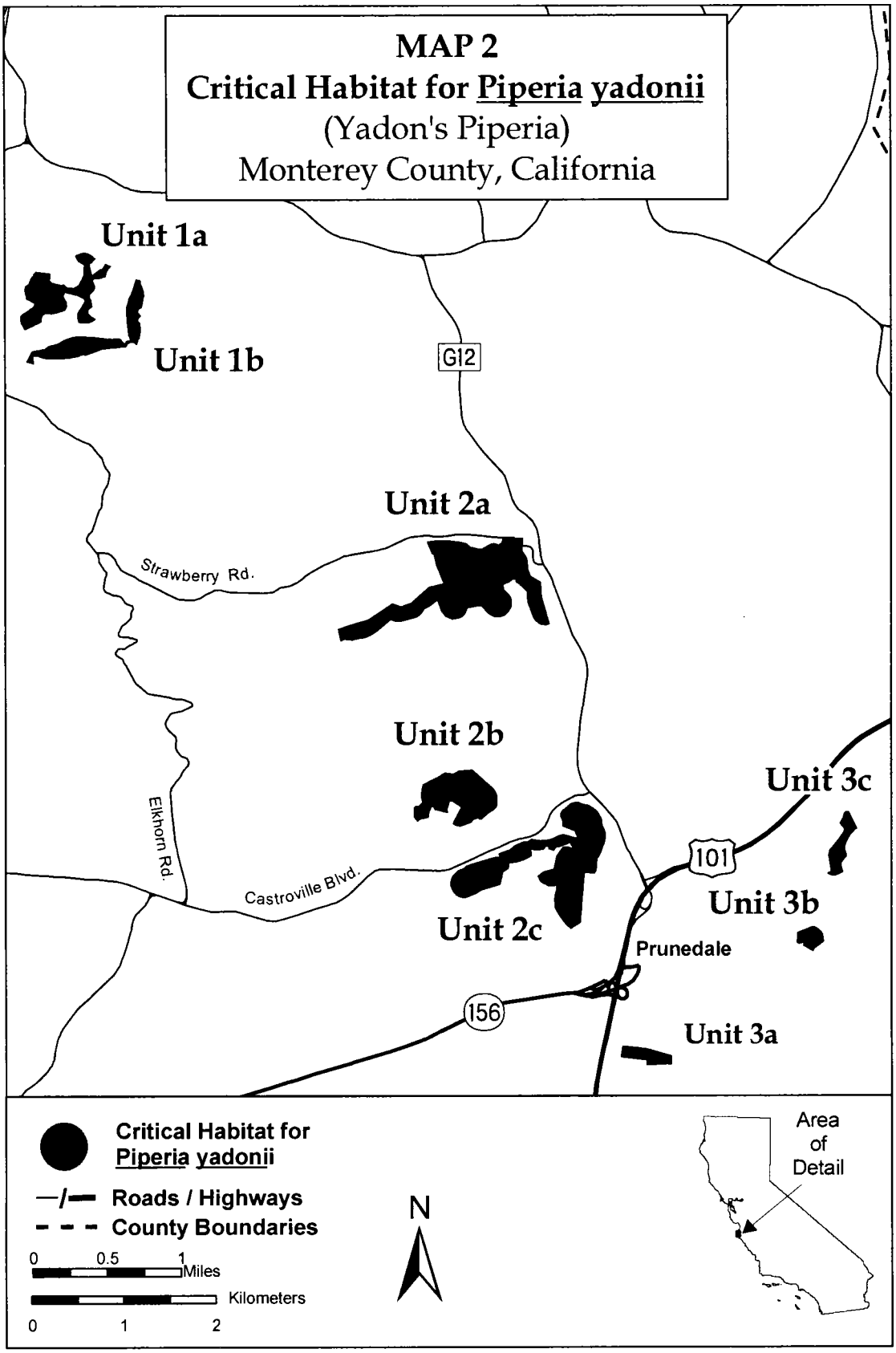

MAP 1
Critical Habitat for Piperia yadonii
(Yadon's Piperia)
Monterey County, California
Santa Cruz Co.
Unit 1
San Benito Co.
Unit 2
Unit 3
Monterey Bay
1
Unit 6
Unit 5
101
68
Unit 4
Unit 7
Monterey Co.
Unit 8
Critical Habitat for
Piperia yadonii
Roads / Highways
County Boundaries
0 1 2 4 6 8
Miles
0 2 4 8 12 16
Kilometers
N
Area
of
Detail

(6) Unit 1: Blohm Ranch, Monterey County, California

(i) Subunit 1a: From USGS 1:24,000 scale quadrangle Prunedale. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 611901, 4079098; 611902, 4079137; 611917, 4079156; 611974, 4079198; 612002, 4079216; 612037, 4079247; 612049, 4079272; 612042, 4079293; 611982, 4079311; 611952, 4079324; 611943, 4079354; 611929, 4079419; 611930, 4079454; 611972, 4079486; 611987, 4079543; 612012, 4079583; 612011, 4079594; 612038, 4079619; 612190, 4079608; 612190, 4079539; 612216, 4079511; 612324, 4079491; 612343, 4079504; 612387, 4079471; 612456, 4079471; 612514, 4079509; 612558, 4079614; 612558, 4079724; 612489, 4079761; 612455, 4079807; 612459, 4079821; 612511, 4079847; 612550, 4079852; 612589, 4079847; 612625, 4079832; 612654, 4079812; 612673, 4079796; 612655, 4079782; 612630, 4079752; 612603, 4079744; 612647, 4079619; 612734, 4079691; 612754, 4079691; 612762, 4079710; 612785, 4079745; 612846, 4079723; 612827, 4079702; 612815, 4079690; 612804, 4079670; 612797, 4079645; 612795, 4079611; 612746, 4079599; 612716, 4079588; 612674, 4079586; 612655, 4079569; 612683, 4079496; 612666, 4079450; 612629, 4079411; 612638, 4079375; 612651, 4079353; 612661, 4079323; 612665, 4079286; 612624, 4079249; 612624, 4079222; 612635, 4079209; 612646, 4079194; 612662, 4079183; 612713, 4079155; 612682, 4079133; 612642, 4079112; 612585, 4079109; 612530, 4079112; 612521, 4079147; 612509, 4079197; 612576, 4079313; 612588, 4079337; 612589, 4079337; 612580, 4079358; 612579, 4079358; 612563, 4079371; 612537, 4079381; 612497, 4079398; 612474, 4079403; 612398, 4079417; 612367, 4079417; 612350, 4079399; 612346, 4079383; 612357, 4079360; 612369, 4079340; 612383, 4079316; 612395, 4079275; 612390, 4079255; 612380, 4079233; 612350, 4079218; 612286, 4079200; 612233, 4079178; 612196, 4079184; 612165, 4079184; 612143, 4079168; 612128, 4079150; 612128, 4079119; 612127, 4079094; 611959, 4078999; 611958, 4078999; 611931, 4079027; 611911, 4079061; returning to 611901, 4079098.

(ii) Subunit 1b: From USGS 1:24,000 scale quadrangle Prunedale. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 611998, 4078651; 611999, 4078664; 611999, 4078665; 612044, 4078765; 612187, 4078803; 612213, 4078825; 612254, 4078844; 612284, 4078853; 612336, 4078871; 612385, 4078907; 612423, 4078925; 612458, 4078940; 612479, 4078947; 612520, 4078956; 612604, 4078959; 612662, 4078959; 612704, 4078960; 612812, 4078958; 612850, 4078951; 612897, 4078953; 612988, 4078967; 613045, 4078913; 613060, 4078936; 613099, 4078949; 613101, 4078961; 613094, 4078978; 613084, 4079005; 613073, 4079060; 613062, 4079129; 613051, 4079222; 613044, 4079306; 613056, 4079376; 613064, 4079397; 613082, 4079431; 613099, 4079501; 613130, 4079602; 613168, 4079601; 613177, 4079580; 613180, 4079551; 613198, 4079533; 613212, 4079488; 613220, 4079438; 613212, 4079355; 613203, 4079303; 613176, 4079297; 613165, 4079281; 613166, 4079253; 613195, 4079224; 613195, 4079212; 613176, 4079198; 613174, 4079174; 613177, 4079155; 613196, 4079139; 613205, 4079091; 613208, 4079041; 613195, 4078982; 613186, 4078964; 613182, 4078941; 613177, 4078906; 613172, 4078906; 613162, 4078914; 613153, 4078927; 613130, 4078938; 613103, 4078930; 613086, 4078918; 613073, 4078906; 613061, 4078885; 613061, 4078882; 612802, 4078842; 612765, 4078826; 612627, 4078767; 612606, 4078767; 612578, 4078759; 612552, 4078744; 612445, 4078722; 612278, 4078704; 612253, 4078701; 612170, 4078702; 612124, 4078719; 612110, 4078724; 612055, 4078722; 612071, 4078638; returning to 611998, 4078651.

(7) **Note:** Map of Units 1, 2, and 3 (Map 2) follows:


MAP 2
Critical Habitat for Piperia yadonii
(Yadon's Piperia)
Monterey County, California
Unit 1a
Unit 1b
G12
Unit 2a
Strawberry Rd.
Unit 2b
Elkhorn Rd.
Castroville Blvd.
Unit 2c
Unit 3c
101
Unit 3b
Prunedale
156
Unit 3a
Critical Habitat for
Piperia yadonii
Roads / Highways
County Boundaries
0 0.5 1
Miles
Kilometers
0 1 2
N
Area
of
Detail

(8) Unit 2: Manzanita Park, Monterey County, California.

(i) Subunit 2a: From USGS 1:24,000 scale quadrangle Prunedale. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 615541, 4076005; 615651, 4076047; 615859, 4076125; 616111, 4076311; 616209, 4076287; 616278, 4076318; 616316, 4076335; 616416, 4076435; 616503, 4076520; 616659, 4076565; 616566, 4076763; 616534, 4076874; 616515, 4076874; 616454, 4077003; 616562, 4077020; 616677, 4077028; 616820, 4077021; 616876, 4077008; 616925, 4076975; 617013, 4076959; 617053, 4076962; 617137, 4077017; 617176, 4077025; 617224, 4077020; 617259, 4077038; 617271, 4077094; 617286, 4077095; 617333, 4077097; 617481, 4077105; 617482, 4077105; 617488, 4076972; 617540, 4076890; 617565, 4076771; 617594, 4076701; 617703, 4076645; 617728, 4076486; 617830, 4076204; 617787, 4076190; 617729, 4076197; 617671, 4076233; 617643, 4076273; 617579, 4076433; 617565, 4076533; 617468, 4076615; 617445, 4076631; 617435, 4076657; 617402, 4076656; 617361, 4076620; 617305, 4076601; 617309, 4076551; 617377, 4076484; 617396, 4076450; 617407, 4076402; 617403, 4076354; 617377, 4076301; 617341, 4076268; 617287, 4076245; 617229, 4076245; 617167, 4076273; 617079, 4076356; 616934, 4076322; 616910, 4076259; 616884, 4076229; 616851, 4076207; 616814, 4076195; 616775, 4076192; 616737, 4076200; 616702, 4076217; 616655, 4076267; 616599, 4076383; 616511, 4076307; 616465, 4076283; 616430, 4076225; 616388, 4076189; 616213, 4076130; 616160, 4076127; 616111, 4076139; 616092, 4076133; 615967, 4076012; 615897, 4075959; 615835, 4075931; 615776, 4075922; 615706, 4075898; 615620, 4075896; 615575, 4075879; returning to 615541, 4076005.

(ii) Subunit 2b: From USGS 1:24,000 scale quadrangle Prunedale. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 616488, 4074150; 616505, 4074167; 616533, 4074172; 616573, 4074209; 616573, 4074219; 616555, 4074267; 616557, 4074347; 616567, 4074401; 616736, 4074502; 616746, 4074512; 616760, 4074521; 616779, 4074536; 616804, 4074543; 616826, 4074543; 616853, 4074543; 616876, 4074540; 616890, 4074537; 616915, 4074552; 616943, 4074575; 617092, 4074595; 617327, 4074410; 617348, 4074387; 617367, 4074354; 617374, 4074335; 617379, 4074301; 617380, 4074258; 617379, 4074219; 617379, 4074218; 617346, 4074185; 617298, 4074145; 617219, 4074073; 617199, 4074072; 617186, 4074083; 617159, 4074076; 617134, 4074069; 617131, 4074058; 617114, 4074034; 616994, 4073984; 616944, 4073991; 616918, 4074001; 616981, 4074157; 617003, 4074188; 616891, 4074250; 616860, 4074246; 616845, 4074178; 616845, 4074160; 616853, 4074117; 616747, 4074137; 616712, 4074146; 616701, 4074171; 616673, 4074179; 616646, 4074104; 616652, 4074081; 616642, 4074056; 616620, 4074046; 616591, 4074041; 616568, 4074035; 616546, 4074023; 616532, 4074006; 616531, 4074006; 616490, 4074054; returning to 616488, 4074150.

(iii) Subunit 2c: From USGS 1:24,000 scale quadrangle Prunedale. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 616931, 4073371; 616936, 4073410; 616951, 4073446; 616975, 4073477; 617003, 4073500; 617077, 4073542; 617094, 4073556; 617142, 4073581; 617382, 4073670; 617411, 4073676; 617450, 4073676; 617435, 4073712; 617512, 4073743; 617549, 4073763; 617598, 4073810; 617636, 4073830; 617694, 4073860; 617739, 4073865; 617774, 4073887; 617847, 4073880; 617879, 4073885; 617960, 4073894; 618016, 4073916; 618064, 4073947; 618117, 4073965; 618279, 4073927; 618244, 4074007; 618138, 4074038; 618106, 4074053; 618104, 4074059; 618103, 4074108; 618076, 4074150; 618071, 4074184; 618081, 4074204; 618095, 4074224; 618117, 4074247; 618176, 4074299; 618229, 4074318; 618261, 4074316; 618307, 4074300; 618370, 4074293; 618407, 4074278; 618448, 4074248; 618468, 4074227; 618507, 4074173; 618519, 4074146; 618533, 4074088; 618553, 4074051; 618566, 4074011; 618572, 4073986; 618574, 4073952; 618568, 4073913; 618533, 4073788; 618521, 4073761; 618495, 4073722; 618496, 4073601; 618482, 4073567; 618369, 4073570; 618365, 4073277; 618364, 4073029; 618261, 4072958; 618212, 4072996; 618157, 4073061; 618131, 4073086; 618090, 4073147; 618078, 4073173; 618064, 4073256; 618067, 4073314; 618081, 4073377; 618072, 4073413; 618044, 4073404; 618015, 4073401; 617985, 4073404; 617957, 4073413; 617931, 4073426; 617902, 4073452; 617885, 4073476; 617873, 4073501; 617927, 4073549; 618040, 4073586; 618063, 4073730; 618123, 4073826; 618134, 4073831; 618168, 4073834; 618228, 4073818; 618235, 4073822; 618191, 4073875; 618082, 4073823; 618062, 4073827; 618042, 4073815; 618025, 4073781; 617967, 4073798; 617970, 4073818; 617934, 4073823; 617913, 4073790; 617874, 4073780; 617778, 4073781; 617786, 4073711; 617701, 4073663; 617644, 4073637; 617551, 4073622; 617545, 4073563; 617491, 4073517; 617470, 4073382; 617262, 4073305; 617237, 4073287; 617138, 4073233; 617100, 4073222; 617071, 4073221; 617032, 4073229; 616997, 4073246; 616968, 4073272; 616946, 4073305; 616934, 4073342; returning to 616931, 4073371.

(9) Unit 3: Vierra Canyon, Monterey County, California.

(i) Subunit 3a: From USGS 1:24,000 scale quadrangle Prunedale. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 618886, 4071622; 618896, 4071742; 619157, 4071722; 619431, 4071664; 619441, 4071576; 619441, 4071573; 619385, 4071569; 619171, 4071553; 619166, 4071601; 618901, 4071615; 618892, 4071615; returning to 618886, 4071622.

(ii) Subunit 3b: From USGS 1:24,000 scale quadrangle Prunedale. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 620707, 4073069; 620865, 4073146; 620890, 4073140; 620917, 4073128; 620941, 4073111; 620961, 4073089; 620977, 4073064; 620987, 4073037; 620992, 4072992; 620897, 4072908; 620886, 4072879; 620778, 4072930; 620784, 4072971; 620736, 4072950; 620709, 4072963; returning to 620707, 4073069.

(iii) Subunit Unit 3c: From USGS 1:24,000 scale quadrangle Prunedale. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 620984, 4073724; 621030, 4073752; 620987, 4073916; 620997, 4073968; 620996, 4073974; 621079, 4074094; 621133, 4074174; 621144, 4074209; 621084, 4074270; 621123, 4074335; 621127, 4074380; 621146, 4074396; 621173, 4074395; 621273, 4074227; 621256, 4074215; 621246, 4074203; 621206, 4074150; 621177, 4074089; 621151, 4074025; 621163, 4073968; 621171, 4073965; 621179, 4073920; 621159, 4073901; 621160, 4073898; 621124, 4073845; 621131, 4073829; 621129, 4073827; 621153, 4073753; 621073, 4073708; 621025, 4073710; returning to 620984, 4073724.

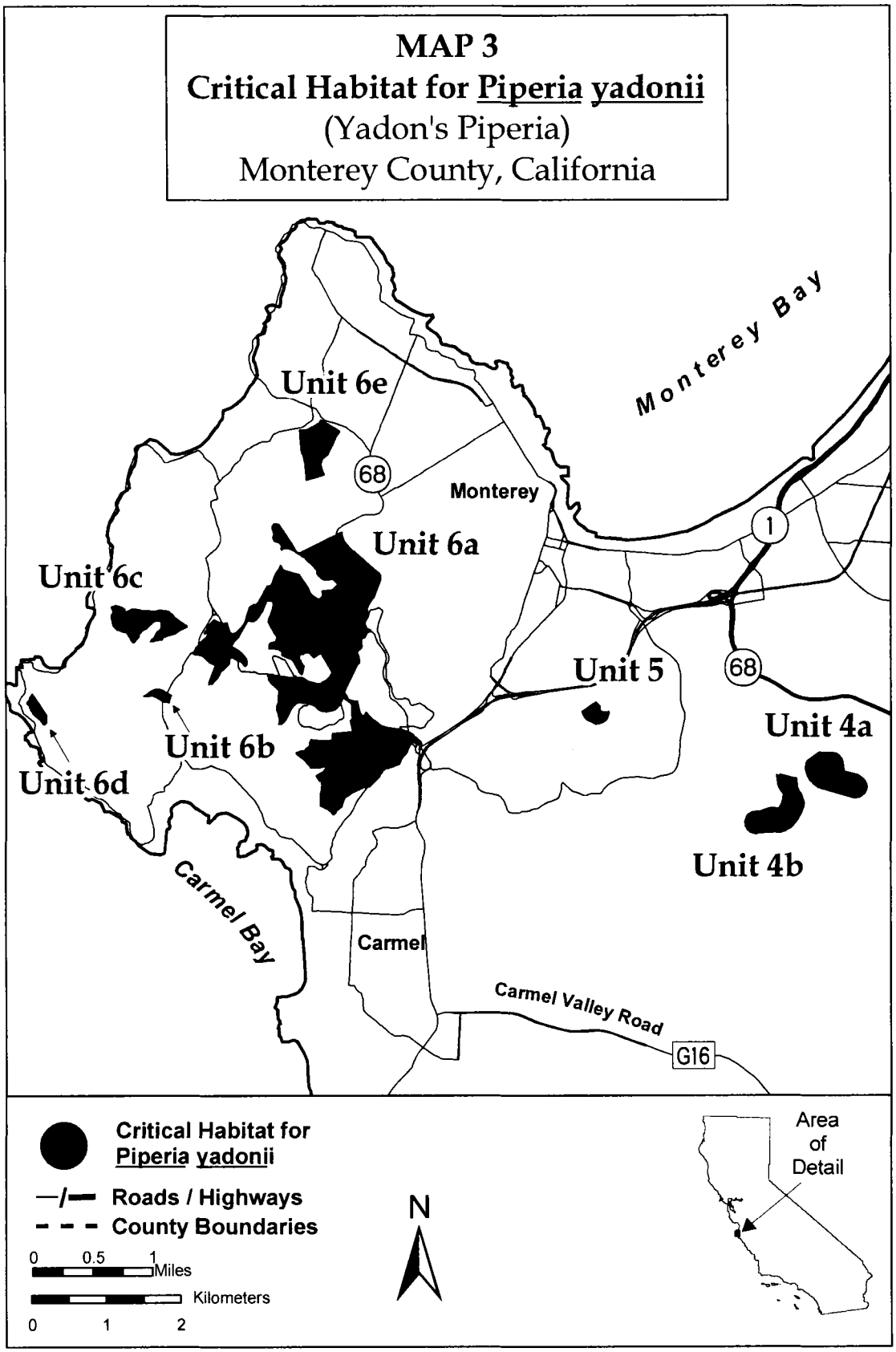
(10) Unit 4: Aguajito, Monterey County, California

(i) Subunit 4a: From USGS 1:24,000 scale quadrangle Seaside. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 602332, 4048354; 602347, 4048427; 602354, 4048439; 602362, 4048452; 602366, 4048456; 602401, 4048489; 602508, 4048576; 602697, 4048582; 602735, 4048574; 602762, 4048562; 602786, 4048545; 602817, 4048507; 602832, 4048471; 602858, 4048345; 603034, 4048312; 603069, 4048294; 603115, 4048262; 603136, 4048241; 603158, 4048209; 603171, 4048172; 603173, 4048133;

603166, 4048094; 603143, 4048051; 603107, 4048018; 603072, 4048000; 603024, 4047993; 602966, 4048004; 602522, 4048105; 602451, 4048153; 602400, 4048198; 602373, 4048240; 602351, 4048287; returning to 602332, 4048354.

(ii) Subunit 4b: From USGS 1:24,000 scale quadrangle Seaside. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 601574, 4047589; 601594, 4047664; 601625, 4047701; 601657, 4047723; 601695, 4047736; 601778, 4047749; 601839, 4047778; 601926, 4047801; 601965, 4047804; 602014, 4047795; 602048, 4047863; 602058, 4047918; 602064, 4047991; 602022, 4048044; 602000, 4048080; 601988, 4048107; 601973, 4048163; 601962, 4048239; 602022, 4048231; 602007, 4048253; 602060, 4048243; 602206, 4048211; 602231, 4048211; 602246, 4048135; 602250, 4048108; 602256, 4048082; 602264, 4048071; 602278, 4048051; 602309, 4048008; 602318, 4047990; 602345, 4047913; 602355, 4047883; 602350, 4047838; 602325, 4047746; 602278, 4047654; 602262, 4047623; 602199, 4047551; 602130, 4047497; 602054, 4047470; 601996, 4047474; 601864, 4047460; 601773, 4047445; 601743, 4047440; 601704, 4047440; 601657, 4047454; 601611, 4047490; 601582, 4047540; returning to 601574, 4047589.

(iii) **Note:** Map of Units 4, 5, and 6 (Map 3) follows:


MAP 3
Critical Habitat for Piperia yadonii
(Yadon's Piperia)
Monterey County, California
Monterey Bay
Unit 6e
68
Monterey
Unit 6a
1
Unit 6c
Unit 5
68
Unit 4a
Unit 6b
Unit 6d
Unit 4b
Carmel Bay
Carmel
Carmel Valley Road
G16
Critical Habitat for
Piperia yadonii
Roads / Highways
County Boundaries
0 0.5 1
Miles
Kilometers
0 1 2
N
Area
of
Detail

(11) Unit 5: Old Capitol, Monterey County, California. From USGS 1:24,000 scale quadrangle Monterey. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 599314, 4048918; 599497, 4049056; 599551, 4048997; 599551, 4048976; 599552, 4048959; 599562, 4048939; 599593, 4048923; 599625, 4048931; 599640, 4048934; 599655, 4048928; 599675, 4048937; 599685, 4048913; 599666, 4048844; 599649, 4048821; 599603, 4048784; 599561, 4048761; 599516, 4048757; 599437, 4048777; 599370, 4048808; 599329, 4048864; returning to 599314, 4048918.

(12) Unit 6: Monterey Peninsula, Monterey County, California.

(i) Subunit 6a: From USGS 1:24,000 scale quadrangle Monterey. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 594042, 4049355; 594060, 4049389; 594080, 4049435; 594120, 4049486; 594160, 4049538; 594186, 4049560; 594186, 4049560; 594199, 4049572; 594209, 4049570; 594210, 4049577; 594211, 4049584; 594214, 4049592; 594216, 4049600; 594219, 4049607; 594226, 4049621; 594226, 4049621; 594201, 4049634; 594188, 4049620; 594183, 4049623; 594186, 4049648; 594202, 4049675; 594225, 4049725; 594236, 4049745; 594285, 4049805; 594296, 4049823; 594348, 4049799; 594414, 4049772; 594480, 4049792; 594500, 4049738; 594525, 4049669; 594536, 4049664; 594558, 4049652; 594572, 4049654; 594574, 4049654; 594584, 4049655; 594594, 4049663; 594613, 4049676; 594636, 4049703; 594659, 4049725; 594680, 4049752; 594698, 4049786; 594718, 4049834; 594730, 4049866; 594741, 4049919; 594754, 4049979; 594759, 4049994; 594762, 4050006; 594767, 4050021; 594788, 4050040; 594822, 4050057; 594856, 4050064; 594888, 4050101; 594890, 4050107; 594890, 4050107; 594890, 4050107; 594893, 4050118; 594893, 4050118; 594897, 4050135; 594923, 4050178; 594929, 4050187; 594942, 4050217; 594960, 4050255; 594977, 4050293; 594984, 4050307; 595002, 4050317; 595010, 4050319; 595029, 4050323; 595043, 4050348; 595059, 4050386; 595076, 4050442; 595095, 4050490; 595117, 4050527; 595139, 4050569; 595145, 4050580; 595154, 4050597; 595176, 4050568; 595176, 4050568; 595176, 4050568; 595177, 4050567; 595179, 4050562; 595191, 4050537; 595193, 4050537; 595299, 4050514; 595410, 4050489; 595534, 4050334; 595574, 4050254; 595621, 4050214; 595660, 4050192; 595699, 4050182; 595717, 4050202; 595734, 4050221; 595727, 4050281; 595736, 4050293; 595873, 4050316; 595930, 4050395; 595864, 4050455; 595764, 4050427; 595707, 4050454; 595647, 4050504; 595634, 4050564; 595487, 4050691; 595467, 4050714; 595431, 4050724; 595392, 4050744; 595365, 4050761; 595352, 4050767; 595321, 4050788; 595289, 4050807; 595247, 4050821; 595216, 4050825; 595193, 4050821; 595168, 4050807; 595149, 4050788; 595133, 4050854; 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4048492; 595254, 4048491; 595253, 4048560; 595225, 4048650; 595206, 4048683; 595202, 4048703; 595204, 4048726; 595225, 4048780; 595225, 4048914; 595221, 4048940; 595134, 4049008; 595110, 4049027; 595080, 4049069; 595055, 4049143; 595117, 4049144; 595138, 4049143; 595159, 4049139; 595177, 4049133; 595194, 4049129; 595211, 4049127; 595227, 4049127; 595274, 4049131; 595291, 4049131; 595308, 4049127; 595322, 4049123; 595348, 4049121; 595406, 4049120; 595417, 4049125; 595437, 4049123; 595459, 4049128; 595480, 4049130; 595499, 4049127; 595516, 4049127; 595527, 4049129; 595545, 4049126; 595578, 4049110; 595609, 4049085; 595627, 4049083; 595670, 4049080; 595745, 4049061; 595776, 4049065; 595849, 4049113; 595883, 4049145; 595905, 4049177; 595928, 4049224; 595759, 4049459; 595669, 4049397; 595607, 4049449; 595585, 4049455; 595551, 4049447; 595530, 4049431; 595480, 4049433; 595477, 4049360; 595505, 4049358; 595511, 4049327; 595522, 4049306; 595551, 4049280; 595538, 4049206; 595524, 4049167; 595514, 4049162; 595495, 4049184; 595407, 4049319; 595397, 4049331; 595379, 4049347; 595359, 4049358; 595245, 4049401; 595233, 4049415; 595233, 4049456; 595168, 4049481; 595109, 4049477; 595063, 4049473; 595058, 4049541; 595079, 4049564; 595101, 4049570; 595119, 4049575; 595140, 4049583; 595150, 4049614; 595159, 4049642; 595129, 4049673; 595089, 4049729; 595067, 4049769; 595039, 4049810; 595027, 4049835; 595027, 4049850; 595037, 4049882; 595060, 4049943; 595073, 4050017; 595084, 4050057; 595080, 4050092; 595068, 4050106; 595039, 4050113; 595011, 4050113; 595000, 4050110; 594992, 4050092; 594983, 4050071; 594980, 4050052; 594952, 4049976; 594931, 4049939; 594909, 4049900; 594877, 4049856; 594837, 4049828; 594813, 4049826; 594781, 4049831; 594762, 4049831; 594743, 4049814; 594724, 4049770; 594673, 4049654; 594653, 4049610; 594587, 4049530; 594576, 4049518; 594569, 4049501; 594573, 4049485; 594616, 4049457; 594661, 4049433; 594719, 4049386; 594766, 4049332; 594781, 4049301; 594781, 4049266; 594774, 4049243; 594767, 4049231; 594766, 4049230; 594743, 4049236; 594740, 4049237; 594731, 4049252; 594720, 4049264; 594713, 4049273; 594705, 4049278; 594675, 4049290; 594647, 4049296; 594627, 4049311; 594614, 4049320; 594602, 4049334; 594583, 4049337; 594573, 4049332; 594557, 4049320; 594543, 4049303; 594543, 4049289; 594547, 4049271; 594547, 4049252; 594538, 4049237; 594472, 4049167; 594453, 4049150; 594437, 4049127; 594416, 4049094; 594390, 4049038; 594378, 4049025; 594360, 4049005; 594350, 4048993; 594342, 4048973; 594275, 4048961; 594283, 4049001; 594348, 4049199; 594354, 4049218; 594277, 4049241; 594269, 4049243; 594268, 4049246; 594262, 4049270; 594243, 4049267; 594200, 4049304; 594176, 4049324; 594099, 4049332; 594097, 4049332; 594090, 4049333; 594078, 4049335; 594059, 4049339; returning to 594042, 4049355.

(ii) Subunit 6b: From USGS 1:24,000 scale quadrangle Monterey. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 593410, 4048743; 593463, 4048782; 593479, 4048793; 593532, 4048832; 593564, 4048847; 593574, 4048849; 593597, 4048853; 593599, 4048854; 593636, 4048853; 593671, 4048844; 593790, 4048784; 593794, 4048779; 593794, 4048778; 593777, 4048726; 593769, 4048678; 593768, 4048678; 593706, 4048686; 593678, 4048693; 593650, 4048707; 593605, 4048738; 593570, 4048750; 593539, 4048752; 593451, 4048741; 593442, 4048741; 593414, 4048743; 593410, 4048743; 593601, 4048844; 593601, 4048844; 593602, 4048844; 593601, 4048844; returning to 593601, 4048844.

(iii) Subunit 6c: From USGS 1:24,000 scale quadrangle Monterey. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 592908, 4049902; 592972, 4049927; 593056, 4049908; 593067, 4049902; 593075, 4049896; 593086, 4049892; 593095, 4049890; 593100, 4049881; 593101, 4049853; 593115, 4049858; 593117, 4049855; 593199, 4049893; 593232, 4049897; 593269, 4049895; 593297, 4049885; 593330, 4049880; 593343, 4049884; 593353, 4049883; 593381, 4049882; 593410, 4049883; 593424, 4049883; 593464, 4049885; 593496, 4049890; 593497, 4049882; 593523, 4049886; 593522, 4049894; 593568, 4049900; 593624, 4049900; 593672, 4049895; 593693, 4049886; 593719, 4049869; 593720, 4049870; 593753, 4049842; 593772, 4049821; 593778, 4049813; 593858, 4049767; 593921, 4049727; 593938, 4049721; 593954, 4049700; 593866, 4049654; 593835, 4049631; 593788, 4049596; 593647, 4049542; 593623, 4049506; 593620, 4049504; 593616, 4049502; 593613, 4049501; 593609, 4049500; 593606, 4049499; 593466, 4049474; 593458, 4049472; 593458, 4049472; 593485, 4049508; 593505, 4049526; 593524, 4049558; 593550, 4049606; 593560, 4049626; 593597, 4049668; 593601, 4049683; 593600, 4049694; 593592, 4049700; 593587, 4049706; 593595, 4049726; 593595, 4049735; 593581, 4049746; 593564, 4049751; 593530, 4049751; 593504, 4049743; 593486, 4049731; 593473, 4049706; 593459, 4049689; 593427, 4049662; 593407, 4049643; 593375, 4049625; 593349, 4049607; 593329, 4049575; 593318, 4049552; 593315, 4049537; 593309, 4049515; 593290, 4049495; 593258, 4049449; 593233, 4049441; 593224, 4049449; 593213, 4049463; 593201, 4049478; 593188, 4049506; 593175, 4049525; 593136, 4049566; 593102, 4049575; 593011, 4049600; 592952, 4049640; 592936, 4049694; 592929, 4049732; 592917, 4049759; 592919, 4049789; 592938, 4049832; 592929, 4049862; 592911, 4049885; returning to 592908, 4049902.

(iv) Subunit 6d: From USGS 1:24,000 scale quadrangle Monterey. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 591851, 4048564; 591855, 4048576; 591861, 4048580; 591868, 4048583; 591873, 4048588; 591879, 4048594; 591884, 4048602; 591887, 4048610; 591889, 4048617; 591889, 4048625; 591891, 4048632; 591918, 4048685; 591925, 4048690; 591925, 4048690; 591935, 4048688; 591945, 4048672; 591953, 4048660; 591961, 4048648; 591969, 4048636; 592120, 4048437; 592141, 4048411; 592144, 4048397; 592144, 4048351; 592144, 4048317; 592136, 4048297; 592116, 4048287; 592116, 4048287; 592116, 4048287; 592096, 4048293; 592073, 4048322; 592062, 4048334; 592050, 4048344; 592038, 4048354; 591992, 4048388; 591951, 4048418; 591951, 4048418; 591933, 4048448; 591931, 4048452; 591928, 4048456; 591924, 4048461; 591920, 4048466; 591920, 4048466; 591912, 4048476; 591908, 4048485; 591907, 4048489; 591905, 4048496; 591902, 4048503; 591899, 4048510; 591895, 4048517; 591891, 4048523; 591886, 4048529; 591882, 4048534; 591877, 4048538; 591872, 4048543; 591866, 4048548; 591860, 4048552; 591855, 4048556; returning to 591851, 4048564.

(v) Subunit 6e: From USGS 1:24,000 scale quadrangle Monterey. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 595291, 4052402; 595329, 4052406; 595339, 4052409; 595340, 4052409; 595341, 4052409; 595343, 4052408; 595345, 4052408; 595347, 4052408; 595347, 4052408; 595348, 4052408; 595350, 4052408; 595352, 4052408; 595354, 4052408; 595355, 4052408; 595357, 4052408; 595359, 4052408; 595359, 4052408; 595361, 4052408; 595362, 4052409; 595364, 4052409; 595366, 4052409; 595367, 4052409; 595368, 4052409; 595369, 4052410; 595371,

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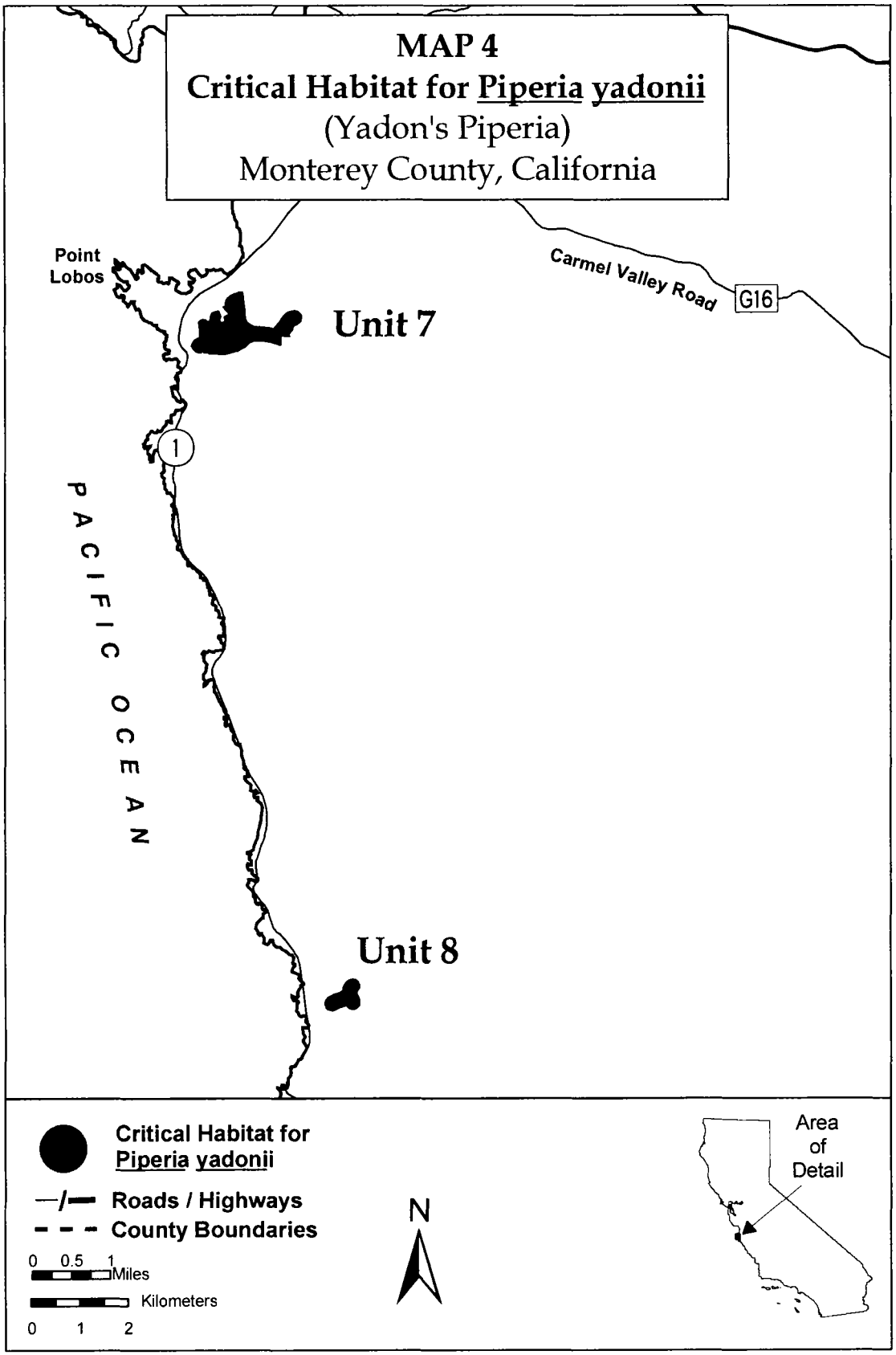
(13) Unit 7: Point Lobos Ranch, Monterey County, California. From USGS 1:24,000 scale quadrangles Monterey and Soberanes Point. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 595261, 4040950; 595269, 4041010; 595302, 4041071; 595344, 4041106; 595399, 4041136; 595410, 4041165; 595402, 4041291; 595387, 4041367; 595377, 4041400; 595365, 4041437; 595365, 4041463; 595389, 4041491; 595453, 4041513; 595516, 4041504; 595570, 4041472; 595597, 4041500; 595597, 4041536; 595602, 4041585; 595627, 4041649; 595635, 4041663; 595716, 4041696; 595759, 4041700; 595783, 4041693; 595801, 4041670; 595825, 4041613; 595827, 4041585; 595813, 4041551; 595807, 4041531; 595812, 4041518; 595844, 4041470; 595915, 4041508; 595889, 4041596; 595951, 4041638; 595966, 4041648; 595986, 4041664; 595850, 4041803; 595867, 4041802; 595891, 4041808; 595893, 4041869; 595904, 4041919; 595915, 4041930; 595910, 4041935; 595945, 4041988; 595990, 4042022; 596063, 4042063; 596142, 4042098; 596156, 4042104; 596211, 4042114; 596241, 4042109; 596269, 4042011; 596275, 4041978; 596276, 4041975; 596317, 4041764; 596343, 4041583; 596373, 4041510; 596515, 4041436; 596694, 4041433; 596927, 4041428; 597048, 4041584; 597068, 4041628; 597136, 4041714; 597204, 4041766; 597235, 4041783; 597291, 4041803; 597332, 4041812; 597381, 4041807; 597425, 4041787; 597461, 4041754; 597484, 4041711; 597492, 4041663; 597484, 4041614; 597467, 4041579; 597441, 4041550; 597408, 4041528; 597363, 4041511; 597341, 4041491; 597323, 4041415; 597248, 4041313; 597288, 4041280; 597098, 4041279; 597103, 4041079; 597060, 4041079; 597045, 4041092; 596996, 4041118; 596889, 4041130; 596702, 4041138; 596646, 4041140; 596553, 4041137; 596503, 4041119; 596451, 4041086; 596363, 4041006; 596211, 4040900; 596003, 4040843; 595913, 4040829; 595905, 4040827; 595884, 4040824; 595865, 4040825; 595753, 4040829; 595629, 4040826; 595611, 4040841; 595574, 4040832; 595575, 4040825; 595539, 4040822; 595537, 4040822; 595497, 4040858; 595465, 4040822; 595393, 4040831; 595371, 4040840; 595366, 4040838; 595297, 4040891; returning to 595261, 4040950. **Note:** Map of Units 7 and 8 (Map 4) follows:



BILLING CODE 4319–55–C

(14) Unit 8: Palo Colorado, Monterey County, California. From USGS 1:24,000 scale quadrangle Soberanes Point. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 598818, 4027785; 598823, 4027824; 598834, 4027852; 598855, 4027884; 598877, 4027904; 599017, 4027985; 599111, 4028022; 599176, 4028075; 599179, 4028121; 599198, 4028182; 599233, 4028238; 599262, 4028268; 599316, 4028304; 599373, 4028315; 599431, 4028304; 599479, 4028271; 599498, 4028249; 599518, 4028204; 599522, 4028146; 599508, 4028099; 599476, 4028056; 599471, 4028019; 599511, 4027964; 599527, 4027921; 599543, 4027880; 599551, 4027832; 599546, 4027793; 599531, 4027757; 599514, 4027733; 599484, 4027707; 599430, 4027685; 599362, 4027687; 599326, 4027702; 599282, 4027741; 599266, 4027766; 599135, 4027707; 599026, 4027647; 598988, 4027637; 598949, 4027637; 598893, 4027655; 598855, 4027686; 598830, 4027728; 598821, 4027756; returning to 598818, 4027785.

* * * * *

Dated: October 3, 2006.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06–8600 Filed 10–17–06; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Wednesday,
October 18, 2006

Part III

Department of Education

34 CFR Part 462

Measuring Educational Gain in the National Reporting System for Adult Education; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 462

Measuring Educational Gain in the National Reporting System for Adult Education

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to establish procedures for determining the suitability of tests for use in the National Reporting System for Adult Education (NRS). These proposed regulations also include procedures that States and local eligible providers would follow when using suitable tests for NRS reporting.

DATES: We must receive your comments on or before November 17, 2006.

ADDRESSES: Address all comments about these proposed regulations to Sharon A. Jones, U.S. Department of Education, 400 Maryland Avenue, SW., room 11108, Potomac Center Plaza, Washington, DC 20202–7120. If you prefer to send your comments through the Internet, you may address them to us at the U.S. Government Web site: *www.regulations.gov.*

Or you may send your Internet comments to us at the following address: *NRSregulations@ed.gov.*

You must include the term ''Part 462'' in the subject line of your electronic message.

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Mike Dean, U.S. Department of Education, 400 Maryland Avenue, SW., room 11152, Potomac Center Plaza, Washington, DC 20202–7240. Telephone: (202) 245–7828 or via Internet: *Mike.Dean@ed.gov.*

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

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

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 11108, 550 12th Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

These proposed regulations further the Department's implementation of section 212 of the Adult Education and Family Literacy Act (Act), 20 U.S.C. 9201 *et seq.*, which establishes a system to assess the effectiveness of eligible agencies in achieving continuous improvement of adult education and literacy activities.

Under the Act, the Department provides Federal funds to States, which then award grants to local eligible providers of adult education and literacy services. These providers may include local educational agencies, community-based organizations, volunteer literacy organizations, and institutions of higher education.

Accountability for results is a central focus of the Act. The Act sets out performance accountability requirements for States and local programs that measure program effectiveness on the basis of student academic achievement and other outcomes. The Act establishes three core indicators that must be used to assess State performance:

- Demonstrated improvements in literacy skill levels in reading, writing, and speaking the English language, numeracy, problem solving, English language acquisition, and other literacy skills as defined by the Secretary (educational gain).
- Placement in, retention in, or completion of postsecondary education, training, unsubsidized employment, or career advancement.
- Receipt of a secondary school diploma or a recognized equivalent.

The Department and each State reach agreement on annual levels of performance for each of the core indicators, and States annually report their actual performance in the NRS.

In order to help States validly demonstrate and accurately report their annual improvements in literacy skill levels and other core indicators of performance, and after extensive consultation with State directors of adult education, representatives from volunteer provider agencies, directors of local adult education programs, and experts on accountability systems, the Department established the NRS. The NRS standardizes the measurement of the core indicators across States and establishes procedures for collecting and reporting student outcome data to enhance the data's validity and reliability.

To further assist States, the Department also issued *Implementation Guidelines: Measures and Methods for the National Reporting System for Adult Education* (Guidelines), which established reporting requirements, data collection policies, and common definitions for each of the core outcome measures or indicators. (The Guidelines are on the Internet at *http://www.nrsweb.org*). As set forth in the Guidelines, the NRS measures educational gain by defining, using standardized tests, a set of educational functioning levels at which students are initially placed based on their abilities to perform literacy-related tasks in specific skill areas. After a specific time period or number of instructional hours established by the State, students are again assessed to determine their skill levels. If a student's skills have improved sufficiently to be placed one or more levels higher, the student is considered to have made an educational gain.

The Guidelines identify a number of standardized tests (along with the tests'

benchmarks for the NRS educational functioning levels) that are currently acceptable for States to use in measuring educational gain. However, the Guidelines do not require States to use only the standardized tests listed. If a State wishes to allow local eligible providers to use some other standardized test for this purpose, the State must take into account the factors identified in the Guidelines and must demonstrate to the Department that the particular alternate test proposed to be used satisfactorily addresses those factors.

Currently, the Department uses experts in the field of educational testing and assessment to assist us in reviewing tests for their suitability for use in the NRS. These psychometricians, using the same criteria for assessing tests that are contained in the Guidelines and these proposed regulations, review tests and make recommendations to the Secretary regarding the appropriateness of the tests. The Secretary determines, taking into account the experts' recommendations, whether a test is suitable for use in the NRS.

Until these regulations become effective, the Secretary will continue to use (1) the guidance provided in the Guidelines and (2) the Department's current process for providing States and test publishers an opportunity to demonstrate that alternate tests are suitable for NRS purposes.

Through these proposed regulations, we intend to formalize the process for the review and approval of tests for use in the NRS. We believe that the uniform process we are proposing will facilitate test publishers' submission of tests to the Department for review and help to strengthen the integrity of the NRS as a critical tool for measuring State performance. The proposed process also will provide an established means for examining tests that are currently approved for use in the NRS but have not been updated recently and, therefore, need to be reassessed for their continuing validity.

Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain.

Proposed § 462.3 provides the meanings of terms, including some from the Act, used in these regulations. We define these terms so that there is a common understanding of how the terms are used in the regulations, and because the terms will affect the validity of data collected and reported in the NRS. In that regard, the terms *adult basic education (ABE), adult secondary education (ASE), English-as-a-second language (ESL), adult education population, content domains or NRS skill areas, educational functioning levels, Guidelines, local eligible provider,* and *State* connect the regulations to the terms used in the NRS. The definitions of the terms *test, test administrator,* and *test publisher* provide standardization, which is particularly needed given the different meanings and synonyms currently used for these terms. For example, in describing the tests used to determine educational functioning levels and to measure educational gain, States and local eligible providers inconsistently use the terms test, assessment, and instrument. By clearly defining terminology, the regulations would eliminate confusion, identify a particular term to be used when describing or referencing a specific circumstance, and provide a shared understanding of how the term is used in the regulations.

Proposed § 462.4 provides the deadline, June 30, 2008, by which States and local eligible providers would stop using tests, including those currently listed in the Guidelines, that the Secretary determines are not suitable for use in the NRS. After June 30, 2008, States and local eligible providers would use only tests that the Secretary has reviewed and considered suitable for use in the NRS under these regulations. We believe a June 30, 2008, deadline provides adequate time for the Secretary to complete at least one review of tests and determine their suitability, and then, if necessary, for States and local eligible providers to transition their accountability systems from use of unsuitable tests to suitable tests. We are particularly interested in your comments on whether June 30, 2008 provides enough time for States and local eligible providers to make the transition to suitable tests.

Proposed § 462.10(a) would provide that the Secretary reviews tests only from test publishers, *i.e.*, an entity, individual, organization, or agency that owns a registered copyright of a test, or is licensed by the copyright holder to sell or distribute a test. In this way, only an entity that has a vested interest in and a great deal of knowledge about a test could request the Secretary's review of a test. These entities have an in-depth knowledge of a test's development, maintenance, content validity, match of scores to the NRS educational functioning levels, reliability, and construct validity, and, as a result, would be able to respond to questions the Secretary may raise during the review process. As importantly, test publishers would also be able to readily make tests available to States and local eligible providers for use in the NRS.

Proposed § 462.10(b) would offer test publishers an annual opportunity, by October 1 of each year, to submit tests for the Secretary's review. However, because we anticipate that these regulations will be published as final regulations after October 1, 2006, the Secretary plans to announce in the **Federal Register** the date for the first opportunity for test publishers to submit tests for review. The date of the first opportunity for test publishers to submit tests will be no earlier than the effective date of the final regulations. On that date, test publishers could begin to request that the Secretary determine the suitability of their tests using the standards and procedures established in the final regulations. States and local eligible providers could immediately use tests once they have been determined suitable by the Secretary under these regulations. The annual review proposed in § 462.10(b) would provide the Department with adequate time to review tests; review any additional information provided by test publishers; and notify test publishers, States, and local eligible providers that additional tests are eligible for use in the NRS. By receiving tests beginning in October, the Secretary would be able to synchronize the review of tests with the operations of the adult education programs, especially the data collection process.

Proposed § 462.11 would delineate the information that a test publisher must include in an application so that the Secretary may determine the suitability of a test, whether the test is being submitted for the first time or resubmitted because, for example, it has been substantively revised. These proposed regulations would continue the Department's practice of having test publishers submit information that supports the reliability and validity of their tests. This is the information that experts in the field of educational testing and assessment will need in order to advise the Secretary on the extent to which a particular test meets the criteria and requirements in § 462.13 for determining the suitability of tests. Section 462.11(j) describes the additional information test publishers would include in an application requesting the review of a previous test, for example, a test that was used to measure educational gain in the NRS before the effective date of these regulations or was first published five years or more before the date it is submitted to the Secretary for review. The Secretary reviews this information

to determine whether a test continues to reflect NRS educational functioning levels.

Proposed § 462.12 would describe the Secretary's process for reviewing and determining the suitability of tests for determining educational functioning levels and measuring educational gain. Annually, at the conclusion of the review process, the Secretary would publish a list of suitable tests in the **Federal Register** and post the list on the Internet at *http://www.nrsweb.org*. Copies of the list would also be available from the Department. Proposed § 462.12 would establish the procedure the Secretary would use to make a determination about the suitability of tests, to notify test publishers of the Secretary's decision, to provide an opportunity for test publishers to request that the Secretary reconsider a decision that a test is unsuitable, to conclude the review process upon any reconsideration, to revoke the Secretary's determination that a test is suitable, and to notify affected parties of the revocation. Further, proposed § 462.12(a)(2) identifies the circumstances when the Secretary would determine the suitability of a test. Proposed § 462.12 clearly delineates the formal, reasoned, and uniform process the Secretary would use to determine the suitability of tests and provides an opportunity for test publishers and others to suggest improvements to that process.

Proposed § 462.13 provides that in order to be determined suitable, tests would determine the NRS educational functioning levels of members of the adult education population; sample one or more of the major content domains of the NRS educational functioning levels of Adult Basic Education, Adult Secondary Education, English-as-a-second Language, or all three; meet the applicable and feasible standards for test construction provided in the 1999 edition of the Standards for Educational and Psychological Testing; contain the test publisher's guidelines for retesting; and have two or more secure, parallel, equated forms. Proposed § 462.13 would also establish that the size of the item pool and the method of item selection for computerized adaptive tests must ensure negligible overlap in items across pre- and post-test. Finally, proposed § 462.13 would establish the requirements for tests that have been modified for an individual with a disability. Proposed § 462.13 is necessary because it would notify test publishers of the criteria and requirements the Secretary would use to determine the suitability of tests. Since the information provided in a test publisher's application must ultimately demonstrate that a test meets the criteria and requirements in § 462.13, this section would be beneficial to test publishers because it contains, in one place, information a test publisher can use to decide whether to submit an application. After reviewing § 462.13, a test publisher could decide to save its resources rather than prepare an application for a test that does not meet the criteria and requirements in the regulations and, as a result, would be determined unsuitable.

Proposed § 462.14 would establish a seven-year period during which a test determined as suitable would remain eligible for use in the NRS, unless the test publisher substantially revises the test—for example, by changing its structure, number of items, content specifications, item types, or sub-tests. The Secretary believes that having a test remain suitable for seven years helps to ensure greater consistency for State and local accountability systems, improves the reliability for data collected and reported in the NRS, and reduces the amount of disruption to State and local programs if suitable tests are later found to be unsuitable and, therefore, can no longer be used in the NRS. The regulations also would establish that the Secretary may determine that a test is suitable for use in the NRS for fewer than seven years. Proposed § 462.14 would clarify for test publishers how often and under which circumstances a test must be reviewed by the Secretary.

Proposed §§ 462.40 through 462.44 would codify a number of existing NRS practices regarding activities such as determining educational functioning levels, administering tests, student placement, measuring educational gain, and State assessment policy. Proposed §§ 462.40 through 462.44 are necessary because they would establish what the Department deems is an efficient and effective means of obtaining accurate, reliable, and valid data for reporting in the NRS.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

Elsewhere in this **SUPPLEMENTARY INFORMATION** section, we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

Elsewhere in this preamble, under the headings Significant Proposed Regulations and Regulatory Flexibility Act Certification, we discuss the potential costs and benefits of these proposed regulations.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential Memorandum on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§'' and a numbered heading; for example, § 462.1 What is the scope of this part?)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities because they would not impose excessive regulatory burdens or require

unnecessary Federal supervision. The proposed regulations would impose minimal requirements to ensure the proper expenditure of program funds.

These proposed regulations would affect States, a few test publishers, and local eligible providers of adult education programs that receive funding under the Act.

States and State agencies are not defined as ''small entities'' in the Regulatory Flexibility Act.

The U.S. Small Business Administration Size Standards classify test publishers as a ''small business'' if they are organized for profit, have total annual revenue below $6.5 million, and have 100 or fewer employees. The U.S. Small Business Administration Size Standards classify local eligible providers as (a) ''small organizations,'' which means any not-for profit enterprise that is independently owned and operated and is not dominant in its field or (b) ''small governmental jurisdictions,'' which means governments of cities, counties, towns, townships, village, school districts, or special districts with a population of less than fifty thousand.

The proposed regulations would benefit both small and large entities by providing one uniform process for reviewing tests that are used to measure educational gain in the NRS. This process would relieve States of the burden of using their limited resources to review tests. It would also reduce the amount of resources test publishers would expend to have tests reviewed by individual States. Under the proposed regulations, test publishers would have their tests reviewed by only the Department instead of by each State that intends to use their tests. Thus entities, both small and large, would experience a positive economic impact as a result of these proposed regulations.

Paperwork Reduction Act of 1995

Sections 462.10, 462.11, 462.12, 462.13, and 462.14 contain new information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management Budget (OMB) for its review. Sections 462.4 and 462.40 through 462.44 contain information collection requirements approved by OMB under Control Number 1830–0027 for existing NRS practices.

Collection of Information: Measuring Educational Gain in the National Reporting System for Adult Education.

Under these proposed regulations, test publishers would request the Secretary's review of tests that measure educational gain. The collection of information includes the following:

(a) Specific information concerning a test's development, maintenance, content validity, match scores, reliability, validity, and the extent to which the test meets applicable and feasible standards for test construction.

(b) Specifications on how tests will be administered at the local eligible provider level.

(c) Existing NRS practices regarding determining educational functioning levels, administering tests, student placement, State assessment policy, and measuring educational gain in the NRS that have been approved by OMB under Control Number 1830–0027.

The Department would use this information to (a) determine the suitability of tests for use in the NRS and (b) judge program performance, including eligibility for incentive grants.

The collection of information would be provided when (a) a test publisher wishes the Secretary to determine the suitability of its test for use in the NRS and (b) States and local eligible providers measure and report educational gain under the NRS.

Once the Secretary determines that a test is suitable for use in the NRS, a test could be used in the NRS for seven years. After that time, the test publisher could again submit the test to the Secretary for review, or the test could no longer be used in the NRS. We estimate reporting and recordkeeping burden for an application requesting the Secretary to determine the suitability of a test for use in the NRS to average 40 hours for each response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, and responding to questions the Secretary may have. While the collection of information is necessarily inclusive, it would request merely the data test publishers can reasonably be expected to have on hand to support their claims regarding the appropriateness and effectiveness of their test or tests, including whether the test meets applicable and feasible standards for test construction in the 1999 edition of the *Standards for Educational and Psychological Testing*. Much of the information is routinely included in the technical manual and the test administrator's manual that are provided with a test.

While we cannot estimate the total number of respondents, because it is impossible to know the number of test publishers that may want to expand their markets into the field of adult education, we are aware of: (a) 25 tests that test publishers may ask the Secretary to review for suitability for use in the NRS and (b) 25 widely used tests of an adult's basic skills that have been in use in the NRS since 1999 and that would need to be reviewed by the Secretary after these regulations become effective if they are to continue to be used in the NRS. Therefore, we estimate the total reporting burden for this collection to be 2,000 hours (50×40). This estimate does not include the reporting burden associated with (a) the actual use of a test to measure educational gain and (b) existing NRS practices regarding determining educational functioning levels, administering tests, student placement, State assessment policy, and measuring educational gain in the NRS because that burden has been approved by OMB under Control Number 1830–0027.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden of those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submissions of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

These regulations are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

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

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

(Catalog of Federal Domestic Assistance Number does not apply)

List of Subjects in 34 CFR Part 462

Administrative practice, Adult education, Grants program—education, Incorporation by reference, and Reporting and recordkeeping requirements.

Dated: October 11, 2006.

Margaret Spellings,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations by adding a new part 462 to read as follows:

PART 462—MEASURING EDUCATIONAL GAIN IN THE NATIONAL REPORTING SYSTEM FOR ADULT EDUCATION

Subpart A—General

Sec.

Subpart B—What Process Does the Secretary Use to Review the Suitability of Tests for Use in the NRS?

Subpart C—[Reserved]

Subpart D—What Requirements Must States and Local Eligible Providers Follow When Measuring Educational Gain?

Authority: 20 U.S.C. 9212, unless otherwise noted.

Subpart A—General

§ 462.1 What is the scope of this part?

These regulations establish the—

(a) Procedures the Secretary uses to determine the suitability of standardized tests for use in the National Reporting System for Adult Education (NRS) to measure educational gain of participants in an adult education program required to report under the NRS; and

(b) Procedures States and local eligible providers must follow when measuring educational gain for use in the NRS.

(Authority: 20 U.S.C. 9212)

§ 462.2 What regulations apply?

The following regulations apply to this part:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)).

(9) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement)).

(10) 34 CFR part 86 (Drug and Alcohol Abuse Prevention).

(11) 34 CFR part 97 (Protection of Human Subjects).

(12) 34 CFR part 98 (Student Rights in Research, Experimental Programs, and Testing).

(13) 34 CFR part 99 (Family Educational Rights and Privacy).

(b) The regulations in this part 462.

(Authority: 20 U.S.C. 9212)

§ 462.3 What definitions apply?

(a) *Definitions in the Adult Education and Family Literacy Act (Act).* The following terms used in these regulations are defined in section 203 of the Adult Education and Family Literacy Act, 20 U.S.C. 9202 (Act):

Adult education
Eligible provider
Individual of limited English proficiency
Individual with a disability
Literacy

(b) *Other definitions.* The following definitions also apply to this part:

Adult basic education (ABE) means instruction designed for an adult whose educational functioning level is equivalent to a particular ABE literacy level listed in the NRS educational functioning level table in § 462.44.

Adult education population means individuals—

(1) Who are 16 years of age or older;

(2) Who are not enrolled in secondary school; and

(3) Who—

(i) Lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society;

(ii) Do not have a secondary school diploma or its recognized equivalent, and have not achieved an equivalent level of education; or

(iii) Are unable to speak, read, or write the English language.

Adult secondary education (ASE) means instruction designed for an adult whose educational functioning level is equivalent to a particular ASE literacy level listed in the NRS educational functioning level table in § 462.44.

Content domains or NRS skill areas mean, for the purpose of the NRS, reading, writing, and speaking the English language, numeracy, problem solving, English language acquisition, and other literacy skills as defined by the Secretary.

Educational functioning levels mean the ABE, ASE, and ESL literacy levels, as provided in § 462.44, that describe a set of skills and competencies that students demonstrate in the NRS skills areas.

English-as-a-second language (ESL) means instruction designed for an adult whose educational functioning level is equivalent to a particular ESL literacy level listed in the NRS educational functioning level table in § 462.44.

Guidelines means the *Implementation Guidelines: Measures and Methods for the National Reporting System for Adult Education* (also known as NRS Implementation Guidelines) posted on the Internet at: *http://www.nrsweb.org.* A copy of the Guidelines is also available from the U.S. Department of Education, Division of Adult Education and Literacy, 400 Maryland Avenue, SW., room 11159, Potomac Center Plaza, Washington, DC 20202–7240.

Local eligible provider means an ''eligible provider'' as defined in the Act that operates an adult education program that is required to report under the NRS.

State means ''State'' and ''Outlying area'' as defined in the Act.

Test means a standardized test, assessment, or instrument that has a formal protocol on how it is to be administered. These protocols include, for example, the use of parallel, equated forms, testing conditions, time allowed for the test, standardized scoring, and the amount of instructional time a student needs before post-testing. Violation of these protocols often invalidates the test.

Test administrator means an individual who is trained to administer tests the Secretary determines to be suitable under this part.

Test publisher means an entity, individual, organization, or agency that owns a registered copyright of a test, or is licensed by the copyright holder to sell or distribute a test.

(Authority: 20 U.S.C. 9202, 9212)

§ 462.4 What are the transition rules for using tests to measure educational gain for the National Reporting System for Adult Education (NRS)?

A State or a local eligible provider may continue to measure educational gain for the NRS using a test that was identified in the Guidelines until June 30, 2008. After that time, States and local eligible providers must use only tests that the Secretary has reviewed and determined to be suitable for use in the NRS under this part. (Approved by the Office of Management and Budget under control number 1830–0027)

(Authority: 20 U.S.C. 9212)

Subpart B—What Process Does the Secretary Use to Review the Suitability of Tests for Use in the NRS?

§ 462.10 How does the Secretary review tests?

(a) The Secretary only reviews tests under this part that are submitted by a test publisher.

(b) A test publisher that wishes to have the suitability of its test determined by the Secretary under this part must submit an application to the Secretary by October 1 of each year and in the manner the Secretary may prescribe.

(Authority: 20 U.S.C. 9212)

§ 462.11 What must an application contain?

(a) *Application content and format.* (1) In order for the Secretary to determine whether a standardized test is suitable for measuring the gains of participants in an adult education program required to report under the NRS, a test publisher must include with its application information listed in paragraphs (b) through (i) of this section, as well as the applicable information in paragraph (j) of this section.

(2) A test publisher must arrange the information in its application in the order it is presented in paragraphs (b) through (j) of this section.

(3) A test publisher must submit to the Secretary three copies of its application.

(b) *General information.* (1) A statement, in the technical manual for the test, of the intended purpose of the test and of how the test will allow examinees to demonstrate the skills that are associated with the NRS educational functioning levels in § 462.44.

(2) The name, address, e-mail address, and telephone and fax numbers of a contact person to whom the Secretary may address inquiries.

(3) A summary of the precise editions, forms, levels, and, if applicable, subtests and abbreviated tests that the test publisher is requesting that the Secretary review and determine to be suitable for use in the NRS.

(c) *Development.* Documentation of how the test was developed, including a description of—

(1) The nature of samples of examinees administered the test during pilot or field testing, for example—

(i) The number of examinees administered each item;

(ii) How similar were the sample or samples of examinees used to develop and evaluate the test to the adult education population of interest to the NRS; and

(iii) The steps, if any, taken to ensure that the examinees were motivated while responding to the test; and

(2) The steps taken to ensure the quality of test items or tasks, for example—

(i) The extent to which items or tasks on the test have been reviewed for fairness and sensitivity; and

(ii) The extent to which items or tasks on the test have been screened for the adequacy of their psychometric properties.

(d) *Maintenance.* Documentation of how the test is maintained, including a description of—

(1) How frequently, if ever, new forms of the test are developed;

(2) The steps taken to ensure the comparability of scores across forms of the test;

(3) The steps taken to maintain the security of the test; and

(4) A history of the test's use.

(e) *Match of content to the NRS educational functioning levels (content validity).* Documentation of the extent to which the items or tasks on the test cover the skills in the NRS educational functioning levels in § 462.44, including—

(1) Whether the items or tasks on the test require the types and levels of skills used to describe the NRS educational functioning levels;

(2) Whether the items or tasks measure skills that are not associated with the NRS educational functioning levels;

(3) Whether aspects of a particular NRS educational functioning level are not covered by any of the items or tasks;

(4) Whether there are items or tasks that are not associated with any of the NRS educational functioning levels;

(5) The procedures used to establish the content validity of the test;

(6) The number of subject-matter experts who provided judgments linking

the items or tasks to the educational functioning levels, and their qualifications for doing so, particularly their familiarity with adult education and the NRS educational functioning levels; and

(7) The extent to which the judgments of the subject matter experts agree.

(f) *Match of scores to NRS educational functioning levels.* Documentation of the adequacy of the procedure used to translate the performance of an examinee on a particular test to an estimate of the examinee's standing with respect to the NRS educational functioning levels in § 462.44, including—

(1) The standard-setting procedures used to establish cut scores for transforming raw or scale scores on the test into estimates of an examinee's NRS educational functioning level;

(2) If judgment-based procedures were used—

(i) The number of subject matter experts who provided judgments, and their qualifications; and

(ii) Evidence of the extent to which the judgments of subject-matter experts agree;

(3) The standard error of each cut score, and how it was established; and

(4) The extent to which the cut scores might be expected to differ if they had been established by a different (though similar) panel of experts.

(g) *Reliability.* Documentation of the degree of consistency in performance across different forms of the test in the absence of any external interventions, including—

(1) The correlation between raw (or number-correct) scores across alternate forms of the test;

(2) The consistency with which examinees are classified into the same NRS educational functioning levels across forms of the test. Information regarding classification consistency should be reported for each NRS educational functioning level that the test is being considered for use in measuring;

(3) The adequacy of the research design leading to the estimates of the reliability of the test, including—

(i) The size of the sample;

(ii) The similarity between the sample used in the data collection and the adult education population; and

(iii) The steps taken to ensure the motivation of the examinees; and

(4) Any other information explaining the methodology and procedures used to measure the reliability of the test.

(h) *Construct validity.* Documentation of the appropriateness of a given test for measuring educational gain for the NRS, *i.e.*, documentation that the test measures what it is intended to measure, including—

(1) The extent to which the raw or scale scores and the educational functioning classifications associated with the test correlate (or agree) with scores or classifications associated with other tests designed or intended to assess educational gain in the same adult education population as the NRS;

(2) The extent to which the raw or scale scores are related to other relevant variables, such as hours of instruction or other important process or outcome variables;

(3) The adequacy of the research designs associated with these sources of evidence (see paragraph (g)(3) of this section); and

(4) Other evidence demonstrating that the test measures gains in educational functioning resulting from adult education, and not some other construct-irrelevant variables, such as practice effects.

(i) *Other information.* (1) A description of the manner in which test-taking time was determined in relation to the content domains of the NRS educational functioning levels, and an analysis of the effects of time on performance.

(2) Additional guidance on the interpretation of scores resulting from any modifications of the tests for an individual with a disability.

(3) The manual provided to test administrators containing procedures and instructions for test security and administration.

(4) A description of the training or certification required of test administrators and scorers by the test publisher.

(5) A description of retesting procedures and the analysis upon which the criteria for retesting are based.

(6) Such other evidence as the Secretary may determine is necessary to establish the test's compliance with the criteria and requirements the Secretary uses to determine the suitability of tests as provided in § 462.13.

(j) *Previous tests.* (1) For a test used to measure educational gain in the NRS before the effective date of these regulations that is being submitted to the Secretary for review under this part, the test publisher must provide documentation of periodic review of the content and specifications of the test to ensure that the test continues to reflect NRS educational functioning levels.

(2) For a test first published five years or more before the date it is submitted to the Secretary for review under this part, the test publisher must provide documentation of periodic review of the content and specifications of the test to ensure that the test continues to reflect NRS educational functioning levels.

(3) For a test that has not changed in the seven years since the Secretary determined, under § 462.13, that it was suitable for use in the NRS that is again being submitted to the Secretary for review under this part, the test publisher must provide new data supporting the validity of the test.

(4) If a test has been substantially revised—for example by changing its structure, number of items, content specifications, item types, or sub-tests—from the most recent edition reviewed by the Secretary under this part, the test publisher must provide an analysis of the revisions, including the reasons for the revisions, the implications of the revisions for the comparability of scores on the current test to scores on the previous test, and results from validity, reliability, and equating or standard-setting studies undertaken subsequent to the revisions.

(Authority: 20 U.S.C. 9212)

§ 462.12 What procedures does the Secretary use to review the suitability of tests?

(a) *Review.* (1) When the Secretary receives a complete application from a test publisher, the Secretary selects experts in the field of educational testing and assessment who possess appropriate advanced degrees and experience in test development or psychometric research, or both, to advise the Secretary on the extent to which a test meets the criteria and requirements contained in § 462.13.

(2) The Secretary reviews and determines the suitability of a test only if an application—

(i) Is submitted by a test publisher;

(ii) Meets the deadline established by the Secretary;

(iii) Includes a test that has two or more secure, parallel, equated forms of the test;

(iv) Includes a test that samples one or more of the major content domains of the NRS educational functioning levels of ABE, ESL, or ASE with sufficient numbers of questions to represent adequately the domain or domains; and

(v) Includes the information prescribed by the Secretary, including the information in § 462.11 of this part.

(b) *Secretary's determination.* (1) The Secretary determines whether a test meets the criteria and requirements in § 462.13 after taking into account the advice of the experts described in paragraph (a)(1) of this section.

(2) For tests that contain multiple sub-tests measuring content domains other than those of the NRS educational functioning levels, the Secretary

determines the suitability of only those sub-tests covering the domains of the NRS educational functioning levels.

(c) *Suitable tests.* If the Secretary determines that a test satisfies the criteria and requirements in § 462.13 and, therefore, is suitable for use in the NRS, the Secretary—

(1) Notifies the test publisher of the Secretary's decision; and

(2) Annually publishes in the **Federal Register** and posts on the Internet at *http://www.nrsweb.org* a list of the names of tests and the educational functioning levels the tests are suitable to measure in the NRS. A copy of the list is also available from the U.S. Department of Education, Division of Adult Education and Literacy, 400 Maryland Avenue, SW., room 11159, Potomac Center Plaza, Washington, DC 20202–7240.

(d) *Unsuitable tests.* (1) If the Secretary determines that a test does not satisfy the criteria and requirements in § 462.13 and, therefore, is not suitable for use in the NRS, the Secretary notifies the test publisher of the Secretary's decision and of the reasons why the test does not meet those criteria and requirements.

(2) Within 30 days after the Secretary notifies a test publisher that its test is not suitable for use in the NRS, the test publisher may request that the Secretary reconsider the Secretary's decision. This request must be accompanied by—

(i) An analysis of why the information and documentation submitted meet the criteria and requirements in § 462.13 notwithstanding the Secretary's earlier decision to the contrary; and

(ii) Any additional documentation and information that address the Secretary's reasons for determining that the test was unsuitable.

(3) The Secretary reviews the additional information submitted by the test publisher and makes a final determination regarding the suitability of the test for use in the NRS.

(i) If the Secretary's decision is unchanged and the test remains unsuitable for use in the NRS, the Secretary notifies the test publisher, and this action concludes the review process.

(ii) If the Secretary's decision changes and the test is determined to be suitable for use in the NRS, the Secretary follows the procedures in paragraph (c) of this section.

(e) *Revocation.* (1) The Secretary's determination regarding the suitability of a test may be revoked if the Secretary determines that the information the publisher submitted as a basis for the Secretary's review of the test was inaccurate.

(2) If the Secretary revokes the determination regarding the suitability of a test, the Secretary publishes in the **Federal Register** and posts on the Internet at *http://www.nrsweb.org* a notice of that revocation along with the date by which States and local eligible providers must stop using the revoked test. A copy of the notice of revocation is also available from the U.S. Department of Education, Division of Adult Education and Literacy, 400 Maryland Avenue, SW., room 11159, Potomac Center Plaza, Washington, DC 20202–7240.

(Authority: 20 U.S.C. 9212)

§ 462.13 What criteria and requirements does the Secretary use for determining the suitability of tests?

In order for the Secretary to consider a test suitable for use in the NRS, the test or the test publisher, if applicable, must meet the following criteria and requirements:

(a) The test must measure the NRS educational functioning levels of members of the adult education population.

(b) The test must sample one or more of the major content domains of the NRS educational functioning levels of ABE, ESL, or ASE with sufficient numbers of questions to adequately represent the domain or domains.

(c)(1) The test must meet all applicable and feasible standards for test construction provided in the 1999 edition of the *Standards for Educational and Psychological Testing*, prepared by the Joint Committee on Standards for Educational and Psychological Testing of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education incorporated by reference in this section. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the American Psychological Association, Inc., 750 First Street, NE., Washington, DC 20002. You may inspect a copy at the Department of Education, room 11108, 550 12th Street, SW., Washington, DC 20202 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(2) If asked by the Secretary, a test publisher must be able to explain why it believes that certain standards in the *Standards for Educational and Psychological Testing* were not applicable or were not feasible.

(d) The test must contain the publisher's guidelines for retesting, including time between test-taking, which are accompanied by appropriate justification.

(e) The test must have two or more secure, parallel, equated forms.

(f) For computerized adaptive tests, the size of the item pool and the method of item selection must be adequate to ensure negligible overlap in items across pre- and post-test administrations of the test to the same examinee. Scores associated with these alternate administrations must be equivalent in meaning.

(g) For a test that has been modified for an individual with a disability, the test publisher must—

(1) Provide documentation that it followed the guidelines provided in the Testing Individuals With Disabilities section of the 1999 edition of the *Standards for Educational and Psychological Testing;*

(2) Provide documentation of the appropriateness and feasibility of the modifications relevant to test performance; and

(3) Recommend educational functioning levels based on the previous performance of test takers who are members of the adult education population of interest to the NRS.

(Authority: 20 U.S.C. 9212)

§ 462.14 How often and under what circumstances must a test be reviewed by the Secretary?

(a) The Secretary's determination that a test is suitable for use in the NRS is in effect for a period of seven years from the date of the Secretary's written notification to the test publisher, unless otherwise indicated by the Secretary. After that time, if the test publisher wants the test to be used in the NRS, the test must be reviewed again by the Secretary so that the Secretary can determine whether the test continues to be suitable for use in the NRS.

(b) If a test that the Secretary has determined is suitable for use in the NRS is substantially revised—for example, by changing its structure, number of items, content specifications, item types, or sub-tests—and the test publisher wants the test to continue to be used in the NRS, the test publisher must submit, as provided in § 462.11(j)(4), the substantially revised test or version of the test to the Secretary for review so that the Secretary can determine whether the test continues to be suitable for use in the NRS.

(Authority: 20 U.S.C. 9212)

Subpart C—[Reserved]

Subpart D—What Requirements Must States and Local Eligible Providers Follow When Measuring Educational Gain?

§ 462.40 Must a State have an assessment policy?

(a) A State must have a written assessment policy that its local eligible providers must follow in measuring educational gain and reporting data in the NRS.

(b) A State must submit its assessment policy to the Secretary for review and approval at the time it submits its annual statistical report for the NRS.

(c) The State's assessment policy must—

(1) Include a statement requiring that local eligible providers measure the educational gain of all students who receive 12 hours or more of instruction in the State's adult education program with a test that the Secretary has determined is suitable for use in the NRS;

(2) Identify the pre- and post-tests that the State requires local eligible providers to use to measure the educational gain of ABE, ESL, and ASE students;

(3)(i) Indicate when, in calendar days or instructional hours, local eligible providers must administer pre- and post-tests to students; and

(ii) Ensure that the time for administering the post-test is long enough after the pre-test to allow the test to measure educational gains according to the test publisher's guidelines;

(4) Specify the score ranges tied to educational functional levels for placement and for reporting gains for accountability;

(5) Identify the skill areas the State intends to require local eligible providers to assess in order to measure educational gain;

(6) Include the guidance the State provides to local eligible providers on testing and placement of an individual with a disability or an individual who is unable to be tested because of a disability;

(7) Describe the training requirements that staff must meet in order to be qualified to administer and score each test selected by the State to measure the educational gains of students;

(8) Identify the alternate form or forms of each test that local eligible providers must use for post-testing;

(9) Indicate whether local eligible providers must use a locator test for guidance on identifying the appropriate pre-test;

(10) Describe the State's policy for the initial placement of a student at each NRS educational functioning level using test scores;

(11) Describe the State's policy for advancing students across educational functioning levels using the post-test and for measuring educational gain;

(12) Describe the pre-service and in-service staff training that the State or local eligible providers will provide, including training—

(i) For staff who either administer or score each of the tests used to measure educational gain;

(ii) For teachers and other local staff involved in gathering, analyzing, compiling, and reporting data for the NRS; and

(iii) That includes the following topics:

(A) NRS policy, accountability policies, and the data collection process.

(B) Definitions of measures.

(C) Conducting assessments; and

(13) Identify the State or local agency responsible for providing pre- and in-service training.

(Approved by the Office of Management and Budget under control number 1830–0027)

(Authority: 20 U.S.C. 9212)

§ 462.41 How must tests be administered in order to accurately measure educational gain?

(a) *General.* A local eligible provider must measure the educational gains of students using only tests that the Secretary has determined are suitable for use in the NRS and that the State has identified in its assessment policy.

(b) *Pre-test.* A local eligible provider must—

(1) Administer a pre-test to measure a student's educational functioning level at intake, or as soon as possible thereafter;

(2) Administer the pre-test to students at a uniform time, according to its State's assessment policy; and

(3) Administer pre-tests to students in the skill areas identified in its State's assessment policy.

(c) *Post-test.* A local eligible provider must—

(1) Administer a post-test to measure a student's educational functioning level after a set time period or number of instructional hours;

(2) Administer the post-test to students at a uniform time, according to its State's assessment policy;

(3) Administer post-tests with a secure, parallel, equated form of the same test that was used to pre-test and determine the initial placement of students; and

(4) Administer post-tests to students in the same skill areas as the pre-test.

(d) *Other requirements.* (1) A local eligible provider must administer a test using only staff who have been trained to administer the test.

(2) A local eligible provider may use the results of a test in the NRS only if the test was administered in a manner that is consistent with the State's assessment policy and the test publisher's recommendations.

(Approved by the Office of Management and Budget under control number 1830–0027)

(Authority: 20 U.S.C. 9212)

§ 462.42 How are tests used to place students at an NRS educational functioning level?

(a) A local eligible provider must use the results of the pre-test described in § 462.41(b) to initially place students at the appropriate NRS educational functioning level.

(b) A local eligible provider must use the results of the post-test described in § 462.41(c)—

(1) To determine whether students have completed one or more educational functioning levels or are progressing within the same level; and

(2) To place students at the appropriate NRS educational functioning level.

(c)(1) States and local eligible providers are not required to use all of the skill areas described in the NRS educational functioning levels to place students.

(2) States and local eligible providers must test and report on the skill areas most relevant to the students' needs and to the programs' curriculum.

(d)(1) If a State's assessment policy requires a local eligible provider to test a student in multiple skill areas and the student will receive instruction in all of the skill areas, the local eligible provider must place the student in an educational functioning level that is equivalent to the student's lowest test score for any of the skill areas tested under § 462.41(b) and (c).

(2) If a State's assessment policy requires a local eligible provider to test a student in multiple skill areas, but the student will receive instruction in fewer than all of the skill areas, the local eligible provider must place the student in an educational functioning level that is equivalent to the student's lowest test score for any of the skill areas—

(i) Tested, under § 462.41(b) and (c); and

(ii) In which the student will receive instruction.

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(Authority: 20 U.S.C. 9212)

§ 462.43 How is educational gain measured?

(a)(1) Educational gain is measured by comparing the student's initial educational functioning level, as measured by the pre-test described in § 462.41(b), with the student's educational functioning level as measured by the post-test described in § 462.41(c).

Example: A State's assessment policy requires its local eligible providers to test students in reading and numeracy. The student scores lower in reading than in numeracy. As described in § 462.42(d)(1), the local eligible provider would use the student's reading score to place the student in an educational functioning level. To measure educational gain, the local eligible recipient would compare the reading score on the pre-test with the reading score on the post-test.

(2) A student is considered to have made an educational gain when the student's post-test indicates that he or she has completed one or more educational functioning levels above the level in which the student was placed by the pre-test.

(b) If a student is not post-tested, then no educational gain can be measured for that student and the local eligible provider must report the student in the same educational functioning level as initially placed for NRS reporting purposes.

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(Authority: 20 U.S.C. 9212)

§ 462.44 Which educational functioning levels must States and local eligible providers use to measure and report educational gain in the NRS?

States and local eligible providers must use the NRS educational functioning levels in the following functioning level table:

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Table to §462.44—Functioning Level Table

EDUCATIONAL FUNCTIONING LEVEL DESCRIPTORS—ADULT BASIC EDUCATION LEVELS			
Literacy Level	**Basic Reading and Writing**	**Numeracy Skills**	**Functional and Workplace Skills**
Beginning ABE Literacy Grade level 0–1.9	Individual has no or minimal reading and writing skills. May have little or no comprehension of how print corresponds to spoken language and may have difficulty using a writing instrument. At the upper range of this level, individual can recognize, read, and write letters and numbers but has a limited understanding of connected prose and may need frequent re-reading. Can write a limited number of basic sight words and familiar words and phrases; may also be able to write simple sentences or phrases, including very simple messages. Can write basic personal information. Narrative writing is disorganized and unclear, inconsistently uses simple punctuation (e.g., periods, commas, question marks), and contains frequent errors in spelling.	Individual has little or no recognition of numbers or simple counting skills or may have only minimal skills, such as the ability to add or subtract single digit numbers.	Individual has little or no ability to read basic signs or maps and can provide limited personal information on simple forms. The individual can handle routine entry level jobs that require little or no basic written communication or computational skills and no knowledge of computers or other technology.
Beginning Basic Education Grade level 2–3.9	Individual can read simple material on familiar subjects and comprehend simple and compound sentences in single or linked paragraphs containing a familiar vocabulary; can write simple notes and messages on familiar situations but lacks clarity and focus. Sentence structure lacks variety, but individual shows some control of basic grammar (e.g., present and past tense) and consistent use of punctuation (e.g., periods, capitalization).	Individual can count, add, and subtract three digit numbers, can perform multiplication through 12, can identify simple fractions, and perform other simple arithmetic operations.	Individual is able to read simple directions, signs, and maps, fill out simple forms requiring basic personal information, write phone messages, and make simple changes. There is minimal knowledge of and experience with using computers and related technology. The individual can handle basic entry level jobs that require minimal literacy skills; can recognize very short, explicit, pictorial texts (e.g., understands logos related to worker safety before using a piece of machinery); and can read want ads and complete simple job applications.
Low Intermediate Basic Education Grade level 4–5.9	Individual can read text on familiar subjects that have a simple and clear underlying structure (e.g., clear main idea, chronological order); can use context to determine meaning; can interpret actions required in specific written directions; can write simple paragraphs with a main idea and supporting details on familiar topics (e.g., daily activities, personal issues) by recombining learned vocabulary and structures; and can self and peer edit for spelling and punctuation errors.	Individual can perform with high accuracy all four basic math operations using whole numbers up to three digits and can identify and use all basic mathematical symbols.	Individual is able to handle basic reading, writing, and computational tasks related to life roles, such as completing medical forms, order forms, or job applications; and can read simple charts, graphs, labels, and payroll stubs and simple authentic material if familiar with the topic. The individual can use simple computer programs and perform a sequence of routine tasks given direction using technology (e.g., fax machine, computer operation). The individual can qualify for entry level jobs that require following basic written instructions and diagrams with assistance, such as oral clarification; can write a short report or message to fellow workers; and can read simple dials and scales and take routine measurements.

Table to §462.44—Functioning Level Table (Continued)

EDUCATIONAL FUNCTIONING LEVEL DESCRIPTORS—ADULT BASIC EDUCATION LEVELS			
Literacy Level	**Basic Reading and Writing**	**Numeracy Skills**	**Functional and Workplace Skills**
High Intermediate Basic Education Grade level 6–8.9	Individual is able to read simple descriptions and narratives on familiar subjects or from which new vocabulary can be determined by context and can make some minimal inferences about familiar texts and compare and contrast information from such texts but not consistently. The individual can write simple narrative descriptions and short essays on familiar topics and has consistent use of basic punctuation but makes grammatical errors with complex structures.	Individual can perform all four basic math operations with whole numbers and fractions; can determine correct math operations for solving narrative math problems and can convert fractions to decimals and decimals to fractions; and can perform basic operations on fractions.	Individual is able to handle basic life skills tasks such as graphs, charts, and labels and can follow multistep diagrams; can read authentic materials on familiar topics, such as simple employee handbooks and payroll stubs; can complete forms such as a job application and reconcile a bank statement. Can handle jobs that involve following simple written instructions and diagrams; can read procedural texts, where the information is supported by diagrams, to remedy a problem, such as locating a problem with a machine or carrying out repairs using a repair manual. The individual can learn or work with most basic computer software, such as using a word processor to produce own texts, and can follow simple instructions for using technology.
EDUCATIONAL FUNCTIONING LEVEL DESCRIPTORS—ADULT SECONDARY EDUCATION LEVELS			
Literacy Level	**Basic Reading and Writing**	**Numeracy Skills**	**Functional and Workplace Skills**
Low Adult Secondary Education *Grade level 9–10.9*	Individual can comprehend expository writing and identify spelling, punctuation, and grammatical errors; can comprehend a variety of materials such as periodicals and nontechnical journals on common topics; can comprehend library reference materials and compose multiparagraph essays; can listen to oral instructions and write an accurate synthesis of them; and can identify the main idea in reading selections and use a variety of context issues to determine meaning. Writing is organized and cohesive with few mechanical errors; can write using a complex sentence structure; and can write personal notes and letters that accurately reflect thoughts.	Individual can perform all basic math functions with whole numbers, decimals, and fractions; can interpret and solve simple algebraic equations, tables, and graphs and can develop own tables and graphs; and can use math in business transactions.	Individual is able or can learn to follow simple multistep directions and read common legal forms and manuals; can integrate information from texts, charts, and graphs; can create and use tables and graphs; can complete forms and applications and complete resumes; can perform jobs that require interpreting information from various sources and writing or explaining tasks to other workers; is proficient using computers and can use most common computer applications; can understand the impact of using different technologies; and can interpret the appropriate use of new software and technology.
High Adult Secondary Education *Grade level 11–12*	Individual can comprehend, explain, and analyze information from a variety of literacy works, including primary source materials and professional journals, and can use context cues and higher order processes to interpret meaning of written material. Writing is cohesive with clearly expressed ideas supported by relevant detail, and individual can use varied and complex sentence structures with few mechanical errors.	Individual can make mathematical estimates of time and space and can apply principles of geometry to measure angles, lines, and surfaces and can also apply trigonometric functions.	Individual is able to read technical information and complex manuals; can comprehend some college level books and apprenticeship manuals; can function in most job situations involving higher order thinking; can read text and explain a procedure about a complex and unfamiliar work procedure, such as operating a complex piece of machinery; can evaluate new work situations and processes; and can work productively and collaboratively in groups and serve as facilitator and reporter of group work. The individual is able to use common software and learn new software applications; can define the purpose of new technology and software and select appropriate technology; can adapt use of software or technology to new situations; and can instruct others, in written or oral form, on software and technology use.

Table to §462.44—Functioning Level Table (Continued)

EDUCATIONAL FUNCTIONING LEVEL DESCRIPTORS—ENGLISH AS A SECOND LANGUAGE LEVELS			
Literacy Level	**Listening and Speaking**	**Basic Reading and Writing**	**Functional and Workplace Skills**
Beginning ESL Literacy SPL 0–1	Individual cannot speak or understand English, or understands only isolated words or phrases.	Individual has no or minimal reading or writing skills in any language. May have little or no comprehension of how print corresponds to spoken language and may have difficulty using a writing instrument.	Individual functions minimally or not at all in English and can communicate only through gestures or a few isolated words, such as name and other personal information; may recognize only common signs or symbols (e.g., stop sign, product logos); can handle only very routine entry-level jobs that do not require oral or written communication in English. There is no knowledge or use of computers or technology.
Low Beginning ESL SPL 2	Individual can understand basic greetings, simple phrases and commands. Can understand simple questions related to personal information, spoken slowly and with repetition. Understands a limited number of words related to immediate needs and can respond with simple learned phrases to some common questions related to routine survival situations. Speaks slowly and with difficulty. Demonstrates little or no control over grammar.	Individual can read numbers and letters and some common sight words. May be able to sound out simple words. Can read and write some familiar words and phrases, but has a limited understanding of connected prose in English. Can write basic personal information (e.g., name, address, telephone number) and can complete simple forms that elicit this information.	Individual functions with difficulty in social situations and in situations related to immediate needs. Can provide limited personal information on simple forms, and can read very simple common forms of print found in the home and environment, such as product names. Can handle routine entry level jobs that require very simple written or oral English communication and in which job tasks can be demonstrated. May have limited knowledge and experience with computers.
High Beginning ESL SPL 3	Individual can understand common words, simple phrases, and sentences containing familiar vocabulary, spoken slowly with some repetition. Individual can respond to simple questions about personal everyday activities, and can express immediate needs, using simple learned phrases or short sentences. Shows limited control of grammar.	Individual can read most sight words, and many other common words. Can read familiar phrases and simple sentences but has a limited understanding of connected prose and may need frequent re-reading. Individual can write some simple sentences with limited vocabulary. Meaning may be unclear. Writing shows very little control of basic grammar, capitalization and punctuation and has many spelling errors.	Individual can function in some situations related to immediate needs and in familiar social situations. Can provide basic personal information on simple forms and recognizes simple common forms of print found in the home, workplace and community. Can handle routine entry level jobs requiring basic written or oral English communication and in which job tasks can be demonstrated. May have limited knowledge or experience using computers.

Table to §462.44—Functioning Level Table (Continued)

Educational Functioning Level Descriptors—English as a Second Language Levels			
Literacy Level	Listening and Speaking	Basic Reading and Writing	Functional and Workplace Skills
Low Intermediate ESL SPL 4	Individual can understand simple learned phrases and limited new phrases containing familiar vocabulary spoken slowly with frequent repetition; can ask and respond to questions using such phrases; can express basic survival needs and participate in some routine social conversations, although with some difficulty; and has some control of basic grammar.	Individual can read simple material on familiar subjects and comprehend simple and compound sentences in single or linked paragraphs containing a familiar vocabulary; can write simple notes and messages on familiar situations but lacks clarity and focus. Sentence structure lacks variety but shows some control of basic grammar (e.g., present and past tense) and consistent use of punctuation (e.g., periods, capitalization).	Individual can interpret simple directions and schedules, signs, and maps; can fill out simple forms but needs support on some documents that are not simplified; and can handle routine entry level jobs that involve some written or oral English communication but in which job tasks can be demonstrated. Individual can use simple computer programs and can perform a sequence of routine tasks given directions using technology (e.g., fax machine, computer).
High Intermediate ESL SFL 5	Individual can understand learned phrases and short new phrases containing familiar vocabulary spoken slowly and with some repetition; can communicate basic survival needs with some help; can participate in conversation in limited social situations and use new phrases with hesitation; and relies on description and concrete terms. There is inconsistent control of more complex grammar.	Individual can read text on familiar subjects that have a simple and clear underlying structure (e.g., clear main idea, chronological order); can use context to determine meaning; can interpret actions required in specific written directions; can write simple paragraphs with main idea and supporting details on familiar topics (e.g., daily activities, personal issues) by recombining learned vocabulary and structures; and can self and peer edit for spelling and punctuation errors.	Individual can meet basic survival and social needs, can follow some simple oral and written instruction, and has some ability to communicate on the telephone on familiar subjects; can write messages and notes related to basic needs; can complete basic medical forms and job applications; and can handle jobs that involve basic oral instructions and written communication in tasks that can be clarified orally. Individual can work with or learn basic computer software, such as word processing, and can follow simple instructions for using technology.
Advanced ESL SPL 6	Individual can understand and communicate in a variety of contexts related to daily life and work. Can understand and participate in conversation on a variety of everyday subjects, including some unfamiliar vocabulary, but may need repetition or rewording. Can clarify own or others' meaning by rewording. Can understand the main points of simple discussions and informational communication in familiar contexts. Shows some ability to go beyond learned patterns and construct new sentences. Shows control of basic grammar but has difficulty using more complex structures. Has some basic fluency of speech.	Individual can read moderately complex text related to life roles and descriptions and narratives from authentic materials on familiar subjects. Uses context and word analysis skills to understand vocabulary, and uses multiple strategies to understand unfamiliar texts. Can make inferences, predictions, and compare and contrast information in familiar texts. Individual can write multi-paragraph text (e.g., organizes and develops ideas with clear introduction, body, and conclusion), using some complex grammar and a variety of sentence structures. Makes some grammar and spelling errors. Uses a range of vocabulary.	Individual can function independently to meet most survival needs and to use English in routine social and work situations. Can communicate on the telephone on familiar subjects. Understands radio and television on familiar topics. Can interpret routine charts, tables and graphs and can complete forms and handle work demands that require non-technical oral and written instructions and routine interaction with the public. Individual can use common software, learn new basic applications, and select the correct basic technology in familiar situations.

(Approved by the Office of Management and Budget under control number 1830–0027)

(Authority: 20 U.S.C. 9212)

[FR Doc. 06–8709 Filed 10–17–06; 8:45 am]

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Federal Register

Wednesday,
October 18, 2006

Part IV

Department of Housing and Urban Development

Notice of Regulatory Waiver Requests Granted for the Second Quarter of Calendar Year 2006; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5074–N–02]

Notice of Regulatory Waiver Requests Granted for the Second Quarter of Calendar Year 2006

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on April 1, 2006, and ending on June 30, 2006.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Aaron Santa Anna, Assistant General Counsel for Regulations, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276,Washington, DC 20410–0500, telephone (202) 708–3055 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the second quarter of calendar year 2006.

SUPPLEMENTARY INFORMATION: Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). In accordance with those procedures and with the requirements of section 106 of the HUD Reform Act, waivers of regulations are granted by the Assistant Secretary with jurisdiction over the regulations for which a waiver was requested. In those cases in which a General Deputy Assistant Secretary granted the waiver, the General Deputy Assistant Secretary was serving in the absence of the Assistant Secretary in accordance with the office's Order of Succession.

This notice covers waivers of regulations granted by HUD from April 1, 2006, through June 30, 2006. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Fair Housing and Equal Opportunity, the Office of Housing, and the Office of Public and Indian Housing, *etc.*). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in time sequence beginning with the earliest-dated regulatory waiver.

Should HUD receive additional information about waivers granted during the period covered by this report (the second quarter of calendar year 2006) before the next report is published (the third quarter of calendar year 2006), HUD will include any additional waivers granted for the second quarter in the next report.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: October 6, 2006.

Keith E. Gottfried,

General Counsel.

Appendix—Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development April 1, 2006, Through June 30, 2006

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development.
II. Regulatory waivers granted by the Office of Housing.
III. Regulatory waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• Regulation: 24 CFR 58.22(a).

Project/Activity: The City of Fort Scott, KS requested a waiver of § 58.22(a), limitations on activities pending clearance, of the Environmental Review regulations for entities assuming HUD environmental responsibilities (24 CFR part 58) to enable the city to receive reimbursement for the funds it spends on property acquisition, demolition, debris removal, building stabilization and infrastructure repair to protect public health and safety after a fire destroyed and damaged historic buildings in the central business district in Fort Scott, Kansas.

Nature of Requirement: Section 58.22(a) of HUD's environmental review regulations prohibits recipients and any participant in the development process from committing HUD or non-HUD

funds on an activity or project under a program listed in § 58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives, until HUD has approved the request for release of funds.

Granted By: Pamela H. Patenaude, Assistant Secretary for Community Planning and Development.

Date Granted: May 12, 2006.

Reasons Waived: The City of Fort Scott used non-HUD funds for acquisition, demolition, debris removal, building stabilization and infrastructure repair, after an application or HUD assistance was made to the State of Kansas and prior to an approved request for release of funds. A fire destroyed and damaged historic buildings in the central business district of Fort Scott, creating a threat to public health and safety that the city needed to address immediately. HUD determined that there was good cause to grant this waiver and the project has not resulted in an adverse environmental impact, nor is any unmitigated adverse impact foreseen to occur.

Contact: Danielle Schopp, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–1201.

• Regulation: 24 CFR 58.22(a).

Project/Activity: The State of Connecticut's Department of Economic and Community Development and the City of Hartford, CT requested a waiver of § 58.22(a), limitations on activities pending clearance, of HUD's environmental review regulations for entities assuming HUD environmental responsibilities (24 CFR part 58) for the Zion Street Mutual Housing Project in Hartford, Connecticut. Zion Street Mutual Housing Project intended to use HOME funds for demolition and new construction of twenty-four units of housing for low to moderate income families.

Nature of Requirement: Section 58.22(a) of HUD's environmental review regulations prohibits recipients and any participant in the development process from committing HUD or non-HUD funds on an activity or project under a program listed in § 58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives, until HUD has approved the request for release of funds.

Granted By: Pamela H. Patenaude, Assistant Secretary for Community Planning and Development.

Date Granted: May 1, 2006.

Reasons Waived: Mutual Housing Association of Greater Hartford, Inc. (MHAGH) used non-HUD funds to acquire properties, demolish the existing structures, and construct the new housing units, after an application for HUD assistance was made and prior to an approved request for release of funds. MHAGH acquired the property and executed a construction contract because the low-income housing tax credits for the project set strict construction time frames and the structures on the site were in an unsafe condition necessitating immediate action to demolish. HUD determined that there was good cause to grant this waiver and the project has not resulted in an adverse environmental impact, nor is any unmitigated adverse impact foreseen to occur.

Contact: Danielle Schopp, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–1201.

• Regulation: 24 CFR 58.22(a).

Project/Activity: The City of Salem, OR requested a waiver of § 58.22(a), limitations on activities pending clearance, of HUD's environmental review regulations for entities assuming HUD environmental responsibilities (24 CFR part 58) to enable the city to use Special Purpose Economic Development Initiative (EDI) grants for reimbursement for public improvements in and around the Conference Center in Salem, Oregon.

Nature of Requirement: Section 58.22(a) of HUD's environmental review regulations prohibits recipients and any participant in the development process from committing HUD or non-HUD funds on an activity or project under a program listed in § 58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives, until HUD has approved the request for release of funds.

Granted By: Pamela H. Patenaude, Assistant Secretary for Community Planning and Development.

Date Granted: June 9, 2006.

Reasons Waived: The City of Salem, OR applied for Section 108 Loan Guarantee Funds to construct a conference center. After application for Section 108 Loan Guarantee Funds, the city committed non-HUD funds by executing a construction contract for the Conference Center prior to obtaining an approved request for release of funds for the Section 108 funds. HUD approved the request for release of funds for the Section 108 funds and subsequently, Special Purpose EDI grants were awarded to the project. A waiver was required to allow the city to use Special Purpose EDI funds to reimburse itself for public improvements in and around the conference center because the city committed non-HUD funds to the project before receiving an approved request for release of funds. The city has made changes to their environmental process to ensure that a similar violation will not occur. HUD determined that there was good cause to grant this waiver and the project has not resulted in an adverse environmental impact, nor is any unmitigated adverse impact foreseen to occur.

Contact: Danielle Schopp, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–1201.

• Regulation: 24 CFR 58.22(a).

Project/Activity: El Lucha Contra el Sida, Puerto Rico requested a waiver of § 58.22(a), limitations on activities pending clearance, of the environmental review regulations for entities assuming HUD environmental responsibilities (24 CFR part 58) for the El Remanso de Paz project in Ponce, Puerto Rico. El Remanso de Paz is a supportive housing project that will provide housing and supportive services for chronically homeless individuals with disabilities.

Nature of Requirement: Section 58.22(a) of HUD's environmental review regulations prohibits recipients and any participant in the development process from committing HUD or non-HUD funds on an activity or project under a program listed in § 58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives, until HUD has approved the request for release of funds.

Granted By: Pamela H. Patenaude, Assistant Secretary for Community Planning and Development.

Date Granted: April 10, 2006.

Reasons Waived: The recipient used non-HUD funds to acquire the property site for a supportive housing project, after an application for HUD assistance was made and prior to a properly approved request for release of funds. The recipient acquired this property prior to an approved request for release of funds because the recipient needed to obtain a new project site to retain the low-income housing tax credits that are critical to the project's development and the recipient was unable to extend an option to buy the property. HUD determined that there was good cause to grant this waiver and the project has not resulted in an adverse environmental impact, nor is any unmitigated adverse impact foreseen to occur.

Contact: Danielle Schopp, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–1201.

• Regulation: 24 CFR 92.214(a)(6).

Project/Activity: Hennepin County Consortium, Minnesota requested a waiver to allow it to invest an additional $500,000 from a HUD Notice of Funding Availability (NOFA) reallocation of recaptured community housing development organization (CHDO) set-aside funds into the Louisiana Court Apartments project. The project was troubled and at risk of foreclosure.

Nature of Requirement: Section 92.214(a)(6) states that, except for the 12 months following project completion, additional HOME assistance may not be provided to a previously-assisted HOME project during the period of affordability.

Granted By: Pamela H. Patenaude, Assistant Secretary for Community Planning and Development.

Date Granted: June 6, 2006.

Reason Waived: This waiver allowed for the reinvestment of additional funds to help stabilize nine HOME-assisted units for the remainder of their period of affordability and will result in six additional HOME units with a 15-year period of affordability. Also, by stabilizing this project, it was determined that the reinvestment of HOME funds will help preserve affordable housing and provide additional HOME-assisted units for the chronically homeless in Minnesota.

Contact: Virginia Sardone, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington DC 20410–7000, telephone (202) 708–2470.

• Regulations: 24 CFR 92.251(a)(1).

Project/Activity: The State of Missouri requested a waiver of this regulation to facilitate the recovery of Missouri counties from the devastation caused by the severe storms, tornados and flooding of March and April 2006. The waiver was requested for those counties located within declared disaster areas pursuant to Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

Nature of Requirement: Section 92.251(a)(1) requires that housing assisted with HOME funds must meet specific property and rehabilitation standards.

Granted By: Pamela H. Patenaude, Assistant Secretary for Community Planning and Development.

Date Granted: May 15, 2006.

Reasons Waived: This waiver was determined necessary to facilitate the recovery of Missouri counties from the devastation caused by the severe storms, tornados and flooding of March and April 2006. The waiver allowed counties in the declared disaster areas to make emergency repairs to storm-damaged, owner-occupied units and return these units to habitability more quickly, and helped these counties meet the critical housing needs of families whose homes were damaged and increase the number of assisted households.

Contact: Virginia Sardone, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington DC 20410–7000, telephone (202) 708–2470.

• Regulations: 24 CFR 92.300(a)(1) and 24 CFR 92.500(d)(1)(B).

Project/Activity: The City of New Orleans, LA requested waivers to facilitate its recovery from the devastation caused by Hurricanes Katrina and Rita. The city is located within a declared disaster area pursuant to Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The city requested these waivers in addition to the waivers granted by HUD on September 14, 2005 (Hurricane Katrina) and October 4, 2005 (Hurricane Rita) for the designated disaster areas.

Nature of Requirement: Section 92.300(a)(1) requires that a PJ reserve not less than 15 percent of each annual allocation for housing owned, sponsored or developed by (CHDOs) within 24 months after HUD notifies the PJ that HUD has executed the jurisdiction's HOME Investment Partnership Agreement. Section 92.500(d)(1)(B) requires that a PJ commit its annual allocation of HOME funds within 24 months after HUD notifies the PJ that HUD has executed the jurisdiction's HOME Investment Partnership Agreement.

Granted By: Pamela H. Patenaude, Assistant Secretary for Community Planning and Development.

Date Granted: May 15, 2006.

Reasons Waived: These waivers were determined necessary to facilitate the recovery of the City of New Orleans from the devastation caused by Hurricane Katrina and Hurricane Rita by waiving the 2004 and 2007 CHDO reservation requirements, and waiving the FY 2004, FY 2005, FY 2006 and FY 2007 HOME commitment requirement. These waivers will ensure that needed HOME funds are not deobligated. The City has flexibility to address the rebuilding of its devastated areas and it was determined that the City had an adequate timeframe to rebuild its CHDO capacity. It was also determined that the City has sufficient flexibility and time to assess, redesign, and implement its housing programs and delivery systems.

Contact: Virginia Sardone, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington DC 20410–7000, telephone (202) 708–2470.

• Regulations: 24 CFR 92.500(d)(1)(A) and 24 CFR 92.500(d)(1)(B).

Project/Activity: The Gulfport Consortium requested waivers of these regulations to facilitate its recovery from the devastation caused by Hurricanes Katrina. The Consortium is located within a declared disaster area pursuant to Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The Consortium requested these waivers in addition to the waivers granted by HUD on September 14, 2005, for the designated disaster areas.

Nature of Requirement: Section 92.500(d)(1)(A) of HUD's regulations requires HUD to reduce or recapture any HOME funds that are required to be reserved by a participating lower jurisdiction (PJ) under § 92.300(a)(1) that are not reserved for a community housing development organization pursuant to a written agreement within 24 months after the last day of the month in which HUD notifies the PJ of HUD's execution of the HOME Investment Partnership Agreement. Section 92.500(d)(1)(B) of HUD's regulations requires that a PJ commit its annual allocation of HOME funds within 24 months after HUD notifies the PJ that HUD has executed the jurisdiction's HOME Investment Partnership Agreement. HUD's September 14, 2005, hurricane disaster relief waivers do not address this commitment requirement.

Granted By: Pamela H. Patenaude, Assistant Secretary for Community Planning and Development.

Date Granted: April 13, 2006.

Reasons Waived: As a result of the devastating effects of Hurricane Katrina on August 29, 2005, the Consortium temporarily suspended all HOME programs and projects. The hurricane caused widespread damage in the Gulf Coast Region. These waivers were determined necessary to facilitate the recovery of the City of New Orleans from the devastation caused by Hurricane Katrina by suspending the 2004 Community Housing Development Organization (CHDO) reservation requirements and commitment requirements will ensure that much

needed HOME funds will not be deobligated. The Consortium advised of its commitment to reinstate all of its HOME programs and projects within 90 days following the granting of the waivers.

Contact: Virginia Sardone, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington DC 20410–7000, telephone (202) 708–2470.

• Regulations: 24 CFR 92.500(d)(1)(B).

Project/Activity: The City of Alexandria, LA requested a waiver to facilitate its recovery from the devastation caused by Hurricanes Katrina and Rita. The city is located within a declared disaster area pursuant to Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The city requested this waiver in addition to the waivers granted by HUD on September 14, 2005 (Hurricane Katrina) and October 4, 2005 (Hurricane Rita) for the designated disaster areas.

Nature of Requirement: Section 92.500(d)(1)(B) requires that a PJ commit its annual allocation of HOME funds within 24 months after HUD notifies the PJ that HUD has executed the jurisdiction's HOME Investment Partnership Agreement.

Granted By: Pamela H. Patenaude, Assistant Secretary for Community Planning and Development.

Date Granted: June 9, 2006.

Reasons Waived: It was determined that this waiver would facilitate the recovery of the City of Alexandria from the devastation caused by Hurricane Katrina and Hurricane Rita by waiving the FY 2004 and FY 2005 HOME commitment requirement. The waiver would help ensure that needed HOME funds are not deobligated while the city is seeking solutions to its difficulties.

Contact: Virginia Sardone, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington DC 20410–7000, telephone (202) 708–2470.

• Regulation: 24 CFR 92.503(b).

Project/Activity: The Minnesota Housing Finance Agency requested a waiver that would allow them to substitute a comparable property for the HOME-assisted property in lieu of the repayment requirement for a project that fail to meet to the affordability requirements for the specified period.

Nature of Requirement: Section 92.503(b) requires that any HOME funds invested in a project that fails to meet the affordability requirements for the period specified in § 92.252 be repaid by the participating jurisdiction to its HOME account.

Granted By: Pamela H. Patenaude, Assistant Secretary for Community Planning and Development.

Date Granted: June 9, 2006.

Reason Waived: This waiver permitted the substitution of comparable units in lieu of the repayment requirement to maintain the number of affordable housing units available in the community.

Contact: Virginia Sardone, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington DC 20410–7000, telephone (202) 708–2470.

• Regulation: 24 CFR 570.207(b)(4).

Project/Activity: The City of Freemont, California, requested a waiver of 24 CFR 570.207(b)(4) of the CDBG regulations regarding the use of emergency grant payments for up to six consecutive months.

Nature of Requirement: Section 570.207(b)(4) of the CDBG regulations prohibits income payments. For the CDBG program, ''income payments'' means a series of subsistence-type grant payments made to an individual or family for items such as food, clothing, housing (rent or mortgage), or utilities, but excludes emergency grant payments made over a period of up to three consecutive months to the providers of such items and services on behalf of an individual or family.

Granted By: Pamela H. Patenaude, Assistant Secretary for Community Planning and Development.

Date Granted: June 9, 2006.

Reasons Waived: Due to the number of Hurricane Katrina evacuees that relocated to the City of Freemont and the needs of this population, it was determined, pursuant to 24 CFR 5.110, that good cause existed to waive the provisions of 24 CFR 570.207(b)(4) to permit emergency grant payments for up to six consecutive months. While this waiver allowed for emergency grant payments to be made for up to six consecutive months, the payments must be made to service providers as opposed to the affected individuals or households. The relief granted by this waiver was made available to the city solely for activities related to Hurricane Katrina and relief for the affected individuals residing in the city of Freemont.

Contact: Stanley Gimont, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–1577.

• Regulation: 24 CFR 570.208(a)(3).

Project/Activity: The City of Orlando, Florida, requested a waiver of 24 CFR 570.208(a)(3) of the Community Development Block Grant (CDBG) regulations to facilitate the construction of new multi-family residential rental units and new single-family owner-occupied residential units that will be made available to both low- and moderate-income-rate and market-rate households. The project will reduce a concentration of lower-income households by creating a mixed-income housing development.

Nature of Requirement: Section 570.208(a)(3) of the CDBG regulations generally requires that at least 51 percent of the units in multi-unit residential structures and 100 percent of single-family unit structures be occupied by low- and moderate-income households. The city requested that a project, known as Carver Court, be allowed to meet the low- and moderate-income national objective for housing, although less than 100 percent of the single-family units would be available to low- and moderate-income households.

Granted By: Pamela H. Patenaude, Assistant Secretary for Community Planning and Development.

Date Granted: June 22, 2006.

Reasons Waived: The City of Orlando's Housing Authority sought to undertake new housing construction that would result in a 203-unit mixed-income residential community. The mixed-income approach that would aid in the deconcentration of public housing units within the project area and further assist in subsidizing the cost of the low- and moderate-income housing. The project would include 146 rental units and 57 owner-occupied single-family units. Of the 146 rental units, 116 were to be occupied by low- and moderate-income households, while 30 units would be provided to market-rate renters. Of the 57 owner-occupied single-family units, 22 will be occupied by low- and moderate-income households, while 35 units would be sold to market-rate homebuyers. Of the combined 203 residential units, 68 percent, or 138 units would be occupied by low- and moderate-income households.

Contact: Stanley Gimont, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–1577.

• Statutory Provision/Regulation: 42 U.S.C. 11374(a)(2)(B) and 24 CFR 576.21(b).

Project/Activity: The City of Bridgeport, Connecticut, requested a

waiver of the Emergency Shelter Grants (ESG) program statutory provision at 42 U.S.C. 11374(a)(2)(B) and the regulation at 24 CFR 576.21 (b).

Nature of Requirements: The McKinney-Vento Homeless Assistance Act (Act) (42 U.S.C. 11374(a)(2)(B)) provides that no more than 30 percent of a recipient's grant may be used for essential services. This requirement is found at 24 CFR 576.21(b). The Act further provides a statutory waiver (42 U.S.C. 11374(b)) of the 30 percent limitation, if the Secretary finds that a recipient ''demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources.'' This waiver authority is found at 24 CFR 576.21(c). A variety of services addressing homeless needs are eligible essential services, including those concerned with employment, health, drug abuse and education.

Granted By: Pamela H. Patenaude, Assistant Secretary for Community Planning and Development.

Date Granted: May 1, 2006.

Reasons Waived: The City of Bridgeport met the statutory standard for waiving the 30 percent limitation on essential services. The City of Bridgeport provided a letter that demonstrated that other categories of ESG activities would be carried out locally with other resources. Therefore, it was determined that the waiver was appropriate.

Contact: Mike Roanhouse, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–1226.

II. Regulatory Waivers Granted by the Office of Housing—Federal Housing Administration (FHA)

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• Regulation: 24 CFR 219.220(b).

Project/Activity: Pittsburgh, Pennsylvania (Riverview Towers Phase II—FHA Project Number 033–44052). The Pittsburgh Multifamily Program Center requested waiver of this regulation to allow for the re-amortization and extension of maturity for the flexible subsidy loan on the subject property. This will allow the property to remain affordable and continue to serve the same elderly and very low-income tenant population.

Nature of Requirement: HUD regulations at 24 CFR 219.220(b) govern the repayment of assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996, requiring that assistance paid to project owners must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage or at sale of the project. Section 5.110 relates to admission of families to projects for elderly or handicapped families that received reservations under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the U.S. Housing Act of 1937.

Granted By: Frank L. Davis, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: June 9, 2006.

Reason Waived: This waiver was granted to allow modification of the terms of the flexible subsidy loan to prevent the property falling into serious disrepair. Waiver of this requirement allowed the property to be decent, safe and affordable housing for its tenants. The property's insured mortgage will mature on July 13, 2013. The project obtained firm commitments totaling $2,563,350 from various sources with the intention of performing extensive renovations/modernization to the property. In order to secure loans from the Pennsylvania Housing Finance Agency under the Urban Redevelopment Act, Riverview Towers proposed to modify the terms of the flexible subsidy loan.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6l60, Washington, DC 20410, telephone (202) 708–3730.

• Regulation: 24 CFR 219.220(b).

Project/Activity: Rockland, Massachusetts (Rockland Place—FHA Project Number 023–057NI). The Boston Multifamily Hub requested waiver of the regulations to allow for the repayment of principal only on the flexible subsidy loan, and re-amortize the accrued interest in a new Residual Receipts Note.

Nature of Requirement: HUD regulations at 24 CFR 219.220(b) govern the repayment of assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996, requiring that assistance paid to project owners must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage or at sale of the project. Section 5.110 relates to admission of families to projects for elderly or handicapped families that received reservations under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the U.S. Housing Act of 1937.

Granted By: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

Date Granted: June 27, 2006.

Reason Waived: This waiver was granted to assist in bringing the property to an acceptable condition. Rockland Place had received three less than acceptable physical inspection scores assessed by the Department. The proposal would infuse cash to the property by selling the property to a new owner with rehabilitation and preservation requirements. The purchaser offered to pay the second flexible subsidy loan in full, plus accrued interest, at the time of the prepayment of the noninsured mortgage. The purchaser also proposed to pay the principal amount of $1,000,000 on the first flexible subsidy loan at prepayment and re-amortize the accrued interest in a new residual receipts note, which will be due upon any future sale, refinancing or expiration of affordability restrictions.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410, telephone (202) 708–3730.

• Regulation: 24 CFR 290.30(a)

Project/Activity: Bronx, New York (Highbridge House—FHA Project Number 012–11027, and Stevenson Towers—FHA Project Number 012–11028). The owners of Highbridge House and Stevenson Towers have requested prepayment approval and that the Department assign the mortgages to a new mortgagee.

Nature of Requirement: HUD regulations at 24 CFR Part 290, subpart B, govern the sale of HUD-held mortgages. Section 290.30(a) of those regulations state that ''e[xcept] as otherwise provided in Section 290.31(a)(2), HUD will sell HUD-held multifamily mortgages on a competitive basis. HUD retains full discretion to offer any qualifying mortgage for sale and to withhold or withdraw any offered mortgage from sale.'' Section 290.31(a)(2) permits ''negotiated'' sales to state or local governments for mortgage loans that are current and secured by subsidized projects, provided such loans are sold with FHA insurance.

Granted By: Frank L. Davis, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: May 1, 2006.

Reason Waived: The General Deputy Assistant Secretary for Housing has granted prepayment approval of their HUD-held mortgages and assignment of the mortgages to a new mortgagee, RCG Longview II, L.P., for mortgage tax savings in the state of New York. This regulation requires a competitive sale of HUD-held mortgages. Waiver of this regulation will allow HUD to enter into a noncompetitive loan sale arrangement with RCG Longview II, L.P., the lender for the borrowers. RCG Longview II, has agreed to these assignments and to pay the full amount of the HUD loans.

Contact: Beverly J. Miller, Director, Office of Asset Management, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Room 6160, Washington, DC 20410, telephone (202) 708–3730 (this is not a toll free number).

• Regulation: 24 CFR 891.100(d).

Project/Activity: Harrison Haven, Kingman, AZ, Project Number: 123–EE096/AZ20–S041–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 6, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Residence Connections, Bowling Green, OH, Project Number: 042–HD111/OH12–Q021–009.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 19, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing, Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Nassau AHRC Development 2004, Levittown, NY, Project Number: 012–HD123/NY36–Q041–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 19, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: James River Apartments, Richmond, VA, Project Number: 051–HD121/VA36–Q031–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 19, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Harvey II, Harvey, IL, Project Number: 071–EE174/IL06–S021–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 19, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Gula Miller Senior Heights, Chataignier, LA, Project Number: 064–EE154/LA48–S031–008.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 20, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Broadway Towers, Anniston, AL, Project Number: 062–EE071/AL09–S041–008.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 24, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Echols Place Apartments, Clovis, NM, Project Number: 116–HD025/NM16–Q041–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 25, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Roselawn Apartments, Artesia, NM, Project Number: 116–EE033/NM16–S041–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 25, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Third Ward VOA Elderly Housing, St. Louis, MO, Project Number: 085–Ee081/MO36–S041–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 25, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Omaha Care Senior Living, Macy, NE, Project Number: 103–EE030/NE26–S031–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 28, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Tuscumbia VOA, Tuscumbia, AL, Project Number: 062–HD056/AL09–Q041–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 1, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Rendu Terrace West, Mobile, AL, Project Number: 062–EE063/AL09–S031–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 1, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Palermo Lakes Apartments, Miami, FL, Project Number: 066–EE100/FL29–S031–012.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 8, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: VOA Selma, Selma, AL, Project Number: 062–EE065/AL09–S041–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 8, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Somerset 2003 Consumer Home, Green Brook Township, NJ, Project Number: 031–HD136/NJ39–Q031–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 22, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all

efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: NCR of Alief II, Houston, TX, Project Number: 114–EE120/TX24–S041–008.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 24, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Westminster Homes II, Jennings, LA, Project Number: 064–EE172/LA48–S041–010.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 24, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Maison De Monde (Sunset Housing), Sunset, LA, Project Number: 064–HD089/LA48–Q041–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 24, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Venture Development 2004, Garnerville, NY, Project Number: 012–HD124/NY36–Q041–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 25, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Josiah Place, North Platte, NE, Project Number: 103–HD032–NE26–Q041–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 25, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: TBD, Stevens Point, WI, Project Number: 075–HD087/WI39–Q041–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 31, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: TBD, Burlington, WI, Project Number: 075–HD088/WI39–Q041–007.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 1, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: TBD, West Allis, WI, Project Number: 075–EE127/WI39–S031–007.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 1, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW.,

Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: RCCC Villa, Ruthven, IA, Project Number: 074–Ee045/IA05–S041–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 1, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Rose Hill House II, Kirkwood, MO, Project Number: 085–EE080/MO36–S041–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 2, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Northside Coalition Senior Housing, Pittsburgh, PA, Project Number: 033–EE121/PA28–S041–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 2, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Brush Hill Residence, Yarmouth, MA, Project Number: 023–HD182/MA06–Q011–010.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 2, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Glengarra Place, Missoula, MT, Project Number: 093–EE017/MT99–S041–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 2, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Las Villas De Magnolia, Houston, TX, Project Number: 114–EE123/TX24–S041–011.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 2, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Birmingham Green Adult Care Residence, Manassas, VA, Project Number: 000–HD054/VA39–Q021–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 8, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Birmingham Green Assisted Living, Inc., Manassas, VA, Project Number: 000–EE057/VA39–S021–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 12, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Magnolia Heights Apartments, Joplin, MO, Project Number: 084–HD051/MO16–Q041–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 12, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Bob Miller Estates, McCurtain, OK, Project Number: 118–EE038/OK56–S041–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 13, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Louis Sandmann Senior Housing, Coalgate, OK, Project Number: 118–EE042/OK56–S051–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 13, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Clayton Place Senior Housing, Clayton, OK, Project Number: 118–EE035/OK56–S041–008.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 14, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Champ Hodges Estates, Hartshorne, OK, Project Number: 118–EE037/OK56–S041–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 14, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Mount Olive Manor II, Flanders, NJ, Project Number: 031–EE064/NJ39–S041–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 14, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Heritage Park, Muskogee, OK, Project Number: 118–HD028/OK56–Q041–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 15, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Garland VOA Elderly Housing, Garland, TX, Project Number: 113–EE027/TX21–S021–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 15, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Dunson School Apartments, LaGrange, GA, Project Number: 061–EE145/GA06–S041–016.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 15, 2006.

Reason Waived: The project is economically designed and comparable

in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Davidson Heights, Stilwell, OK, Project Number: 118–EE032/OK56–S041–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 15, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Moravian House IV, Bethlehem, PA, Project Number: 034–HD080/PA26–Q041–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 15, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Villa De Lucas, Beaumont, TX, Project Number: 114–HD028/TX24–Q031–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 15, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Beattie House at Mt. Eustis Commons, Littleton, NH, Project Number: 024–EE083/NH36–S041–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 27, 2006.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Gulfport Manor, Gulfport, MS, Project Number: 065–EE031/MS26–S001–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 21, 2006.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources. The sponsor/owner needed additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Inglis Gardens at Germantown, Philadelphia, PA, Project Number: 034–HD075/PA26–Q031–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 5, 2006.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. The sponsor/owner needed additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Garland VOA Elderly Housing, Garland, TX, Project Number: 113–Ee027/TX21–S021–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 24, 2006.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. The sponsor/owner needed additional time to secure amendment funds and prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant

Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Sky Forest Acres, South Lake Tahoe, CA, Project Number: 136–HD014/CA30–Q011–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 2, 2006.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. The sponsor/owner needed additional time to secure amendment funds and prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Haley's Park, Nashville, TN, Project Number: 086–HD033/TN43–Q031–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 2, 2006.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. The sponsor/owner needed additional time to secure amendment funds.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Sanchez Project, Middlebury, VT, Project Number: 024–HD044/VT36–Q031–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 2, 2006.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funds from other sources. The sponsor/owner needed additional time to secure amendment funds and prepare for initially closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Southview Senior Residence, Bronx, NY, Project Number: 012–EE318/NY36–S011–012.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 2, 2006.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. The sponsor/owner needed additional time due to the zoning authorization approval process.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Denrael Residence, Salisbury, MA, Project Number: 023–HD199/MA06–Q031–007.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 7, 2006.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. The sponsor/owner needed additional time to secure amendment funds and to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Coop Apartments, Pittsfield, MA, Project Number: 023–HD204/MA06–Q031–012.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 9, 2006.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. The sponsor/owner needed additional time to revise the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW.,

Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Gates Plaza Senior Residence, Brooklyn, NY, Project Number: 012–EE329/NY36–S031–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 16, 2006.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. The sponsor/owner needed additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Willow Bend Creek Apartments, Fort Worth, TX, Project Number: 113–HD020/TX21–Q021–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 27, 2006.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. The sponsor/owner needed additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.120(c).

Project/Activity: Tri Cities Terrace South, Richland, WA, Project Number: 171–HD014/WA19–Q041–005.

Nature of Requirement: Section 891.120(c) prohibits the use of HUD funding to cover the cost of acquisition and/or related operating expenses for excess amenities.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 24, 2006.

Reason Waived: Waivers are approved when the Department determines that the amenities are a necessity in meeting the health and safety needs of the residents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Howland Housing, Howland Township, OH, Project Number: 042–EE161/OH12–S031–014.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 25, 2006.

Reason Waived: The sponsor/owner needed additional time to locate another site.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Delmor Dwellings, Bucyrus, OH, Project Number: 042–HD113/OH12–Q031–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 27, 2006.

Reason Waived: The sponsor/owner needed additional time to re-bid the construction contract.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: VOA Sandusky, Sandusky, OH, Project Number: 042–HD110/OH12–Q021–008.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 14, 2006.

Reason Waived: The sponsor/owner needed additional time to re-bid the construction contract.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Meadowlark Apartments, Oregon City, OR, Project Number: 126–HD038/OR16–Q031–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 27, 2006.

Reason Waived: The sponsor/owner needed additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Woodside Village, Toledo, OH, Project Number: 042–HD112/OH12–Q031–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 27, 2006.

Reason Waived: The sponsor/owner needed additional time to revise the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Hale Mahaolu Ehiku, Kihei, HI, Project Number: 140–EE028/HI10–S021–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 1, 2006.

Reason Waived: The sponsor/owner needed additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: St. George Housing Corporation, Superior, WI, Project Number: 075–HD074/WI39–Q021–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 1, 2006.

Reason Waived: The sponsor/owner needed additional time to research that use of the site met legal requirement sfor the structure to be built on the site.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Gardens at Immanuel House, New Haven, CT, Project Number: 017–EE071/CT26–S021–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 10, 2006.

Reason Waived: The sponsor/owner needed additional time to secure secondary financing and to submit the firm commitment exhibits.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Whalley Avenue Housing II, New Haven, CT, Project Number: 017–HD031/CT26–Q011–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 10, 2006.

Reason Waived: The sponsor/owner needed additional time to revise the firm commitment application and to secure secondary financing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Columbia Supportive Living, Knowlton, NJ, Project Number: 031–HD131/NJ39–Q021–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 11, 2006.

Reason Waived: The sponsor/owner needed additional time to redesign the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Brush Hill Residences, Yarmouth, MA, Project Number: 023–HD182/MA06–Q011–010.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 17, 2006.

Reason Waived: The sponsor/owner needed additional time to submit the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Robinstein Homes, Cleveland, OH, Project Number: 042–HD115/OH12–Q031–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 19, 2006.

Reason Waived: The sponsor/owner needed additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Hungry Run Housing Corporation, Rib Lake, WI, Project Number: 075–EE124/WI39–S031–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 22, 2006.

Reason Waived: The sponsor/owner needed additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Grace Manor, Inglewood, CA, Project Number: 122–HD159/CA16–Q031–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 22, 2006.

Reason Waived: The sponsor/owner needed additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: McTaggert II Akron, OH, Project Number: 042–HD096/OH12–Q011–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 23, 2006.

Reason Waived: The sponsor/owner needed additional time to locate another site and to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Wills Manor, Los Angeles, Project Number: 122–HD161/CA16–Q031–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 24, 2006.

Reason Waived: The sponsor/owner needed additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Fox Creek II, Akron, OH, Project Number: 042–HD116/OH12–Q031–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 24, 2006.

Reason Waived: The sponsor/owner needed additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Fox Creek I, Springfield Township, OH, Project Number: 042–HD117/OH12–Q031–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 24, 2006.

Reason Waived: The sponsor/owner needed additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Goodman Lake Housing Corporation, Richland Center, WI, Project Number: 075–EE126/WI39–S031–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 24, 2006.

Reason Waived: The sponsor/owner needed additional time to resolve issues pertaining to whether the site met the legal requirements necessary for the structure to be built.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Spruce Manor, Jacksonville, IL, Project Number: 072–HD132/IL06–Q021–019.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 25, 2006.

Reason Waived: The sponsor/owner needed additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Tikigaqmiut Senior Housing, Point Hope, AK, Project Number: 176–EE029/AK06–S021–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 30, 2006.

Reason Waived: The sponsor/owner needed additional time to resolve title issues.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban

Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Albany Housing VI, Albany, GA, Project Number: 061–HD098/GA06–Q041–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 31, 2006.

Reason Waived: The sponsor/owner needed additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Kaktovik Senior Housing, Kaktovik, AK, Project Number: 176–EE032/AK06–S021–007.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 2, 2006.

Reason Waived: The sponsor/owner needed additional time to resolve title issues and to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Aaniyak Senior Housing, Anaktuvuk Pass, AK, Project Number: 176–EE030/AK06–S021–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 2, 2006.

Reason Waived: The sponsor/owner needed additional time to resolve title issues and to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Olgonikgum Uttuganaknich Senior Housing, Wainwright, AK, Project Number: 176–EE031/AK06–S021–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 2, 2006.

Reason Waived: The sponsor/owner needed additional time to resolve title issues and to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Villa Regina, West Palm Beach, FL, Project Number: 066–EE086/FL29–S011–010.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 2, 2006.

Reason Waived: The sponsor/owner needed additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Harvey II, Harvey, Il, Project Number: 071–EE174/IL06–S021–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 2, 2006.

Reason Waived: The sponsor/owner needed additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Balsam Terrace, Jacksonville, IL, Project Number: 072–EE147/IL06–S021–011.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 7, 2006.

Reason Waived: The sponsor/owner needed additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Utuqqanaaqagvik Senior Housing, Nuiqsut, AK, Project Number: 176–EE033/Ak06–S021–008.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 7, 2006.

Reason Waived: The sponsor/owner needed additional time to resolve title issues and to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Delta Partners Manor II, Drew, MS, Project Number: 065–EE041/MS26–S031–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 13, 2006.

Reason Waived: The sponsor/owner needed additional time to select a new contractor.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: LaPalma Apartments, Miami, FL, Project Number: 066–EE093/FL29–S021–014.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 13, 2006.

Reason Waived: The sponsor/owner needed additional time to secure secondary financing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Hanover Lutheran Retirement, Hanover, PA, Project Number: 034–EE135/PA26–S031–007.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 15, 2006.

Reason Waived: The sponsor/owner needed additional time to resolve problems with the water system and local municipality issues.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.305.

Project/Activity: Advance Supportive Housing II, New Milford, NJ, Project Number: 031–HD139/NJ39–Q031–007.

Nature of Requirement: Section 891.305 requires any nonprofit entity to have tax-exempt status under Section 501(c)(3) or (c)(4) of the Internal Revenue Code.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 25, 2006.

Reason Waived: The required tax-exemption ruling from IRS was to be issued, but not in time for the scheduled initial closing of the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.310(b)(1) and (b)(2).

Project/Activity: Nassau AHRC Development 2004, Levittown, NY, Project Number: 012–HD123/NY36–Q041–002.

Nature of Requirement: Section 891.310(b)(1) and (b)(3) require that all entrances, common areas, units to be occupied by resident staff, and amenities must be readily accessible to and usable by persons with disabilities.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 1, 2006.

Reason Waived: The project consists of the acquisition and rehabilitation of two single-family homes in order to create at least one group home for the developmentally disabled. One home would house four residents and the other would house three residents. The waiver would permit one home to be fully accessible, which would result in the total project meeting the accessibility requirements.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.410(c).

Project/Activity: Gary, West Virginia (The Oaks—Project Number 045–EE014). The Charleston Multifamily Program Center requested permission to waive the age requirement to alleviate occupancy problems at the project.

Nature of Requirement: HUD regulations at 24 CFR part 891 requires occupancy to be limited to very low income (VLI) elderly persons (*i.e.*, households composed of one or more persons at least one of whom is 62 years of age at the time of initial occupancy). These regulations also require that an owner is to determine the eligibility in selecting tenants.

Granted By: Frank L. Davis, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: April 6, 2006.

Reason Waived: This waiver was granted in order to alleviate occupancy problems at this Section 202/8 Supportive Housing for the Elderly project. The project consisted of 10 vacant units. The property's owner, McDowell County Action Network aggressively advertised and marketed the property to no avail. The Housing Authority of Mingo County advised they had six applicants on their waiting list with only two of those age eligible for the Oaks. Waiver of the age requirement allowed the property to rent to families or individuals who are 55 years of age but below the age of 62 and allowed the additional flexibility of renting vacant units.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410, telephone (202) 708–3730.

• Regulation: 24 CFR 891.410(c).

Project/Activity: Strawberry, Arkansas (Strawberry Fields Apartments—FHA Project Number 082–EE140). The Fort Worth Multifamily Hub requested waiver of the age and very low-income requirements for this property to fill vacant units.

Nature of Requirement: HUD regulations at 24 CFR, part 891 requires occupancy to be limited to very low income (VLI) elderly persons (*i.e.*, households composed of one or more persons at least one of whom is 62 years of age at the time of initial occupancy). These regulations also require that an owner is to determine the eligibility in selecting tenants.

Granted By: Frank L. Davis, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: May 19, 2006.

Reason Waived: This waiver was granted to alleviate the current occupancy problem at this Supportive Housing for the Elderly Program, Section 202 project. The local housing market indicated that there was not sufficient demand for housing for the

very low-income elderly. The owner/managing agent aggressively marked the property with the local housing authorities and various religious, social and community organizations. The property of the time of the request for the waiver, had two vacant units and no waiting list. Waiver of the age and income restrictions allowed the project flexibility to offer units to individuals who meet the definition of lower income elderly and, allowed the owner to increase occupancy levels.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410, telephone (202) 708–3730.

• Regulation: 24 CFR 891.410(c).

Project/Activity: Ravenden, Arkansas (Cedar Ridge Apartments—FHA Project Number 082–EE128). The Fort Worth Multifamily Hub requested waiver of the very low-income limit to alleviate occupancy problems at the property.

Nature of Requirement: HUD regulations at 24 CFR part 891 requires occupancy to be limited to very low income (VLI) elderly persons (*i.e.*, households composed of one or more persons at least one of whom is 62 years of age at the time of initial occupancy). These regulations also require that an owner is to determine the eligibility in selecting tenants.

Granted By: Frank L. Davis, General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 26, 2006.

Reason Waived: This waiver was granted to permit admission of lower-income (income between 51 and 80 percent of median), elderly applicants when there are no very low-income elderly applicants to fill vacant units. The market analysis indicated that there was insufficient effective demand to fill the complex with very low-income elderly. The owner aggressively marketed the property with the local housing authorities and various religious, social and community organizations. The property at the time of the request for waiver had 3 vacant units and with no waiting list. Granting of the waiver allowed the owner the flexibility to offer units to individuals who meet the definition of lower income elderly and, increase occupancy levels.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410, telephone (202) 708–3730.

• Regulation: 24 CFR 891.410(c).

Project/Activity: Stebbins, Alaska (Cupluaq House—FHA Project Number 176–EE012). The Anchorage Multifamily Housing Program Center has requested an age waiver for the subject project to alleviate current occupancy and financial problems at the property.

Nature of Requirement: HUD regulations at 24 CFR part 891 requires occupancy to be limited to very low income (VLI) elderly persons (*i.e.*, households composed of one or more persons at least one of whom is 62 years of age at the time of initial occupancy). These regulations also require that an owner is to determine the eligibility in selecting tenants.

Granted By: Frank L. Davis, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: May 31, 2006

Reason Waived: This waiver was granted to assist the project in renting up vacant units, thereby attaining full occupancy for the project. The property only managed to reach 60 percent occupancy since 2001. The current occupancy level does not support the complex. Permission to waive the elderly and very low-income requirement assisted in alleviating the current occupancy and financial problems at the property.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410, telephone (202) 708–3730.

III. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• Regulation: 24 CFR 5.1005.

Project/Activity: Ms. Diane L. Brown-Job, President of Pleasant View Tenant Association, Inc. in Danville, VA approval of waiver of electronic filing requirement for FY2006 ROSS Family-Homeownership.

Nature of Requirement: Applicants described under 24 CFR 5.1001 are required to submit electronic applications or plans for grants and other financial assistance in response to any application that HUD has placed on the *http://www.grants.gov/Apply* website or its successor.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: April 20, 2006.

Reason Waived: This requirement was waived to the mobility impairments of the grant writer that prevent her from accessing the application electronically

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Room 4130, telephone (202) 708–0614, ext. 4181.

• Regulations: 24 CFR 5.801.

Project/Activity: City of Vacaville Housing Authority (CA131), Vacaville, CA.

Nature of Requirement: The regulation is 85.801 establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: May 23, 2006.

Reason Waived: The City of Vacaville Housing Authority (CVHA), a Section 8 only entity, administers the Section 8 Housing Voucher Program for the Solano County Housing Authority (SCHA). Both HAs requested a 30-day extension of the audited financial submission deadline of March 31, 2006, for FYE June 30, 2005. The HAs were unable to complete the audit process due to confusion as to whether or not the CVHA should be considered a sub-recipient of the SCHA, since it administers the Section 8 Housing Voucher Program for the SCHA. The CVHA requested clarification from the Department as to which HA has audit responsibilities over the SCHA's Section 8 Housing Voucher Program. Because the circumstances surrounding the waiver request were unusual and beyond the HAs' control, the HAs were granted an extension of 30 days to submit their audited financial information.

Contact: David R. Ziaya, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–8574.

• Regulation: 24 CFR 902.20.

Project/Activity: Winter Haven Housing Authority (FL139), Winter Haven, FL.

Nature of Requirement: This regulation establishes criteria to determine whether a housing authority

(HA) meets the standard of decent, safe, sanitary, and in good repair. The Real Estate Assessment Center (REAC) provides for an independent physical inspection of a HA's property of properties that includes a statistically valid sample of the units.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: April 14, 2006.

Reason Waived: The HA requested a waiver of the Physical Assessment Subsystem (PASS) indicator for fiscal year ending (FYE) September 30, 2005, because it was impacted by multiple hurricanes during fiscal year 2004. The HA's housing developments sustained significant damages that the HA is in the process of repairing. Consequently, the PASS requirements were waived and no physical inspections will be conducted for FYE September 30, 2005.

Contact: David R. Ziaya, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–8574.

• Regulation: 24 CFR 902.20.

Project/Activity: Caruthersville Housing Authority (MO036), Caruthersville, MO.

Nature of Requirement: This regulation establishes criteria to determine whether a housing authority (HA) meet the standard of decent, safe, sanitary, and in good repair. The Real Estate Assessment Center (REAC) provides for an independent physical inspection of a HA's property of properties that includes a statistically valid sample of the units.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: June 9, 2006.

Reason Waived: The HA was granted a waiver from physical inspections because of severe category F4 tornado damage to 197 of its 304 public housing units, and the declaration of the City of Caruthersville as by the Federal Emergency Management Agency.

Contact: David R. Ziaya, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–8574.

• Regulation: 24 CFR 902.30.

Project/Activity: Arcadia Housing Authority (FL055), Arcadia, FL.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: April 5, 2006.

Reason Waived: The HA requested a three-month waiver of the audited financial submission due date of March 31, 2006, for FYE June 30, 2005, because the HA required additional time to procure an auditor. The HA's previous auditor informed the HA that he will no longer conduct audits in the state of Florida. The HA made numerous attempts to procure a new audit firm since August 2005, without success. The HA was granted a waiver extending the due date to June 30, 2006.

Contact: David R. Ziaya, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–8574.

• Regulation: 24 CFR 902.30.

Project/Activity: City of Las Vegas Housing Authority (NM007), Las Vegas, NM.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: May 3, 2006.

Reason Waived: The HA requested a waiver extension of one-month to the audited financial information submission due date of March 31, 2006, for FYE June 30, 2005. The HA is an agency of the City of Las Vegas whose audit for fiscal year (FY) 2005 was delayed because the audit firm completing the FY 2004 audit filed for bankruptcy. A new audit firm, engaged by the City of Las Vegas in September 2005, proceeded to complete the FY 2004 audit and received the State Auditor's consent before proceeding to audit the City's FY 2005 books and records. The waiver provides a one-month extension to April 30, 2006, for the HA to submit its audited financial information.

Contact: David R. Ziaya, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–8574.

• Regulation: 24 CFR 902.30.

Project/Activity: Mercer County Housing Authority (PA020), Sharon, PA.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: May 26, 2006.

Reason Waived: The HA requested a waiver of its (LPF) score of zero, and an extension of its March 31, 2006, submission deadline for FYE June 30, 2005. The reason for failing to submit its audited financial information by the submission deadline was because the HA's terminal server crashed causing extensive damage to the operating system thereby rendering the computer system useless for almost a week. The HA was at the last step of the audit submission process when the system crashed. Documentation provided by the HA substantiated the fact that the computer system crashed on March 31, 2006, and was completely reinstalled on April 4, 2006. The circumstances surrounding the HA's waiver request were beyond the HA's control and the HA was given 15 days from receipt of the waiver approval letter to complete and submit its audited financial information to the REAC.

Contact: David R. Ziaya, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–8574.

• Regulation: 24 CFR 902.50.

Project/Activity: Milton Housing Authority (FL053), Milton, FL.

Nature of Requirement: Section 902.50 provides for measurement of the level of resident satisfaction with living condition at the public housing authority. The Resident Service and Satisfaction Assessment are performed through the use of a survey under the Resident Assessment Subsystem (RASS) indicator. Additionally, the housing authority (HA) is responsible for completing implementation plan activities and developing a follow-up

plan in accordance with the RASS requirements.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: June 9, 2006.

Reason Waived: The HA sustained direct hits from two hurricanes Ivan and Dennis, resulting in damages to roofs, flooded units, exterior siding, etc. that required the relocation of residents. Additionally, the HA was unable to certify the address information in the RASS for FYE March 31, 2006, because the city changed the unit and building addresses. The circumstances surrounding the waiver request under the RASS indicator were unusual and beyond the HA's control and therefore the RASS requirements are waived for FYE March 31, 2006.

Contact: David R. Ziaya, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–8574.

• Regulation: 24 CFR 902.20 and 24 CFR 5.801(c) and 5.801(d)(1).

Project/Activity: Opelousas Housing Authority (LA055), Opelousas, LA.

Nature of Requirement: Section 902.20 establishes criteria determine whether a housing authority (HA) is meeting the standard of decent, safe, sanitary, and in good repair. The Real Estate Assessment Center (REAC) provides for an independent physical inspection of a HA's property of properties that includes a statistically valid sample of the units. Section 5.801 establishes certain reporting compliance dates; namely, the Un-audited financial statements are required to be submitted within two months after the HA's Fiscal Year End (FYE), and the audited financial statements are required to be submitted no later than nine months after the HA's FYE, in accordance with the Single Audit Act and OMB Circular A–133 (24 CFR 902.30), and the Management operations certifications are required to be submitted within two months after the HA's FYE (24 CFR 902.40). The Resident Service and Satisfaction Indicator are performed through the use of a survey. The HA is responsible for completing implementation plan activities and developing a follow-up plan (24 CFR 902.50).

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: May 5, 2006.

Reason Waived: The Opelousas Housing Authority, a hurricane Katrina disaster declared HA, was granted a waiver from the submission of all four Public Housing Assessment System (PHAS) indicators, as well as the overall PHAS score under 24 CFR 902 and 24 CFR 5.801(c) and 5.801(d)(1) for FYE June 30, 2006.

Contact: Wanda Funk, Hurricane Disaster Relief Coordinator, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–8736.

• Regulations: 24 CFR part 5 and 24 CFR Chapter IX.

Project/Activity: The PHAs identified in Table 1, are all located within a presidentially declared disaster area as a result of damages caused by Hurricanes Katrina and/or Rita or Hurricane Wilma, and each PHA notified HUD of the need for one or more regulatory waivers made available to PHAs in Hurricanes Katrina, Rita and Wilma disaster areas by three **Federal Register** notices. The first notice is *Regulatory and Administrative Waivers Granted for Public and Indian Housing Programs to Assist with Recovery and Relief in Hurricane Katrina Disaster Areas*, signed September 27, 2005, and published in the **Federal Register** on October 3, 2005 (70 FR 57716), the second notice is *Regulatory and Administrative Waivers Granted for Public and Indian Housing Programs to Assist with Recovery and Relief in Hurricane Rita Disaster Areas; and Additional Administrative Relief for Hurricane Katrina*, signed October 25, 2005, and published in the **Federal Register** on November 1, 2005 (70 FR 66222), and the third notice is *Regulatory and Administrative Waivers Granted for Public and Indian Housing Programs To Assist With Recovery and Relief in Hurricane Wilma Disaster Areas*, signed on March 7, 2006, and published in the **Federal Register** on March 13, 2006 (71 FR 12988):

Nature of Requirements: The three **Federal Register** notices provided for waiver of the following regulations, in 24 CFR part 5 and 24 CFR Chapter IX for those PHAs in the disaster areas that notified HUD through a special waiver request process designed to expedite both the submission of regulatory requests to HUD and HUD's response to the request.

1. 24 CFR 5.216(g)(5) (Disclosure and Verification of Social Security and Employer Identification Numbers);

2. 24 CFR 5.512(c) (Verification of Eligible Immigration Status; Secondary Verification);

3. 24 CFR 5.801(c) and 5.801(d) (Uniform Financial Reporting Standards (UFRS));

4. 24 CFR 902 (Public Housing Assessment System (PHAS));

5. 24 CFR 903.5 (Annual Plan Submission Deadline);

6. 24 CFR 905.10(i) (Capital Fund Formula; Limitation of Replacement Housing Funds to New Development);

7. 24 CFR 941.306 (Maximum Project);

8. 24 CFR 965.302 (Requirement for Energy Audits);

9. 24 CFR 982.54 (Administrative Plan);

10. 24 CFR 982.206 (Waiting List; Opening and Public Notice);

11. 24 CFR 982.401(d) (Housing Quality Standards; Space Requirements);

12. 24 CFR 982.503(b) (Waiver of payment standard; Establishing Payment Standard; Amounts);

13. 24 CFR 984.303 (Contract of Participation; Family Self-Sufficiency (FSS) Program; Extension of Contract) and 24 CFR 984.105 (Minimum Payment Size);

14. 24 CFR part 985 (Section 8 Management Assessment Program (SEMAP)); and

15. 24 CFR 990.145 (Dwelling Units with Approved Vacancies).

16. 24 CFR 1000.156 and 1000.158 (IHBG Moderate Design Requirements for Housing Development).

17. 24 CFR 1000.214 (Indian Housing Plan (IHP) Submission Deadline).

18. 24 CFR 1003.400(c) and Section I.C. of FY 2005 Indian Community Development Block Grants (ICDBG) Program Notice of Funding Availability (NOFA) (Grant Ceilings for ICDBG Imminent Threat Applications).

19. 24 CFR 1003.401 and Section I.C. of FY 2005 ICDBG NOFA (Application Requirements for ICDBG Imminent Threat Funds).

20. 24 CFR 1003.604 (ICDBG Citizen Participation Requirements). Both **Federal Register** notices described the regulatory requirement in detail and the period of suspension or alternative compliance date.

Granted By: Roy A. Bernardi, Deputy Secretary by the October 3, 2005 notice and the November 1, 2005 notice, both in the **Federal Register**. The March 13, 2006 notice was granted by Orlando J. Cabrera, Assistant Secretary, Public and Indian Housing, published in the **Federal Register**.

Date Granted: Please refer to Table 1. Table 1 identifies public housing agencies (PHAs) that have requested and were granted the regulatory waivers made available through the three **Federal Register** notices. The table identity's by number (as listed in the **Federal Register** notices) the regulatory waivers granted to each housing entity

and identifies whether the housing entity was located in a Hurricane Katrina, Hurricane Rita or Hurricane Wilma disaster area.

Reason waived: The regulations waived in the October 3, 2005, and the November 1, 2005, and the March 13, 2006, **Federal Register** notices were waived to facilitate the delivery of safe and decent housing under HUD's Public Housing programs to families and individuals that were displaced from their housing as a result of the hurricanes.

Contacts: Reference the items numbers with the items identified in the aforementioned ''Nature of Requirements'' section for the following contacts:

• For requirements 1, 2 and 8, Patricia S. Arnaudo, Director, Public Housing Management and Occupancy Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4222, Washington, DC 20410–5000, telephone (202) 708–0744;

• For requirements 3, 4 and 15,Wanda F. Funk, Senior Advisor, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8736;

• For requirement 5, Merrie Nichols-Dixon, Division Director, Compliance and Coordination Division, Office of Field Operations, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4112, Washington, DC 20410–5000, telephone (202) 708–4016;

• For requirements 6 and 7, Jeffery Riddel, Acting Director, Capital Fund Division, Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4146, Washington, DC 20410–5000, telephone (202) 401–8812;

• For requirements 9–14, Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477;

• For requirements 16–20, Deborah M. Lalancette, Director, Office of Grants Management, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 1670 Broadway Denver, CO 80202, telephone (303) 675–1600.

TABLE 1

Housing authority code	Housing authority Name and Hurricane Disaster Area (K)(R) and (W) indicate whether the Housing Authority was located in hurricane Katrina, Rita, or Wilma disaster area	Regulatory waivers granted	Date acceptable notification received
FL005	MIAMI DADE HOUSING AUTHORITY (W)	1–9, 13–15	05/01/06
FL010	HOUSING AUTHORITY OF FORT LAUDERDALE (W)	4, 8, 9, 14	04/27/06
FL021	PAHOKEE HOUSING AUTHORITY (W)	4, 13, 14	04/03/06
FL116	DANIA BEACH HOUSING AUTHORITY (W)	4, 10, 14	04/06/06
LA003	EAST BATON ROUGE PARISH HOUSING AUTHORITY (K)	8	04/10/06
LA055	HOUSING AUTHORITY OF THE CITY OF OPELOUSAS (K)	1–8, 10, 11, 15	05/05/06
LA172	CALCASIEU PARISH HOUSING DEPARTMENT (K)	1–6, 9–14	04/14/06
LA178	ST. MARTIN PARISH POLICE JURY (K)	13 & 14	04/06/06
LA207	TANGIPAHOA PARISH GOVERNMENT (K)	1, 3, 5, 8–11, 14	04/14/06
LA219	City of Baton Rouge Office of Community Development (K)	12 & 14	04/14/06

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Federal Register

Wednesday,
October 18, 2006

Part V

Department of Labor

Employment and Training Administration

20 CFR Part 618

Alternative Trade Adjustment Assistance Benefits; Amendment of Regulations; Proposed Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 618

RIN 1205–AB40

Alternative Trade Adjustment Assistance Benefits; Amendment of Regulations

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Proposed Rule Making (NPRM); Request for comments.

SUMMARY: On August 6, 2002, President Bush signed into law the Trade Adjustment Assistance Reform Act of 2002 (the Reform Act), which amended the Trade Act of 1974, as amended (Act or Trade Act). The Reform Act reauthorized the Trade Adjustment Assistance (TAA) program through fiscal year 2007 and made significant amendments to the TAA program, including the addition of Alternative Trade Adjustment Assistance for Older Workers (Alternative TAA or ATAA). These amendments generally took effect on November 4, 2002, and required that the Department establish the ATAA program ''[n]ot later than one year after the date of the enactment of the [Reform Act]''.

The Department is implementing the TAA amendments, including the introduction of ATAA, through three separate rulemakings. This proposed rule implements the ATAA program, a demonstration project for older workers. On August 25, 2006, the Department published a proposed rule governing the payment of TAA and the provision of related employment services. The Department will publish a third proposed rule governing TAA and ATAA certifications of worker groups adversely affected by trade.

DATES: The Department invites written comments on this proposed rule. Comments must be submitted on or before December 18, 2006.

ADDRESSES: You may submit written comments on this proposed rule, identified by Regulatory Identification Number (RIN) 1205–AB40, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: AlternativeTAA.comments@dol.gov.* Include RIN 1205–AB40 in the subject line of the message. Your comment must be in the body of the e-mail message; do not send attached files.
- *Fax:* (202) 693–3584 (this is not a toll-free number). Only comments of 10 or fewer pages (including a Fax cover sheet and attachments, if any) will be accepted by Fax.
- *Mail:* Submit comments to Erica Cantor, Administrator, Office of National Response, ETA, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5422, Washington, DC 20210. Please note that due to security concerns, mail delivery in Washington, DC, may be delayed. Therefore, the Department encourages the public to submit comments via e-mail or Internet as indicated above.
- *Hand Delivery/Courier:* 200 Constitution Avenue, NW., Room N–5422, Washington, DC 20210.

Instructions: All comment submissions should include the RIN (1205–AB40) for this rulemaking and must be received on or before the last day of the comment period. The Department will not open, read, or consider any comments received after that date. Also, the Department will not acknowledge receipt of any comments received. Commenters who submit comments to the Department by Fax or through the Internet as well as by mail should indicate that the mailed comments are duplicate copies.

Docket: All comments will be available for public inspection and copying during normal business hours at 200 Constitution Avenue, NW., Division of Trade Adjustment Assistance, Room N–5422, Washington, DC 20210. Copies of the proposed rule are available in alternative formats of large print and electronic file on computer disk, which may be obtained at the above-stated address. The proposed rule is available on the Internet at the Web address *http://www.doleta.gov.*

FOR FURTHER INFORMATION CONTACT: Erica Cantor, Administrator, Office of National Response, ETA, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5422, Washington, DC 20210. Telephone: (202) 693–3560 (voice) (this is not a toll-free number); 1–800–326–2577 (TDD).

SUPPLEMENTARY INFORMATION: This preamble is divided into three sections. Section I provides general background information on the Reform Act and the Department's approach for developing implementing regulations for the Reform Act. Section II is a section-by-section analysis of this NPRM which proposes rules to implement ATAA for older workers. Section III covers the administrative requirements for this proposed rulemaking mandated by statute and executive order.

I. Background

The Reform Act expanded the scope of the TAA program and increased certain benefit amounts available under that program, repealed the North American Free Trade Agreement Transitional Adjustment Assistance (NAFTA–TAA) program, provided the Health Coverage Tax Credit (HCTC) administered by the Internal Revenue Service (IRS) to provide a tax credit for qualified health insurance costs for eligible workers, and enacted the Alternative TAA demonstration program for older workers. These amendments augmented the benefits and services to workers certified as adversely affected by foreign trade under the TAA program.

One of the purposes of the TAA program, 19 U.S.C. 2271 *et seq.*, as described in section 2 of the Act, 19 U.S.C. 2102, is ''to assist * * * workers * * * to adjust to changes in international trade flows.'' The TAA program assists workers adversely affected by international trade by providing eligible workers with certain benefits and services, including income support in the form of trade readjustment allowances (TRA), training, job search allowances, relocation allowances, wage subsidies under ATAA, and the Health Coverage Tax Credit (HCTC). In order for a worker to apply to a cooperating State agency (CSA) for these benefits and services, the worker must be part of a group of workers covered under a TAA certification.

To implement the substantial changes to the TAA program, including the introduction of ATAA, the Department proposes creating a new 20 CFR Part 618. Proposed Part 618 would consist of nine subparts: subpart A—General; subpart B—Petitions and Determinations of Eligibility to Apply for Trade Adjustment Assistance; subpart C—Delivery of Services through the One-Stop Delivery System; subpart D—Job Search Allowances; subpart E—Relocation Allowances; subpart F—Training Services; subpart G—Trade Readjustment Allowances (TRA); subpart H—Administration by Applicable State Agencies; and subpart I—Alternative Trade Adjustment Assistance for Older Workers.

The rulemaking for Part 618 is divided into three parts: This NPRM proposes rules for Subpart I, ATAA for Older Workers. The Reform Act introduced this demonstration program to provide alternate benefits to older workers who obtain group certifications of their eligibility to apply for both TAA and ATAA. These older workers, when

they are part of a group certified as eligible to apply for ATAA, have the option of applying for a wage supplement as an alternative to TAA when they take work for less compensation than they received in their adversely affected employment.

A separate NPRM, published at 71 FR 50760–50832 (August 25, 2006) (RIN 1205–AB32), covers six subparts governing the payment of TAA and the provision of related employment services (subpart C through subpart H) and related definitions in subpart A. The Department will publish a third NPRM for subpart B, which will govern TAA and ATAA certifications of worker groups adversely affected by trade. (A worker must be covered under a TAA or ATAA certification to apply for TAA or ATAA, respectively.) It will also provide definitions relating to TAA and ATAA certifications that were reserved in subpart A.

The reader should note that since the Department initially expected to publish subparts B and I as one NPRM, both subparts B and I were initially covered under the same RIN, 1205–AB40. In order to expedite the publication of subpart I, the Department has decided to publish the NPRM for subpart B separately. Therefore, subpart I will remain under RIN 1205–AB40, and the Department will request a new RIN for subpart B and remaining definitions in subpart A.

II. Summary and Discussion of Regulatory Provisions: Subpart I—Alternative Trade Adjustment Assistance for Older Workers

This proposed subpart governs ATAA, a demonstration project established by the Reform Act under new section 246 of the Act. ATAA is a new approach to providing employment assistance to workers 50 years of age or older through wage subsidies. The goal of ATAA is to encourage reemployment of older workers who may find it difficult to find a new job at the same wage level when they change careers after long-term employment in a single job or industry. Training to improve opportunities for a future career, such as training individuals may receive through TAA, may not be the best option for these workers.

The program allows a worker covered by an ATAA certification a choice. An eligible worker may receive either an ATAA wage supplement to supplement income from a new job at lower pay than the worker's adversely affected employment, or TAA benefits including training and income support (although some workers may, under this proposed subpart, receive TRA, the income support component of TAA, before being determined eligible for ATAA). A worker under either program may receive employment and other related services focused on obtaining new employment offering compensation at or near the wages earned in adversely affected employment, and a worker under either program may receive the Health Coverage Tax Credit (HCTC) if otherwise eligible.

Some provisions in proposed subpart I reference provisions in subpart H of Part 618, Administration by Applicable State Agencies. All subpart H provisions apply to the ATAA program except where subpart H or subpart I specifically provides to the contrary. The absence in subpart I of a reference to an applicable subpart H provision may not be construed to mean subpart H does not apply.

Proposed § 618.900 describes the scope and purpose of ATAA. It explains that the Division of Trade Adjustment Assistance (DTAA) will determine ATAA and TAA certification at the same time. ATAA group certification will be covered in subpart B of this Part. Paragraph (a) of § 618.900 also explains that a worker for whom a nonrefundable expense is incurred for training approved under § 618.605(c) loses the option to receive ATAA, whether or not TAA funds pay the expense. The basis for this requirement appears in the preamble explanation of proposed § 618.915. Finally, this provision explains that proposed § 618.915 provides that workers individually found eligible for TAA and ATAA may not receive any TAA (except for the HCTC) after receiving an ATAA wage supplement, to highlight the choice of benefits that receipt of ATAA imposes on an individual worker.

Proposed paragraph (b) states the purpose of the ATAA program: ''to provide workers 50 years of age or older with the option to receive a temporary wage supplement upon prompt reemployment at lower pay than their previous adversely affected employment.''

Proposed § 618.905 discusses the six criteria that section 246 of the Act requires the Cooperating State Agencies (CSAs) to apply in determining whether an individual worker is eligible for ATAA.

Proposed paragraph (a)(1) of § 618.905 (criterion 1) implements both section 246(a)(3)(B)(i) of the Act, requiring that, to be eligible for the ATAA wage supplement, the worker ''is covered by a certification under subpart A of this Part [providing for group certifications for TAA],'' as well as the section 246(a)(3)(B) requirement that the worker is covered by an ATAA certification. Accordingly, proposed paragraph (a)(1) requires that the worker be certified as eligible to apply for ATAA under an ATAA certification (which is issued concurrently with a TAA certification). Further, the Department interprets the statutory phrase ''covered by a certification'' to mean that the worker is an ''adversely affected worker,'' as defined in § 618.110(b)(3). To be an adversely affected worker, the worker must be separated from adversely affected employment during the period of coverage of the certification. Thus, an adversely affected worker is one who is ''covered by a certification,'' as required by the statutory language. Moreover, the definition of adversely affected worker requires that the worker be separated ''because of lack of work in adversely affected employment * * *.'' This requirement assures that a worker fired for cause or laid off for other reasons than lack of work is not eligible for ATAA benefits. Accordingly, proposed paragraph (a)(1) requires that the worker be an adversely affected worker in a group of workers certified as eligible to apply for TAA and ATAA.

Proposed paragraph (a)(2) of § 618.905 (criterion 2) implements section 246(a)(3)(B)(ii) of the Act, which requires that the worker obtain reemployment not more than 26 weeks after the date of separation from adversely affected employment. Proposed paragraph (a)(2) implements this provision by requiring the worker to obtain reemployment by the last day of the 26th week after the date of the worker's most recent ''total separation,'' as defined in § 618.110(b)(76), that occurred within the certification period of the ATAA certification. The use of the term ''most recent total separation'' recognizes that workers may undergo more than one separation from employment and, like the regular TAA program, permits workers to obtain benefits when the employment relationship appears to be finally severed.

By making the wage supplement available only if reemployment occurred within 26 weeks of the worker's total separation, the statute encourages workers to begin looking for employment as soon as possible. However, as provided in proposed §§ 618.905(d)(4) and 618.910(a)(3), a CSA may approve a wage supplement and pay it retroactively to a worker who is covered by an ATAA certification but is reemployed before the certification is issued, if the worker otherwise meets eligibility requirements. The Department believes that denying the supplement to a worker who becomes

reemployed before the certification is issued is inconsistent with the intent of the statute to encourage rapid reemployment. In addition, denying retroactive approval of ATAA could encourage a worker to delay reemployment if a petition is pending, since the worker would have an incentive to wait until a determination is made. Further, the statute does not preclude retroactive approval of ATAA since it requires reemployment within 26 weeks of separation and does not provide an alternate deadline for reemployment if the separation occurs prior to the certification.

Proposed paragraph (a)(3) of § 618.905 (criterion 3) implements section 246(a)(3)(B)(iii) of the Act, which requires that the worker is at least 50 years of age. Proposed paragraph (a)(3) implements this provision by requiring that the worker must be at least 50 years of age at the time of reemployment. The Department proposes using the age of the worker at the time of the worker's reemployment because that is the time when all 6 criteria must be met. The worker's age may be verified with a driver's license or other appropriate documentation.

Proposed paragraph (a)(4) of § 618.905 (criterion 4) implements section 246(a)(3)(B)(iv) of the Act, which conditions the wage supplement on the worker not earning more than $50,000 a year in wages from reemployment. Accordingly, proposed paragraph (a)(4) requires that the worker may not earn more than $50,000 in annualized wages from reemployment as calculated under proposed § 618.910(a)(2)(ii). Computations of annualized wages from reemployment include wages from all jobs in which the worker is employed. When a worker applies for ATAA, a paycheck or supporting statement from the employer, or from each employer if there is more than one, must indicate that the annualized wages from reemployment with that employer will not exceed $50,000. Because the $50,000 figure is a prospective calculation, a formula to annualize reemployment wages, set forth in proposed § 618.910(a)(2)(ii), must be used to calculate whether the worker's wages project to exceed this amount or the annualized wages at separation as computed under proposed § 618.910(a)(2)(i). Finally, the proposed paragraph provides that annualized wages from reemployment must be less than the worker's annualized wages at separation from adversely affected employment, computed under § 618.910(a)(2)(i).

Proposed paragraph (a)(5) of § 618.905 (criterion 5) implements section 246(a)(3)(B)(v) of the Act, which requires that the worker is employed on a full-time basis as defined by State law in the State in which the worker is employed by repeating the statutory language. It also adds the requirement that the worker must continue to be employed on a full-time basis, although not necessarily at the same job or for the same employer. This is a requirement for continuing eligibility which the Department believes should be clearly stated.

Proposed paragraph (a)(5)(i) explains that either a single full-time job or any combination of part-time work that meets or exceeds full-time employment under that State law may be used. ''State law'' is defined in § 618.110(b)(70) as the State Unemployment Insurance (UI) law. Following longstanding practice, State UI law means not only State statutory provisions, but also: State court decisions, regulations, program letters, manuals, and any other documents interpreting State UI law. Thus, even if full-time employment were not defined in the State code, a definition contained in another State-issued document would apply. If the worker is employed in more than one State, then the law of the State in which the worker has the higher weekly earnings applies. If the worker's weekly earnings in that State are reduced, the law of that State continues to apply. The determination of which State law applies is made at the same time as the initial determination of eligibility and the amount of the supplement or, if the worker requalifies for ATAA on the basis of subsequent employment in two States, at the initial determination for that employment. Once the CSA makes the determination of the applicable State law, that determination continues to apply even if the worker's weekly earnings change. If the worker's wages in that State are reduced, it is easier to simply continue to apply the law of that State.

State UI law does not need to cover the employment, but the employment must not present any unusual risk to the health, safety, or morals of the worker and the employment must not be in an unlawful activity under any applicable Federal, State, or local law. The Department includes this provision because it believes that ATAA should not serve as an incentive for a worker either to accept employment that otherwise would jeopardize the worker's own welfare or involve illegal activities.

Proposed paragraph (a)(5)(ii) provides an exception to the requirement that State law requirements define full-time employment. It provides that a worker is considered employed full-time for any week in which the worker worked less than full-time as defined in State law, *only* because the worker was on employer-authorized leave. The Department believes that a worker should not be disqualified from receiving ATAA for periods of employer-authorized leave, whether paid or unpaid, simply because the worker actually worked fewer than the minimum number of hours required under the applicable State law definition of full-time employment.

Proposed paragraph (a)(5)(iii) provides that the employment may not be TAA- or WIA-sponsored on-the-job training (OJT). Under both TAA and WIA, OJT is a form of training in which a Federal program pays a subsidy to an employer to offset the employer's cost of providing training. Since ATAA is provided as an alternative to other TAA benefits, the choice to enroll in training means that a worker becomes ineligible for ATAA. ATAA allowances may be paid if a WIA-funded OJT, that has not been approved as TAA training, ends and leads to permanent unsubsidized employment within the 26-week window for applying for ATAA.

Proposed paragraph (a)(6) of § 618.905 (criterion 6) implements section 246(a)(3)(B)(vi) of the Act, which requires that the worker ''does not return to the employment from which the worker was separated.'' The Department interprets this as meaning more than merely a return to the same job, with the same facility, of the same firm, producing the same article. Rather, the provision's evident intent is to prevent the subsidization of wages when the worker effectively is returning to the adversely affected employment, a broader standard.

Proposed paragraph (a)(6)(i) contains the first part of this interpretation, that the worker returns to the same facility owned by the same firm from which the adversely affected worker was separated, regardless of whether the worker returns to the same job or produces the same article as in adversely affected employment. Proposed paragraph (a)(6)(ii) contains the second part of the interpretation, that the worker returns to the same facility but under ownership by a different firm from that which the worker was separated, if the worker is producing the same article as identified in the TAA determination but without regard to whether the worker is in the same job. Proposed paragraph (a)(6)(iii) contains the third part of the interpretation, that the worker is reemployed at a different facility of the same firm from which the worker was

separated, and in the same job producing the same article identified in the TAA determination.

Proposed paragraph (b) of § 618.905 contains the basic filing requirement for a worker to file an application for ATAA. For an ATAA application to be timely, it must be filed with the CSA within two years from the first day of the worker's reemployment, unless the Department extends this two-year deadline for workers covered by an ATAA certification whose issuance was unduly delayed as determined by the Department. Although the Act is silent, the Department proposes a deadline in order to avoid an open-ended commitment. ATAA is payable for no more than two years and it is reasonable that a claimant file the claim within this period.

The Department also proposes to permit CSAs to require in-person filing because it might, in some cases, help prevent fraud by better enabling the CSA to verify an applicant's identity, or assist in ensuring an accurate calculation of benefits for eligible workers. The ATAA payment, unlike State UI, is not based upon wage records in a database, but pay stubs. The CSA may need the claimant present to obtain the needed information quickly and to speed up the process for deciding on eligibility for and the amount of the ATAA payment. The Department therefore believes that CSA's should have the flexibility of requiring in-person claim filing.

Proposed paragraph (c) addresses situations where, because of the delays associated with litigation over the denials of certifications of petitions, certifications are issued so late that the two-year deadline for receiving ATAA benefits has expired for workers covered. Proposed paragraph (c) remedies this by providing that, as long as the petitioner or the adversely affected worker did not contribute to the delay in issuing the certification, for example, failing to meet filing deadlines or repeatedly requesting extensions of filing deadlines, the filing deadline will be extended for a reasonable period, decided on a case-by-case basis, necessary to permit eligible workers to file for ATAA. The Department believes that, in these cases, the adversely affected workers should not be unfairly penalized by not receiving ATAA. The Department proposes paragraph (c) to restore such workers to the position they would have occupied had the certification covering them been issued without the delay. The 26-week deadline for obtaining reemployment, in § 618.925(a)(2), is not extended. The 26-week deadline is statutory. Under the statute, the deadline runs from the layoff date, not the certification date. Since every certification reaches back one year, in every certification there are potentially workers for whom the 26-week deadline passed long before the petition was certified, or even filed. Everyone must meet this deadline, regardless of whether the worker was laid off before a timely certification, or the worker was laid off before the certification because it was delayed by the appeals process.

Proposed paragraph (d) of § 618.905 provides that specified provisions in subpart H concerning determinations, redeterminations, notice, and appeals and hearings apply to ATAA. The Department proposes to apply the same procedural requirements to ATAA as apply to TAA because doing so promotes efficient ATAA administration. Proposed paragraphs (d)(1), (d)(2), and (d)(3) provide further procedural requirements specific to ATAA.

Proposed paragraph (d)(1) provides that in reviewing the application, the CSA must verify and document the worker's age, reemployment, and wages in determining whether the individual meets the individual eligibility criteria in proposed § 618.905(a).

Proposed paragraph (d)(2) provides that a determination of eligibility issued to a worker must include a notice that the benefit amount will be regularly recalculated and may change if the eligible worker's annualized wages in reemployment vary. Workers' ATAA payments frequently change; therefore, this requirement would prevent confusion as workers see their benefit amounts change.

Proposed paragraph (d)(3) allows a worker to file a new application and obtain ATAA if the worker meets the criteria of proposed § 618.905(a) at the time of filing of the new application, even if the CSA has denied a prior application.

Proposed paragraph (d)(4) provides that a CSA may approve a wage supplement and pay it retroactively to a worker who is covered by an ATAA certification but is reemployed before the certification is issued, and otherwise meets eligibility requirements. This was explained above in the discussion of proposed § 618.905(a)(2).

Proposed paragraph (e) of § 618.905 provides that the recordkeeping and disclosure of information requirements of proposed § 618.865 apply to CSA's ATAA program administration. The language of proposed § 618.865 already states that it applies to the administration of ''the Act,'' which includes ATAA; however, proposed § 618.905(e) ensures there is no confusion concerning the applicability of proposed § 618.865 to ATAA.

Proposed § 618.910 addresses the wage supplement payments available, and the HCTC potentially available, to those receiving ATAA. Proposed paragraphs (a)(1) and (a)(2) of this section govern the computation of the total ATAA wage supplement for an eligible worker.

Proposed paragraph (a)(1) of § 618.910 provides that the total supplement amount, payable for up to a two-year period, is the lesser of $10,000 or an amount equal to 50 percent of the difference between the wages earned from the adversely affected employer and the new employment obtained after separation from adversely affected employment. As discussed above regarding proposed § 618.905(a)(4), a worker is ineligible to receive any wage supplement if the worker's annualized wages at separation do not exceed the worker's annualized wages from reemployment.

Proposed paragraphs (a)(2)(i) and (ii) of § 618.910 provide the computations for, respectively, annualized wages at separation, and annualized wages from reemployment. Proposed paragraph (a)(2)(i) computes the annualized wages at separation based upon the amount of wages received by the worker during the last full week of adversely affected employment. Proposed § 618.110(b)(81) defines ''wages'' as ''all compensation for employment for an employer, including commissions, bonuses, and the cash value of all compensation in a medium other than cash.'' Thus, the computation of annualized wages at separation for ATAA recognizes that some eligible workers are paid by means other than an hourly wage. However, the computation of wages for ATAA purposes varies from the definition of ''wages'' by excluding overtime wages because such wages are too speculative. It also varies from the definition of ''wages'' by excluding employer-paid health insurance premiums and employer pension contributions, so as not to disqualify workers for ATAA because their employer provides health insurance or pensions. Lastly, it varies from the definition of ''wages'' by excluding bonuses, severance payments, buyouts and similar payments, which are not reflective of the worker's weekly pay and which therefore should not be annualized. The computation of annualized wages at separation would use wages earned only in the last full week of the worker's regular schedule in adversely affected employment, rather than, for example, the worker's wages during the preceding 12-month period.

This is because the Act describes the formula as using the wages received by the worker ''at the time of separation.''

Proposed paragraph (a)(2)(ii) of § 618.910 provides that the initial computation of annualized wages from reemployment relies on the amount of wages received by the worker during the first full week of reemployment. This computation also requires combining wages from all jobs, which is consistent with the requirement in proposed § 618.905(a)(5) that ''full-time employment'' may include any combination of part-time jobs. However, the computation of wages from reemployment, like the computation of wages at separation, excludes overtime, employer-paid health insurance premiums, employer pension contributions, as well as bonuses, severance payments, buyouts and similar payments not reflective of weekly pay. Tips are not included in the proposed definition of wages, and the Department specifically invites comments on whether they should be, and if so, how they should be calculated. The computation of annualized wages from reemployment uses wages earned in the first full week of reemployment because that amount is the only actual figure available at the outset of a worker's reemployment.

The Department notes that the proposed computation of the wage supplement does not address one possible problem, that is, where a worker's wages decrease because an employer lowers the worker's wage rate immediately prior to separation or because piece rate or commission earnings are reduced. The Department invites comment on this possible problem as well as whether there is a better way to calculate wages at separation.

Proposed paragraph (a)(3) of § 618.910 governs the timing of wage supplement payments and explains that the CSA has the option to distribute the wage supplement payments to the worker on either a weekly, biweekly, or monthly basis for no more than a two-year period to a worker under any single ATAA certification. Proposed paragraph (a)(3) also provides that a worker may receive a lump-sum retroactive wage supplement payment for a previous period for which the worker was eligible for such payments, but did not have the opportunity to apply. This most commonly would occur where a worker was separated and found a new job before the ATAA certification was issued. Retroactive payment was explained above in the discussion of § 618.905(a)(2).

Proposed paragraph (a)(4) of § 618.910 provides that each wage supplement payment will be equal to the Annualized Wage Differential divided by the number of payments made during the year, *e.g.*, divided by 12 in a State that pays on a monthly basis and divided by 52 in a State that pays on a weekly basis. As noted in proposed § 618.905(d)(2), this calculation, and thus the payments, may change when the Annualized Wage Differential is recalculated as a result of changes in wages.

Proposed paragraph (a)(5) of § 618.910 provides that the CSA will, no less than monthly, review whether a worker remains eligible for, and the amount of, the wage supplement payments. This requirement would reduce the risk of fraud and error and would reduce the number of overpayments that would have to be established in the case of workers who receive payments to which they are not entitled. This requirement also is necessary for determinations of eligibility and recalculations of wage supplement payment amounts if the worker's annualized wages from reemployment change, as provided in proposed paragraph (a)(6) of § 618.910. If the review determines that the worker's annualized wages from reemployment have changed, then proposed paragraph (a)(6) requires a CSA to determine eligibility or recalculate wage supplement payment amounts based on the new annualized wages from the change.

Proposed paragraph (a)(7) of § 618.910 provides that if a CSA has verified continued eligibility monthly, as required by proposed paragraph (a)(5), then payments made after a worker's annualized wages from reemployment have changed but before the regular monthly review, are considered valid payments to which the individual was entitled and are not overpayments subject to § 618.840. The Department believes that in these circumstances, basic fairness and justice requires that it allow a worker to keep wage supplement payments received as the result of determinations that were correct and accurate at the time they were made based on all the information available at that time.

Proposed paragraph (a)(8) of § 618.910 explains how a change in employment affects ATAA eligibility. Proposed paragraph (a)(8)(i) provides that an eligible worker who changes jobs is not disqualified from continuing to receive wage supplement payments so long as the new employment meets the applicable requirements in proposed § 618.905(a), that is, proposed paragraphs (a)(4), (a)(5) and (a)(6).

The Department proposes this policy because it does not want to preclude workers from receiving ATAA benefits if they secure different employment after their initial reemployment. Also, the employment is not required to be consecutive. However, ATAA benefits are not payable during periods of unemployment. If a worker receiving ATAA becomes unemployed, the worker must complete a new individual application for ATAA upon reemployment. The worker then will be eligible to receive the wage supplement, up to the $10,000 maximum, for the remainder of the two-year eligibility period (the two-calendar year period beginning with the first day of initial reemployment) if the worker meets criteria 4, 5, and 6 of § 618.905.

If the worker's initial reemployment meets all the criteria for individual eligibility found in § 618.905, then the worker continues to be eligible for ATAA even though the worker obtains different employment, as long as it is within the worker's two-year eligibility period for benefits and the new job meets criteria 4, 5 and 6. Criteria 1, 2 and 3 do not need to be reevaluated. Criterion 1, the worker is covered by a certification and criterion 3, the worker is at least 50 years of age, will not change. The Department also interprets criterion 2, that the worker obtained the job not more than 26 weeks after the date of separation from adversely affected employment, as only applying to the first reemployment job. Thus, it is not necessary that the worker obtain subsequent reemployment by the statutory deadline described in § 618.905(a)(2), because that deadline was met by the initial reemployment.

Proposed paragraph (a)(8)(ii) specifies that a worker already receiving wage supplement payments will become ineligible for the duration of any period of unemployment. However, the worker may regain eligibility upon again becoming reemployed if the new employment meets the same three requirements in § 618.905(a).

Proposed paragraph (a)(8)(iii) provides that a worker whose recalculated annualized wages from reemployment exceed $50,000, may not receive any further wage supplement payments or any TAA benefit. However, if another change reduces the worker's annualized wages from reemployment below $50,000 and the job still meets criteria 4, 5 and 6, the worker may reapply and receive ATAA for the remaining portion of the two-year eligibility period. The Department believes a worker should not be permanently barred from further wage supplement payments due to a

temporary spike in earnings that subsides before the worker's two-year eligibility period expires.

Proposed paragraph (b) of § 618.910 provides that ATAA recipients are ''eligible ATAA recipients'' for purposes of the HCTC. Although neither the Department nor CSAs make HCTC eligibility determinations, proposed § 618.770(b) describes the duties of a CSA in administering the HCTC. The Internal Revenue Service makes the final determination of HCTC eligibility.

Proposed § 618.915 explains the Department's interpretation of section 246(a)(5) of the Act, limiting the TAA benefits available to workers receiving ATAA. That provision prohibits a worker who is receiving ATAA benefits from receiving benefits under the TAA program other than the HCTC, but it does not indicate whether a worker may receive ATAA after having received TAA benefits. Proposed § 618.915 interprets section 246(a)(5) of the Act as permitting a worker to receive TRA, a job search allowance, and a relocation allowance under a TAA certification before receiving a wage supplement payment under the accompanying ATAA certification. Once such a worker receives a wage supplement payment, however, that worker may not receive any further TAA benefits under that TAA certification, except the HCTC, if eligible.

Proposed § 618.915 prohibits a worker for whom a nonrefundable expense is incurred—whether or not TAA funds pay the expense—for training approved under § 618.605(c) from receiving a wage supplement payment under the ATAA certification. The Department proposes this prohibition because ATAA is a demonstration program designed to test whether a wage supplement will return older workers to work faster than training under the TAA program. Therefore, it is reasonable to require a worker to choose between a longer-term commitment to training and the receipt of ATAA to supplement the wages earned in employment obtained quickly with existing skills. Mere approval of training under § 618.605(c) does not disqualify a worker from receiving ATAA; rather, the disqualification for receipt of training applies only once an actual and nonrefundable expense for TAA approved training is incurred from TAA or other funds.

Proposed § 618.920 explains the effect of the termination of the ATAA program. This program was enacted as a demonstration project to better serve older workers seeking reemployment. Section 246(b) of the Act provides that a worker may not receive ATAA after the termination date unless the worker is ''receiving payments * * * on the termination date.'' Proposed § 618.920 interprets this provision to mean that an eligible worker whose initial application for ATAA is approved on or before the termination date may receive ATAA payments for as long as the worker remains eligible for the duration of the worker's ATAA eligibility period. The Department believes this interpretation, as opposed to one that would permit continuing wage supplement payments only to workers who had received an actual payment by the termination date, is reasonable and is more sensible because it avoids the inequity of a worker having an initial application approved before the termination date, but then not receiving a payment because of an administrative delay.

III. Administrative Requirements of the Proposed Rulemaking

Executive Order 12866

This proposed rule for ATAA program benefits is not an economically significant rule because it will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs; have an annual effect on the economy of $100 million or more; or adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way. However, the proposed rule is a significant regulatory action under Executive Order 12866 at section 3(f), Regulatory Planning and Review, because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. This proposed rule implements a new program under the Reform Act for individuals who are at least 50 years old. Therefore, the Department has submitted this proposed rule to the Office of Management and Budget for review.

Paperwork Reduction Act

The ATAA program described in this proposed rule contains a requirement for States to submit to the Department the quarterly ATAA Activities Report (ATAAAR). These requirements were previously reviewed and approved for use by the Office of Management and Budget (OMB) and assigned OMB control number 1205–0459 under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (PRA).

Executive Order 13132: Federalism

The Department has reviewed this proposed rule revising the operation of a Federal benefit program in accordance with Executive Order 13132 and found that it will not have substantial direct effects on the States or the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government, within the meaning of the Executive Order.

Unfunded Mandates Reform Act of 1995

This regulatory action has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) and Executive Order 12875. The Department has determined that this rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, the Department has not prepared a budgetary impact statement.

Effect on Family Life

The Department certifies that this proposed rule has been assessed according to section 654 of Pub. L. 105–277, 112 Stat. 2681, for its effect on family well-being. The Department concludes that the rule will not adversely affect the well-being of the nation's families. Rather, it should have a positive effect on family well-being by providing greater choice in for benefits to eligible individuals.

Regulatory Flexibility Act/SBREFA

We have notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act (RFA) at 5 U.S.C. 605(b), that this proposed rule will not have a significant economic impact on a substantial number of small entities. Under the RFA, no regulatory flexibility analysis is required where the rule ''will not * * * have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). A small entity is defined as a small business, small not-for-profit organization, or small governmental jurisdiction. 5 U.S.C. 601(3)–(5). Therefore, the definition of the term ''small entity'' does not include States or individuals.

This proposed rule provides procedures governing a program for individuals over age 50 and is administered by the States and not by small governmental jurisdictions. In addition, the program applies to individuals who seek benefits under the program only, and not small entities as

defined by the Regulatory Flexibility Act. Therefore, the Department certifies that this proposed rule will not have a significant impact on a substantial number of small entities and, as a result, no regulatory flexibility analysis is required.

In addition, the Department certifies that this proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996 (SBREFA). Under section 804 of SBREFA, a major rule is one that is an ''economically significant regulatory action'' within the meaning of Executive Order 12866. Because this proposed rule is not an economically significant rule under Executive Order 12866, the Department certifies that it also is not a major rule under SBREFA.

Catalogue of Federal Domestic Assistance Number

This program is listed in the Catalogue of Federal Domestic Assistance at No. 17.245.

List of Subjects in 20 CFR Part 618

Administrative practice and procedure, Employment, Fraud, Grant programs—labor, Manpower training programs, Relocation assistance, Reporting and recordkeeping requirements, Trade adjustment assistance, Vocational education.

Signed at Washington, DC, on October 12, 2006.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

For the reasons stated in the preamble, the Department of Labor proposes to amend 20 CFR part 618 as proposed in a Notice of Proposed Rulemaking entitled Trade Adjustment Assistance for Workers, Workforce Investment Act; Amendment of Regulations, published at 71 FR 50760–50832 (August 25, 2006) which is proposed to be further amended as follows:

PART 618—TRADE ADJUSTMENT ASSISTANCE UNDER THE TRADE ACT OF 1974 FOR WORKERS CERTIFIED UNDER PETITIONS FILED BEFORE NOVEMBER 4, 2002

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

Authority: 19 U.S.C. 2320; Secretary's Order No. 3–81, 46 FR 31117.

2. 20 CFR part 618 is amended to add subpart I to read as follows:

Subpart I—Alternative Trade Adjustment Assistance for Older Workers

Sec.

Subpart I—Alternative Trade Adjustment Assistance for Older Workers

§ 618.900 Scope and purpose.

(a) This subpart covers Alternative Trade Adjustment Assistance for older workers (ATAA), including the procedures for applying for individual eligibility determinations. ATAA certification is determined at the same time as TAA certification, both of which are governed by subpart B of this Part. Workers who are covered under an ATAA certification must meet the individual eligibility criteria for ATAA in order to opt to receive a wage supplement. However, a worker for whom a nonrefundable expense is incurred for training approved under § 618.605(c) loses the option to receive ATAA, whether or not TAA funds pay for the expense. Under § 618.915 a worker who receives an ATAA wage supplement may not receive TAA benefits and services, but may still be eligible to receive the HCTC.

(b) The purpose of ATAA is to provide workers 50 years of age or older with the option to receive a temporary wage supplement upon prompt reemployment at lower pay than their previous adversely affected employment, as an alternative to training and other TAA benefits.

§ 618.905 Individual eligibility criteria, applications, and determinations.

(a) *Criteria for individual eligibility.* An individual worker must satisfy each of the following requirements to qualify for ATAA:

(1) *Criterion 1: The worker is covered by a certification.* The worker must be an adversely affected worker, as defined in § 618.110(b)(3), in the group of workers certified as eligible to apply for TAA and ATAA;

(2) *Criterion 2: The worker obtains reemployment not more than 26 weeks after the date of separation from the adversely affected employment.* The worker's first day of employment must occur before the last day of the 26th week after the date of the worker's most recent total separation, as defined in § 618.110(b)(76), within the ATAA certification period;

(3) *Criterion 3: The worker is at least 50 years of age.* The worker must be at least 50 years of age at the time of reemployment;

(4) *Criterion 4: The worker earns not more than $50,000 a year in annualized wages from reemployment.* The worker may not earn more than $50,000 in annualized wages from reemployment, *as computed under 618.910(a)(2)(ii).* Annualized wages from reemployment will include wages from all jobs in which the worker is employed. When a worker applies for ATAA, a paycheck or supporting statement from the employer, or from each employer if more than one, must be used to establish that annualized wages from reemployment will not exceed $50,000. Annualized wages from reemployment also must be less than the worker's annualized wages at separation from adversely affected employment, as computed under § 618.910(a)(2)(i);

(5) *Criterion 5: The worker is employed on a full-time basis as defined by State law in the State in which the worker is employed.* The worker must be employed, and must continue being employed (although the worker need not continue to be employed in the same job(s) or for the same employer(s)), on a full-time basis as defined by State law (as defined in § 618.110(b)(70)) in the State in which the worker is employed.

(i) Employment on a full-time basis may include a single, full-time job or any combination of part-time work that meets or exceeds full-time employment, as defined under State law in the State in which the worker is employed. If the worker is employed in more than one State, then the law of the State in which the worker has the highest weekly earnings applies. If the worker's weekly earnings in that State are reduced, the law of that State continues to apply. Such employment need not be covered employment under State UI law, but must be employment which does not present any unusual risk to the health, safety, or morals of the individual and must not involve activity that is unlawful under Federal, State, or local law.

(ii) Notwithstanding State law, a worker must be considered employed full-time for any week in which the worker worked less than full-time as defined in State law, *only* because the worker was on employer-authorized leave.

(iii) Such employment may not be TAA- or WIA-sponsored on-the-job training (OJT);

(6) *Criterion 6: The worker does not return to the employment from which the worker was separated.* The worker's reemployment must not be the same employment as the adversely affected employment from which the worker was separated. An adversely affected worker

returns to adversely affected employment if reemployed:

(i) by the same firm at the same facility from which the adversely affected worker was separated, regardless of whether the worker is returning to the same job or producing the same article as identified in the TAA determination; or

(ii) by a different firm but at the same facility from which the adversely affected worker was separated, and producing the same article identified in the TAA determination, regardless of whether the worker is returning to the same job; or

(iii) by the same firm but at a different facility in the same job and producing the same article identified in the TAA determination.

(b) *Filing an individual application for ATAA.* To receive ATAA, an adversely affected worker must file an application for ATAA with the cooperating State agency within two years from the first day of the worker's reemployment. The cooperating State agency, at its discretion, may require the worker to file the application in person.

(c) The limitation in paragraph (b) of this section does not apply where a negative determination on a petition filed under subpart B of this part 618 has been appealed to the United States Court of International Trade; and the certification is later granted; and the delay in the certification is not attributable to the petitioner or the adversely affected worker. In that event, the filing period for ATAA will be extended by the Department of Labor, on a case-by-case basis, for a reasonable period in which workers may file for ATAA. The 26 week deadline for reemployment described in § 618.905(a)(2) remains and is not changed by this provision.

(d) *Determinations, redeterminations, and appeals.* Cooperating State agencies must apply the requirements of § 618.825 (determinations and notice) and § 618.835 (appeals and hearings) of subpart H, respectively, to all determinations, redeterminations, and appeals under this subpart I.

(1) Before issuing a determination or redetermination, the cooperating State agency must verify and document the worker's age, reemployment, and wages in determining whether the requirements of paragraph (a) of this section have been met.

(2) A determination of eligibility issued to a worker must include a notice that the benefit amount will be regularly recalculated (as required by § 618.910(a)(6)) and may change if the eligible worker's annualized wages in reemployment vary.

(3) A worker who is denied individual eligibility based on a first reemployment may file a new application and subsequently obtain ATAA eligibility if the worker meets all of the criteria of paragraph (a) of this section at the time the worker files the new application.

(4) A wage supplement may be approved retroactively in the case of a worker who is covered by an ATAA certification but is reemployed before such certification actually is issued, and otherwise meets the eligibility requirements of this section.

(e) *Recordkeeping requirements.* The recordkeeping and disclosure of information requirements of § 618.865 apply to the cooperating State agencies' administration of the ATAA program.

§ 618.910 Benefits.

(a) *Wage supplement.* An eligible worker under an ATAA certification may receive a total wage supplement of up to $10,000 over a period of not more than two years.

(1) *Computation of total worker payment and Annualized Wage Differential.* The ATAA wage supplement supplements an individual's wages for up to two calendar years beginning with the first day of initial reemployment or $10,000, whichever occurs first, by an amount equal to the annualized wage differential. The Annualized Wage Differential is an amount equal to 50 percent of the result of—

(i) The amount of the worker's annualized wages at separation, as computed under paragraph (a)(2)(i) of this section, minus

(ii) The amount of the worker's annualized wages from reemployment, as computed under paragraph (a)(2)(ii) of this section.

(2) *Computation of annualized wages.* (i) *Annualized wages at separation* means the product of 52 multiplied by the amount of wages received by the worker during the last full week of the worker's regular schedule in adversely affected employment. The computation of wages at separation excludes overtime, employer-paid health insurance premiums, and employer pension contributions, as well as bonuses, severance payments, buyouts and similar payments not reflective of the worker's weekly pay.

(ii) Annualized wages from reemployment means the product of 52 multiplied by the amount of wages received by the worker during the first full week of reemployment. If a worker's wages from reemployment change, then annualized wages from reemployment means the product of 52 multiplied by the amount of wages received by the worker during the latest full week of reemployment, and the cooperating State agency must follow § 618.910(a)(6) in recalculating the wage supplement payments. The computation of annualized wages from reemployment excludes overtime, employer-paid health insurance premiums, and employer pension contributions, as well as bonuses, severance payments, buyouts and similar payments not reflective of the worker's weekly pay. If a worker's annualized wages from reemployment exceed $50,000, then the worker is ineligible for any ATAA benefit under this subpart I.

(3) *Timing of wage supplement payments.* The cooperating State agency must make wage supplement payments on a regular basis, either weekly, biweekly, or monthly, for no more than a two-year period for a worker under any one certification, beginning no earlier than the first day of reemployment that satisfies the requirements of § 618.905. A worker may receive retroactive payments, in a lump sum, for which the worker was eligible under § 618.905(a) and approved under § 618.905(d)(4).

(4) *Calculation of wage supplement payments.* Each wage supplement payment will be equal to the Annualized Wage Differential divided by the number of payments made during the year, *e.g.*, divided by 12 in a State that pays on a monthly basis and divided by 52 in a State that pays on a weekly basis.

(5) *Periodic verification of employment and annualized wages.* No less than once a month, the cooperating State agency must review whether a worker receiving wage supplement payments continues to meet the eligibility requirements of § 618.905, and determine whether changes have occurred in the worker's annualized wages from reemployment, as described in paragraph (a)(2)(ii) of this section.

(6) *Change in annualized wages from reemployment.* The cooperating State agency must recalculate the appropriate amount of the wage supplement payments if, during its review under paragraph (a)(5) of this section, it determines that the worker's annualized wages from reemployment have changed.

(i) If the worker's annualized wages from reemployment, as computed under paragraph (a)(2)(ii) of this section, exceed either $50,000 or the worker's annualized wages at separation, as computed under paragraph (a)(2)(i) of this section, then the cooperating State agency must immediately issue a determination that the worker is ineligible for further wage supplement

payments, notify the worker of this determination, and cease such wage supplement payments.

(ii) If the worker's annualized wages from reemployment, as computed under paragraph (a)(2)(ii) of this section, change, but still do not exceed either $50,000 or the worker's annualized wages at separation, as computed under paragraph (a)(2)(i) of this section, then the cooperating State agency must recalculate the amount of each wage supplement payment.

(7) *Overpayments.* If a cooperating State agency has verified continued eligibility monthly, as required by paragraph (a)(5) of this section, payments made before a worker's annualized wages from reemployment are determined, under the computation in paragraph (a)(2)(ii) of this section, to have changed will, in the absence of fraud, be considered valid payments to which the individual was entitled and are not overpayments subject to § 618.840.

(8) *Continuing eligibility for wage supplement.* (i) Changing jobs during reemployment does not disqualify an otherwise eligible worker from receiving subsequent wage supplement payments under this subpart I for the remainder of the two-year eligibility period if the new reemployment meets the requirements of § 618.905(a)(4), (a)(5), and (a)(6).

(ii) A worker already receiving wage supplement payments who has a period of unemployment will not be eligible to receive the wage supplement for that period nor any TAA benefit (see § 618.915 (choice of TAA or ATAA wage supplement)). Upon reemployment, the worker must reapply for ATAA to the cooperating State agency. If the new reemployment meets the requirements of § 618.905(a)(4), (a)(5), and (a)(6), the worker may be eligible to receive the wage supplement in accordance with the requirements of this section for the remaining portion of the two-year eligibility period.

(iii) A worker already receiving wage supplement payments whose recalculated annualized wages from reemployment, under 618.910(a)(2)(ii), exceed $50,000, may not receive any further wage supplement payments or any TAA benefit (see § 618.915 (choice of TAA or ATAA wage supplement)). However, if another change reduces the worker's annualized wages from reemployment to $50,000 or less and the worker meets the requirements of § 618.905(a)(4), (a)(5), and (a)(6), the worker may reapply to the CSA and resume receiving ATAA for the remaining portion of the two-year eligibility period.

(b) *Health Coverage Tax Credit.* A worker who receives an ATAA wage supplement payment is an eligible ATAA recipient as defined in 618.110(b)(33) and may, if determined eligible by the Internal Revenue Service, receive the HCTC for any month in which the worker receives an ATAA payment and for one month following the last month of ATAA payment eligibility. A cooperating State agency must meet the responsibilities explained in § 618.770(b) (Health Coverage Tax Credit).

§ 618.915 Choice of TAA or ATAA wage supplement.

A worker for whom a nonrefundable expense is incurred—whether or not TAA funds pay the expense—for training approved under § 618.605(c) loses the option to receive ATAA and may not receive a wage supplement under an accompanying ATAA certification. A worker who has received TRA, a job search allowance, or a relocation allowance may still choose to receive ATAA benefits. However, a worker who receives a wage supplement payment under an ATAA certification makes an irrevocable election to receive ATAA benefits and may not receive any concurrent or subsequent TAA benefits, except for the HCTC, as provided in § 618.910(b), under the TAA certification that accompanies that ATAA certification.

§ 618.920 Termination of ATAA Program.

A worker may not receive a wage supplement under § 618.910(a) after the termination date of the ATAA program specified in the Act or other law, unless the worker received a determination approving an initial application for ATAA on or before such termination date. A worker who has received approval of a wage supplement under the ATAA program on or before the termination date specified in the Act will, if otherwise eligible, continue to receive payments throughout the worker's eligibility period, in accordance with § 618.910(a) of this subpart I.

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Federal Register

Wednesday,
October 18, 2006

Part VI

The President

Proclamation 8070—National Character Counts Week, 2006

Proclamation 8071—National Forest Products Week, 2006

Federal Register
Vol. 71, No. 201
Wednesday, October 18, 2006

Presidential Documents

Title 3—

The President

Proclamation 8070 of October 13, 2006

National Character Counts Week, 2006

By the President of the United States of America

A Proclamation

America's strength is found in the spirit and character of our people. During National Character Counts Week, we renew our commitment to instilling values in our young people and to encouraging all Americans to remember the importance of good character.

As the primary teachers and examples of character, parents help create a more compassionate and decent society. And as individuals, we all have an obligation to help our children become responsible citizens and realize their full potential. By demonstrating values such as integrity, courage, honesty, and patriotism, all Americans can help our children develop strength and character.

Countless individuals throughout our country demonstrate character by volunteering their time and energy to help neighbors in need. The men and women of our Armed Forces set an example of character by bravely putting the security of our Nation before their own lives. We also see character in the family members, teachers, coaches, and other dedicated individuals whose hearts are invested in the future of our children.

Our changing world requires virtues that sustain our democracy, make self-government possible, and help build a more hopeful future. National Character Counts Week is an opportunity to recognize the depth of America's character and appreciate those who pass on our values to future generations.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 15 through October 21, 2006, as National Character Counts Week. I call upon public officials, educators, librarians, parents, students, and all Americans to observe this week with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of October, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirty-first.

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Presidential Documents

Proclamation 8071 of October 13, 2006

National Forest Products Week, 2006

By the President of the United States of America

A Proclamation

During National Forest Products Week, we take time to appreciate the natural splendor of our country's forests and acknowledge the importance of these woodlands to our economic and environmental vitality. It is also an opportunity to renew our commitment to conserving our natural resources and to using them responsibly.

Our forests are important to our economic well-being, supplying products that drive our economy and create jobs and opportunities.

America's forests are also an important part of our Nation's natural beauty, and we must continue to conserve and use these resources in a manner that preserves them for future generations. My Administration is committed to protecting our forests and woodlands against fire damage. Through the Healthy Forests Initiative, we have reduced the danger of fires by removing hazardous fuels from millions of acres of Federal land, making communities safer from catastrophic fire and improving wildlife habitat.

Recognizing the ''importance and heritage of our vast forest resources which are inseparably tied to our present and our future,'' the Congress, by Public Law 86–753 (36 U.S.C. 123), as amended, has designated the week beginning on the third Sunday in October of each year as ''National Forest Products Week'' and has requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 15 through October 21, 2006, as National Forest Products Week. I call upon all Americans to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of October, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirty-first.

[FR Doc. 06–8808
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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 315/P.L. 109–339

To designate the United States courthouse at 300

North Hogan Street, Jacksonville, Florida, as the ''John Milton Bryan Simpson United States Courthouse''. (Oct. 13, 2006; 120 Stat. 1863)

H.R. 562/P.L. 109–340

To authorize the Government of Ukraine to establish a memorial on Federal land in the District of Columbia to honor the victims of the manmade famine that occurred in Ukraine in 1932-1933. (Oct. 13, 2006; 120 Stat. 1864)

H.R. 1463/P.L. 109–341

To designate a portion of the Federal building located at 2100 Jamieson Avenue, in Alexandria, Virginia, as the ''Justin W. Williams United States Attorney's Building''. (Oct. 13, 2006; 120 Stat. 1865)

H.R. 1556/P.L. 109–342

To designate a parcel of land located on the site of the Thomas F. Eagleton United States Courthouse in St. Louis, Missouri, as the ''Clyde S. Cahill Memorial Park''. (Oct. 13, 2006; 120 Stat. 1867)

H.R. 2322/P.L. 109–343

To designate the Federal building located at 320 North Main Street in McAllen, Texas, as the ''Kika de la Garza Federal Building''. (Oct. 13, 2006; 120 Stat. 1868)

H.R. 3127/P.L. 109–344

Darfur Peace and Accountability Act of 2006 (Oct. 13, 2006; 120 Stat. 1869)

H.R. 4768/P.L. 109–345

To designate the facility of the United States Postal Service located at 777 Corporation Street in Beaver, Pennsylvania, as the ''Robert Linn Memorial Post Office Building''. (Oct. 13, 2006; 120 Stat. 1882)

H.R. 4805/P.L. 109–346

To designate the facility of the United States Postal Service located at 105 North Quincy Street in Clinton, Illinois, as the ''Gene Vance Post Office Building''. (Oct. 13, 2006; 120 Stat. 1883)

H.R. 4954/P.L. 109–347

Security and Accountability for Every Port Act of 2006 (Oct. 13, 2006; 120 Stat. 1884)

H.R. 5026/P.L. 109–348

To designate the Investigations Building of the Food and Drug Administration located at 466 Fernandez Juncos Avenue in San Juan, Puerto Rico, as the ''Andres Toro Building''. (Oct. 13, 2006; 120 Stat. 1963)

H.R. 5428/P.L. 109–

49 To designate the facility of the United States Postal Service located at 202 East Washington Street in Morris, Illinois, as the ''Joshua A. Terando Morris Post Office Building''. (Oct. 13, 2006; 120 Stat. 1964)

H.R. 5434/P.L. 109–350

To designate the facility of the United States Postal Service located at 40 South Walnut Street in Chillicothe, Ohio, as the ''Larry Cox Post Office''. (Oct. 13, 2006; 120 Stat. 1965)

S. 2856/P.L. 109–351

Financial Services Regulatory Relief Act of 2006 (Oct. 13, 2006; 120 Stat. 1966)

S. 3661/P.L. 109–352

Wright Amendment Reform Act of 2006 (Oct. 13, 2006; 120 Stat. 2011)

S. 3728/P.L. 109–353

North Korea Nonproliferation Act of 2006 (Oct. 13, 2006; 120 Stat. 2015)

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