6–21–05 Tuesday
Vol. 70 No. 118 June 21, 2005

Pages 35509–35984

# Federal Register

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Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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# Presidential Documents

Title 3—

The President

**Executive Order 13380 of June 17, 2005**

## Implementing Amendments to Agreement on Border Environment Cooperation Commission and North American Development Bank

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 533 of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3473), it is hereby ordered as follows:

**Section 1.** Executive Order 12916 of May 13, 1994, is amended as follows:

(a) in section 1, by inserting ‘‘, as amended by the Protocol of Amendment done at Washington and Mexico City, November 25 and 26, 2002’’ after ‘‘North American Development Bank’’;

(b) by striking section 2 and inserting in lieu thereof the following:

‘‘**Sec. 2.** (a) The Secretary of State, the Secretary of the Treasury, and the Administrator of the Environmental Protection Agency shall be members of the Board of Directors of the Border Environment Cooperation Commission and the North American Development Bank (‘‘Board’’) as provided in clauses (1), (3), and (5) of article II in chapter III of the Agreement.

(b) Appointments to the Board under clauses (7) and (9) of article II in chapter III of the Agreement shall be made by the President. Individuals so appointed shall serve at the pleasure of the President.

(c) The Secretary of the Treasury is selected to be the Chairperson of the Board during any period in which the United States is to select the Chairperson under article III in chapter III of the Agreement.

(d) Except with respect to functions assigned by section 4, 5, 6, or 7 of this order, the Secretary of the Treasury shall coordinate with the Secretary of State, the Administrator of the Environmental Protection Agency, such other agencies and officers as may be appropriate, and the individuals appointed under subsection 2(b) as may be appropriate, the development of the policies and positions of the United States with respect to matters coming before the Board.’’;

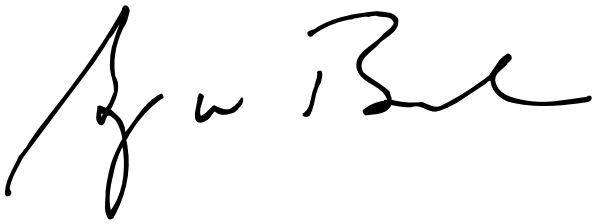
(c) in section 3, by striking subsections (a), (b), and (c), striking ‘‘(d)’’, and striking ‘‘representatives’’ and inserting in lieu thereof ‘‘members of the Board listed in subsections 2(a) and (b)’’;

(d) in section 6, by striking ‘‘Advisory Committee’’ and inserting in lieu thereof ‘‘Community Adjustment and Investment Program Advisory Committee (‘‘Advisory Committee’’) established pursuant to section 543(b) of the NAFTA Implementation Act’’; and

(e) in section 7(c), by striking ‘‘Members’’ and inserting in lieu thereof ‘‘members’’.

**Sec. 2.** This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity

by any party against the United States, its departments, agencies, entities, officers, employees, or agents, or any other person.



THE WHITE HOUSE,
*June 17, 2005.*

[FR Doc. 05–12354
Filed 6–20–05; 8:45 am]
Billing code 3195–01–P

# Rules and Regulations

Federal Register
Vol. 70, No. 118
Tuesday, June 21, 2005

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

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

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 23

**[Docket No. CE225; Special Conditions No. 23–165–SC]**

## Special Conditions: AMSAFE, Incorporated; Adam Aircraft Industries Model A500; Inflatable Four-Point Restraint Safety Belt With an Integrated Airbag Device

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued to AMSAFE, Inc. for the installation of an AMSAFE, Inc., Inflatable Four-Point Restraint Safety Belt with an Integrated Airbag Device on the Adam Model A500. These airplanes, as modified by the installation of this Inflatable Safety Belt, will have novel and unusual design features associated with the upper-torso restraint portions of the four-point safety belt, which contains an integrated airbag device. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These 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:** The effective date of these special conditions is June 8, 2005. Comments must be received on or before July 21, 2005.

**ADDRESSES:** Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration (FAA), Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE225, 901 Locust, Room 506, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: CE225. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark James, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Kansas City, Missouri, 816–329–4137, fax 816–329–4090, e-mail *mark.james@faa.gov.*

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice and opportunity for prior public comment is impractical because these procedures would significantly delay issuance of approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

### Comments Invited

Interested persons are invited to submit such written data, views or arguments, as they may desire. Communications should identify the regulatory docket or special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to CE225.'' The postcard will be date stamped and returned to the commenter.

### Background

On May 24, 2005, Adam Aircraft Industries applied for a type design change, to include the new Adam Aircraft Industries Model A500 airplane for the installation of an AMSAFE four-point safety belt restraint system incorporating an inflatable airbag for the pilot and co-pilot seats. The Adam Model A500 is a twin engine, six-place airplane, currently approved under Type Certificate No. A00009DE.

The inflatable restraint system is four-point safety belt restraint system consisting of a lap belt and dual shoulder harnesses. An inflatable airbag is attached to one of the shoulder harnesses, and the other shoulder harness is of conventional construction. The inflatable portion of the restraint system will rely on sensors to electronically activate the inflator for deployment. The inflatable restraint system will be installed on both the pilot and co-pilot seats.

In the event of an emergency landing, the airbag will inflate and provide a protective cushion between the occupant's head and structure within the airplane. This will reduce the potential for head and torso injury. The inflatable restraint behaves in a manner that is similar to an automotive airbag, but, in this case, the airbag is integrated into one of the shoulder harnesses. While airbags and inflatable restraints are standard in the automotive industry, the use of an inflatable four-point restraint system is novel for general aviation operations.

The FAA has determined that this project will be accomplished on the basis of providing the same current level of safety of the Adam Aircraft Industries Model A500 occupant restraint systems. The FAA has two primary safety concerns with the installation of airbags or inflatable restraints:

- That they perform properly under foreseeable operating conditions; and
- That they do not perform in a manner or at such times as to impede the pilot's ability to maintain control of the airplane or constitute a hazard to the airplane or occupants.

The latter point has the potential to be the more rigorous of the requirements. An unexpected deployment while conducting the takeoff or landing phases of flight may result in an unsafe condition. The unexpected deployment may either startle the pilot or generate a force sufficient to cause a sudden movement of the control yoke. Either action could result in a loss of control of the airplane, the consequences of

which are magnified due to the low operating altitudes during these phases of flight. The FAA has considered this when establishing these special conditions.

The inflatable restraint system relies on sensors to electronically activate the inflator for deployment. These sensors could be susceptible to inadvertent activation, causing deployment in a potentially unsafe manner. The consequences of an inadvertent deployment must be considered in establishing the reliability of the system. Adam Aircraft Industries must show that the effects of an inadvertent deployment in flight are not a hazard to the airplane or that an inadvertent deployment is extremely improbable. In addition, general aviation aircraft are susceptible to a large amount of cumulative wear and tear on a restraint system. It is likely that the potential for inadvertent deployment increases as a result of this cumulative damage. Therefore, the impact of wear and tear on inadvertent deployment must be considered. Due to the effects of this cumulative damage, a life limit must be established for the appropriate system components in the restraint system design.

There are additional factors to be considered to minimize the chances of inadvertent deployment. General aviation airplanes are exposed to a unique operating environment, since the same airplane may be used by both experienced and student pilots. The effect of this environment on inadvertent deployment must be understood. Therefore, qualification testing of the firing hardware/software must consider the following:

- The airplane vibration levels appropriate for a general aviation airplane; and
- The inertial loads that result from typical flight or ground maneuvers, including gusts and hard landings.

Any tendency for the firing mechanism to activate as a result of these loads or acceleration levels is unacceptable.

Other influences on inadvertent deployment include high intensity electromagnetic fields (HIRF) and lightning. Since the sensors that trigger deployment are electronic, they must be protected from the effects of these threats. To comply with HIRF and lightning requirements, the AMSAFE, Inc., inflatable restraint system is considered a critical system, since its inadvertent deployment could have a hazardous effect on the airplane.

Given the level of safety of the current Adam Aircraft Industries Model A500 occupant restraints, the inflatable restraint system must show that it will offer an equivalent level of protection in the event of an emergency landing. In the event of an inadvertent deployment, the restraint must still be at least as strong as a Technical Standard Order approved belt and shoulder harnesses. There is no requirement for the inflatable portion of the restraint to offer protection during multiple impacts, where more than one impact would require protection.

The inflatable restraint system must deploy and provide protection for each occupant under a crash condition. The seats of the model A500 are certificated to the structural requirements of § 23.562. Therefore, the test crash pulses identified in § 23.562 must be used to satisfy this requirement.

It is possible a wide range of occupants will use the inflatable restraint. Thus, the protection offered by this restraint should be effective for occupants that range from the fifth percentile female to the ninety-fifth percentile male. Energy absorption must be performed in a consistent manner for this occupant range.

In support of this operational capability, there must be a means to verify the integrity of this system before each flight. As an option, AMSAFE, Inc., can establish inspection intervals where they have demonstrated the system to be reliable between these intervals.

It is possible that an inflatable restraint will be ''armed'' even though no occupant is using the seat. While there will be means to verify the integrity of the system before flight, it is also prudent to require that unoccupied seats with active restraints not constitute a hazard to any occupant. This will protect any individual performing maintenance inside the cockpit while the aircraft is on the ground. The restraint must also provide suitable visual warnings that would alert rescue personnel to the presence of an inflatable restraint system.

In addition, the design must prevent the inflatable seatbelt from being incorrectly buckled and/or installed such that the airbag would not properly deploy. As an alternative, Adam Aircraft Industries may show that such deployment is not hazardous to the occupant and will still provide the required protection.

The cabins of the Adam Model A500 airplanes identified in these special conditions are confined areas, and the FAA is concerned that noxious gases may accumulate in the event of airbag deployment. When deployment does occur, either by design or inadvertently, there must not be a release of hazardous quantities of gas or particulate matter into the cockpit.

An inflatable restraint should not increase the risk already associated with fire. Therefore, the inflatable restraint should be protected from the effects of fire, so that an additional hazard is not created by, for example, a rupture of the inflator.

Finally, the airbag is likely to have a large volume displacement, and possibly impede the egress of an occupant. Since the bag deflates to absorb energy, it is likely that the inflatable restraint would be deflated at the time an occupant would attempt egress. However, it is appropriate to specify a time interval after which the inflatable restraint may not impede rapid egress. Ten seconds has been chosen as a reasonable time. This time limit will offer a level of protection throughout the impact event.

**Type Certification Basis**

Under the provisions of § 21.101, Adam Aircraft Industries, must show that the Adam Aircraft Model A500, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A00009DE 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. A00009DE are as follows:

*Adam A500:* Title 14, Code of Federal Regulations, Part 23, dated February 1, 1965, as amended by Amendment 23–1 through 23–55.

For the model listed above, the certification basis also includes all exemptions, if any; equivalent level of safety findings, if any; and special conditions not relevant to the special conditions adopted by this rulemaking action.

The Administrator has determined that the applicable airworthiness regulations (*i.e.*, part 23 as amended) do not contain adequate or appropriate safety standards for the AMSAFE, Inc., inflatable restraint, as installed on this Adam Aircraft Industries model because of a novel or unusual design feature. Therefore, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 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 novel or unusual design feature, the special conditions would also apply to that model under the provisions of § 21.101.

**Novel or Unusual Design Features**

The Adam Aircraft Industries Model A500 will incorporate the following novel or unusual design feature:

The AMSAFE, Inc., Four-Point Safety Belt Restraint System incorporating an inflatable airbag for the pilot and co-pilot seats. The purpose of the airbag is to reduce the potential for injury in the event of an accident. In a severe impact, an airbag will deploy from one shoulder harness, in a manner similar to an automotive airbag. The airbag will deploy between the head of the occupant and airplane interior structure. Therefore, this will provide some protection to the head of the occupant. The restraint will rely on sensors to electronically activate the inflator for deployment.

The Code of Federal Regulations state performance criteria for seats and restraints in an objective manner. However, none of these criteria are adequate to address the specific issues raised concerning inflatable restraints. Therefore, the FAA has determined that, in addition to the requirements of part 21 and part 23, special conditions are needed to address the installation of this inflatable restraint.

Accordingly, these special conditions are adopted for the Adam Aircraft Industries models equipped with the AMSAFE, Inc., four-point inflatable restraint. Other conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer and civil aviation authorities.

**Applicability**

As discussed above, these special conditions are applicable to the Adam Aircraft Industries Model A500 equipped with the AMSAFE, Inc., four-point inflatable restraint system. Should Adam Aircraft Industries, at a later date, request to modify any other model on the Type Certificate identified in these special conditions to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

**Conclusion**

This action affects only certain novel or unusual design features on the previously identified Adam model. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, the substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

**List of Subjects in 14 CFR Part 23**

Aircraft, Aviation safety, Signs and symbols.

**Citation**

■ The authority citation for these special conditions is as follows:

**PART 23—[AMENDED]**

**Authority:** 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

**The Special Conditions**

The FAA has determined that this project will be accomplished on the basis of not lowering the current level of safety of the Adam Aircraft Industries Model A500 occupant restraint system. 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 these models, as modified by AMSAFE, Incorporated.

Inflatable Four-Point Restraint Safety Belt with an Integrated Airbag Device on the Pilot and Copilot Seats of the Adam Aircraft Industries Model A500.

1. It must be shown that the inflatable restraint will deploy and will provide protection under crash conditions. Compliance will be demonstrated using the dynamic test condition specified in 14 CFR part 23, § 23.562(b)(2). It is not necessary to account for floor warpage, as required by § 23.562(b)(3). The means of protection must take into consideration a range of stature from a 5th percentile female to a 95th percentile male. The inflatable restraint must provide a consistent approach to energy absorption throughout that range.

2. The inflatable restraint must provide adequate protection for each occupant. In addition, unoccupied seats that have an active restraint must not constitute a hazard to any occupant.

3. The design must prevent the inflatable restraint from being incorrectly buckled and/or incorrectly installed such that the airbag would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant and will provide the required protection.

4. It must be shown that the inflatable restraint system is not susceptible to inadvertent deployment as a result of wear and tear or the inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings) that are likely to be experienced in service.

5. It must be extremely improbable for an inadvertent deployment of the restraint system to occur, or an inadvertent deployment must not impede the pilot's ability to maintain control of the airplane or cause an unsafe condition (or hazard to the airplane). In addition, a deployed inflatable restraint must be at least as strong as a Technical Standard Order (C114) four-point harness.

6. It must be shown that deployment of the inflatable restraint system is not hazardous to the occupant and will not result in injuries that could impede rapid egress. This assessment should include occupants whose restraint is loosely fastened.

7. It must be shown that an inadvertent deployment that could cause injury to a standing or sitting person is improbable. In addition, the restraint must also provide suitable visual warnings that would alert rescue personnel to the presence of an inflatable restraint system.

8. It must be shown that the inflatable restraint will not impede rapid egress of the occupants 10 seconds after its deployment.

9. For the purposes of complying with HIRF and lightning requirements, the inflatable restraint system is considered a critical system since its deployment could have a hazardous effect on the airplane.

10. It must be shown that the inflatable restraints will not release hazardous quantities of gas or particulate matter into the cabin.

11. The inflatable restraint system installation must be protected from the effects of fire such that no hazard to occupants will result.

12. There must be a means to verify the integrity of the inflatable restraint activation system before each flight or it must be demonstrated to reliably operate between inspection intervals.

13. A life limit must be established for appropriate system components.

14. Qualification testing of the internal firing mechanism must be performed at vibration levels appropriate for a general aviation airplane.

Issued in Kansas City, Missouri on June 8, 2005.

**John Colomy,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05–12148 Filed 6–20–05; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2005–20869; Directorate Identifier 2004–NM–09–AD; Amendment 39–14139; AD 2005–13–03]**

**RIN 2120–AA64**

## Airworthiness Directives; AvCraft Dornier Model 328–100 and –300 Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain AvCraft Dornier Model 328–100 and –300 airplanes. This AD requires operators to install colored identification strips on the pulley brackets, fairlead bracket assemblies, operational assemblies, and flight control cables. This AD is prompted by a report that the flight control systems do not have elements that are distinctively identified. We are issuing this AD to prevent the incorrect re-assembly of the flight control system during maintenance, which could result in reduced controllability of the airplane.

**DATES:** This AD becomes effective July 26, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of July 26, 2005.

**ADDRESSES:** For service information identified in this AD, contact AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany.

*Docket:* The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2005–20869; the directorate identifier for this docket is 2004–NM–09–AD.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** The FAA proposed to amend 14 CFR part 39 with an AD for certain AvCraft Dornier Model 328–100 and –300 airplanes. That action, published in the **Federal Register** on April 6, 2005 (70 FR 17370), proposed to require operators to install colored identification strips on the pulley brackets, fairlead bracket assemblies, operational assemblies, and flight control cables.

### Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

### Explanation of Change to Applicability

We have revised the applicability of the proposed AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

### Conclusion

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

### Costs of Compliance

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

ESTIMATED COSTS

| Action | Work hours | Average labor rate per hour | Parts | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|---|
| Installation | 16 | $65 | $291 | $1,331 | 112 | $149,072 |

The following table provides the estimated costs for operators to comply with this AD if they have airplanes that are subject to the concurrent requirements.

ESTIMATED COSTS—CONCURRENT REQUIREMENTS

| Concurrent Dornier Service Bulletin | Work hours | Average labor rate per hour | Parts | Cost per airplane |
|---|---|---|---|---|
| SB–328–27–290 | 5 | $65 | Operator Supplied | $325 |
| SB–328–27–291 | 5 | 65 | Operator Supplied | 325 |
| SB–328–27–292 | 5 | 65 | Operator Supplied | 325 |

ESTIMATED COSTS—CONCURRENT REQUIREMENTS—Continued

| Concurrent Dornier Service Bulletin | Work hours | Average labor rate per hour | Parts | Cost per airplane |
|---|---|---|---|---|
| SB–328J–27–035 | 5 | 65 | $462 | 787 |
| SB–328J–27–036 | 5 | 65 | 578 | 903 |
| SB–328J–27–037 | 5 | 65 | Operator Supplied | $325 |

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2005–13–03 AvCraft Aerospace Gmbh (Formerly Fairchild Dornier GmbH):** Amendment 39–14139. Docket No. FAA–2005–20869; Directorate Identifier 2004–NM–09–AD.

**Effective Date**

(a) This AD becomes effective July 26, 2005.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to AvCraft Dornier Model 328–100 and –300 series airplanes, certificated in any category; as identified in Dornier Service Bulletin SB–328J–27–176, Revision 1, dated April 15, 2003; and Dornier Service Bulletin SB–328–27–436, Revision 1, dated April 15, 2003; as applicable.

**Unsafe Condition**

(d) This AD was prompted by a report that the flight control systems do not have elements that are distinctively identified. We are issuing this AD to prevent the incorrect re-assembly of the flight control system during maintenance, which could result in reduced controllability of the airplane.

**Compliance**

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

**Installation**

(f) Within 24 months after the effective date of this AD, install colored identification strips on the pulley brackets, fairlead bracket assemblies, operational assemblies, and flight control cables, in accordance with the Accomplishment Instructions of Dornier Service Bulletin SB–328J–27–176, Revision 1, dated April 15, 2003; or Dornier Service Bulletin SB–328–27–436, Revision 1, dated April 15, 2003; as applicable.

**Prior or Concurrent Requirements**

(g) Prior to or concurrently with the accomplishment of the actions in paragraph (f) of this AD, accomplish the actions in the applicable service bulletins listed in Table 1 of this AD.

TABLE 1.—PRIOR OR CONCURRENT REQUIREMENTS

| Model | Dornier Service Bulletin | Revision | Date | Action |
|---|---|---|---|---|
| 328–100 airplanes | SB–328–27–290 | 1 | December 8, 2000. | Relocate the auto-pilot rudder servo. |
| | SB–328–27–291 | 1 | December 8, 2000. | Relocate the auto-pilot aileron servo. |
| | SB–328–27–292 | 1 | December 8, 2000. | Relocate the auto pilot elevator servo. |
| 328–300 airplanes | SB–328J–27–035 | Original | April 25, 2000 | Relocate the auto-pilot rudder servo. |
| | SB–328J–27–036 | Original | April 25, 2000 | Relocate the auto-pilot elevator servo. |
| | SB–328J–27–037 | Original | April 25, 2000 | Relocate the auto-2000 pilot aileron servo. |

**Alternative Methods of Compliance (AMOCs)**

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

**Related Information**

(i) German airworthiness directive 2003–376, effective November 11, 2003; and German airworthiness directive 2003–377, effective November 11, 2003; also address the subject of this AD.

**Material Incorporated by Reference**

(j) You must use the applicable service bulletins in Table 2 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

| Dornier service bulletin | Revision level | Date |
|---|---|---|
| SB–328–27–290 | 1 | December 8, 2000. |
| SB–328–27–291 | 1 | December 8, 2000. |
| SB–328–27–292 | 1 | December 8, 2000. |
| SB–328–27–436 | 1 | April 15, 2003. |
| SB–328J–27–035 | Original | April 25, 2000. |
| SB–328J–27–036 | Original | April 25, 2000. |
| SB–328J–27–037 | Original | April 25, 2000. |
| SB–328J–27–176 | 1 | April 15, 2003. |

Issued in Renton, Washington, on June 10, 2005.

**Michael J. Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05–12001 Filed 6–20–05; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2005–20866; Directorate Identifier 2004–NM–258–AD; Amendment 39–14140; AD 2005–13–04]**

**RIN 2120–AA64**

## Airworthiness Directives; Avcraft Dornier Model 328–100 and –300 Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Avcraft Dornier Model 328–100 and –300 airplanes. This AD requires a pressure test and detailed inspection of each fuselage drain line to determine if there is a blockage, and related investigative/corrective actions if necessary. This AD is prompted by a report of leakage at one of the drain lines in the fuselage. We are issuing this AD to prevent blockage within the drain lines, causing fluids to collect. These fluids may freeze and expand, damaging the drain lines, and allowing fuel to leak into the cabin and fuel vapors to come into contact with ignition sources, which could result in consequent fire in the cabin.

**DATES:** This AD becomes effective July 26, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of July 26, 2005.

**ADDRESSES:** For service information identified in this AD, contact AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany.

*Docket:* The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2005–20866; the directorate identifier for this docket is 2004–NM–258–AD.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** The FAA proposed to amend 14 CFR part 39 with an AD for certain Avcraft Dornier Model 328–100 and –300 series airplanes. That action, published in the **Federal Register** on April 6, 2005 (70 FR 17357), proposed to require a pressure test and detailed inspection of each fuselage drain line to determine if there is a blockage, and related investigative/corrective actions if necessary.

**Comments**

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

**Explanation of Change to Applicability**

We have revised the applicability of the proposed AD to identify model designations as published in the most recent type certificate data sheet for the affected models. In addition, we noticed that we had inadvertently reversed the qualifiers of the airplane models specified in the applicability of the proposed AD. The applicability for this AD has been corrected for this AD and now reads, ''This AD applies to Avcraft Dornier Model 328–100 series airplanes having serial numbers 3005 through 3119 inclusive, and Avcraft Dornier Model 328–300 series airplanes without option 033F003 ''Extended Range'' installed; certificated in any category.''

**Conclusion**

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

**Costs of Compliance**

We estimate that this AD affects about 53 Model 328–100 airplanes and 57 Model 328–300 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

| Action | Work hours | Average labor rate per hour | Parts | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|---|
| Pressure test | 2 | $65 | None | $130 | 110 | $14,300 |
| Detailed inspection | 5 | 65 | None | 325 | 110 | 35,750 |

**Authority for this Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2005–13–04 AvCraft Aerospace Gmbh (Formerly Fairchild Dornier GmbH):** Amendment 39–14140. Docket No. FAA–2005–20866; Directorate Identifier 2004-NM–258-AD.

**Effective Date**

(a) This AD becomes effective July 26, 2005.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to AvCraft Dornier Model 328–100 series airplanes having serial numbers 3005 through 3119 inclusive, and AvCraft Dornier Model 328–300 series airplanes without option 033F003 ''Extended Range'' installed; certificated in any category.

**Unsafe Condition**

(d) This AD was prompted by a report of leakage at one of the drain lines in the fuselage. We are issuing this AD to prevent blockage within the drain lines, causing fluids to collect. These fluids may freeze and expand, damaging the drain lines, and allowing fuel to leak into the cabin and fuel vapors to come into contact with ignition sources, which could result in consequent fire in the cabin.

**Compliance**

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

**Initial Pressure Test**

(f) Within 4 months after the effective date of this AD: Perform an initial pressure test and any applicable related investigative and corrective actions in accordance with the Accomplishment Instructions of Avcraft Service Bulletin SB–328–53–462, Revision 1, dated July 15, 2004 (for Model 328–100 series airplanes); or SB–328J–53–214, Revision 1, dated July 15, 2004 (for Model 328–300 series airplanes); as applicable. Do any applicable related investigative or corrective action before further flight.

**Detailed Inspection**

(g) After doing the pressure test required by paragraph (f) of this AD, but not later than 24 months after the effective date of this AD: Perform a detailed inspection and related investigative and corrective actions, in accordance with Part 2 of the Accomplishment Instructions of Avcraft Service Bulletin SB–328–53–462, Revision 1, dated July 15, 2004; or SB–328J–53–214, Revision 1, dated July 15, 2004; as applicable.

**Note 1:** For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

**Alternative Methods of Compliance (AMOCs)**

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

Related Information

(i) German airworthiness directives D–2004–448 and D–2004–449, both effective

October 14, 2004, also address the subject of this AD.

**Material Incorporated by Reference**

(j) You must use Avcraft Dornier Service Bulletin SB–328–53–462, Revision 1, dated July 15, 2004; or Avcraft Dornier Service Bulletin SB–328J–53–214, Revision 1, dated July 15, 2004; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on June 10, 2005.

**Michael J. Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05–12003 Filed 6–20–05; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2005–20757; Directorate Identifier 2004–NM–192–AD; Amendment 39–14142; AD 2005–13–06]**

**RIN 2120–AA64**

## Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ airplanes. This AD requires modifying the auxiliary power unit (APU) exhaust duct in the environmental control system (ECS) bay; installing new, improved insulation on this APU exhaust duct; and replacing the existing drain pipe with a new exhaust drain pipe blank. This AD is prompted by a determination that the temperature of the skin of the APU exhaust duct in the ECS bay is higher than the certificated maximum temperature for this area. We are issuing this AD to prevent the potential for ignition of fuel or hydraulic fluid, which could leak from pipes running through the ECS bay. Ignition of these flammable fluids could result in a fire in the ECS bay.

**DATES:** This AD becomes effective July 26, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of July 26, 2005.

**ADDRESSES:** For service information identified in this AD, contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171.

*Docket:* The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2005–20757; the directorate identifier for this docket is 2004-NM–192-AD.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** The FAA proposed to amend 14 CFR part 39 with an AD for certain BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ airplanes. That action, published in the **Federal Register** on March 30, 2005 (70 FR 16185), proposed to require modifying the auxiliary power unit (APU) exhaust duct in the environmental control system bay; installing new, improved insulation on this APU exhaust duct; and replacing the existing drain pipe with a new exhaust drain pipe blank.

### Explanation of Change to Applicability

We have revised the applicability of the proposed AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

### Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

### Conclusion

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

### Costs of Compliance

This AD will affect about 65 airplanes of U.S. registry. The actions will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Required parts will cost about $3,766 per airplane. Based on these figures, the estimated cost of the AD for U.S. operators is $249,015, or $3,831 per airplane.

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2005–13–06 Bae Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft):** Amendment 39–14142. Docket No. FAA–2005–20757; Directorate Identifier 2004–NM–192–AD.

**Effective Date**

(a) This AD becomes effective July 26, 2005.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to BAE Systems (Operations) Limited Model BAe 146 and Avro 146-RJ airplanes, certificated in any category, on which BAE Systems Modification HCM30373A, or BAE Systems Modification HCM30373A and HCM36166C, are installed.

**Unsafe Condition**

(d) This AD was prompted by a determination that the temperature of the skin of the auxiliary power unit (APU) exhaust duct in the environmental control system (ECS) bay is higher than the certificated maximum temperature for this area. We are issuing this AD to prevent the potential for ignition of fuel or hydraulic fluid, which could leak from pipes running through the ECS bay. Ignition of these flammable fluids could result in a fire in the ECS bay.

**Compliance**

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

**Modification**

(f) Within 6 months after the effective date of this AD: Modify the APU exhaust duct in the ECS bay; install new, improved insulation on this APU exhaust duct; and replace the existing drain pipe with a new exhaust drain pipe blank; by doing all of the actions in the Accomplishment Instructions of BAE Systems (Operations) Limited Modification Service Bulletin SB.49–072–36244A, dated October 11, 2004. Where the Accomplishment Instructions of the service bulletin specify submitting an Advice Note to the manufacturer, this AD does not require that action.

**Alternative Methods of Compliance (AMOCs)**

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

**Related Information**

(h) British airworthiness directive G–2004–0031, dated December 22, 2004, also addresses the subject of this AD.

**Material Incorporated by Reference**

(i) You must use BAE Systems (Operations) Limited Modification Service Bulletin SB.49–072–36244A, dated October 11, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on June 9, 2005.

**Michael J. Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05–12004 Filed 6–20–05; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2005–24163; Directorate Identifier 2005–CE–30–AD; Amendment 39–14144; AD 2005–12–51]**

**RIN 2120–AA64**

## Airworthiness Directives; Rockwell International (Aircraft Specification No. A–2–575 previously held by North American and recently purchased by Boeing) Models AT–6 (SNJ–2), AT–6A (SNJ–3), AT–6B, AT–6C (SNJ–4), AT–6D (SNJ–5), AT–6F (SNJ–6), BC–1A, SNJ–7, and T–6G Airplanes; and Autair Ltd. (Aircraft Specification No. AR–11 previously held by Noorduyn Aviation Ltd.) Model Harvard (Army AT–16) Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for Rockwell International (Aircraft Specification No. A–2–575 previously held by North American and recently purchased by Boeing) Models AT–6 (SNJ–2), AT–6A (SNJ–3), AT–6B, AT–6C (SNJ–4), AT–6D (SNJ–5), AT–6F (SNJ–6), BC–1A, SNJ–7, and T–6G airplanes; and Autair Ltd. (Aircraft Specification No. AR–11 previously held by Noorduyn Aviation Ltd.) Model Harvard (Army AT–16) airplanes. This AD contains the same information as emergency AD 2005–12–51 and publishes the action in the **Federal Register**. It requires immediate and repetitive inspections of the inboard and outboard, upper and lower wing attach angles (except for the nose angles) of both wings for fatigue cracks; and, if any crack is found, replacement of the cracked angle with a new angle. This AD is the result of a report of a Rockwell International Model SNJ–6 (AT–6F) airplane crash that occurred on May 9, 2005, resulting in two fatalities. We are issuing this AD to detect and correct any fatigue crack in the inboard and outboard, upper and lower wing attach angles (except for the nose angles) of either wing, which could result in failure of the wing. This failure could lead to loss of control of the aircraft.

**DATES:** This AD becomes effective on June 23, 2005, to all affected persons who did not receive emergency AD 2005–12–51, issued June 8, 2005. Emergency AD 2005–12–51 contained the requirements of this amendment and

became effective immediately upon receipt.

We must receive any comments on this AD by August 15, 2005.

**ADDRESSES:** Use one of the following to submit comments on this AD:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- The type certificate holders have not issued any service information that addresses this safety issue.

To view the comments to this AD, go to *http://dms.dot.gov.* The docket number is FAA–2005–24163; Directorate Identifier 2005–CE–30–AD.

**FOR FURTHER INFORMATION CONTACT:** Fred Guerin, Aerospace Engineer, FAA, Los Angeles ACO, 3960 Paramount Blvd., Lakewood, CA 90712; telephone: (562) 627–5232; facsimile: (562) 627–5210; e-mail: *fred.guerin@faa.gov*.

**SUPPLEMENTARY INFORMATION:**

### Discussion

*What events caused previous FAA AD action?* The FAA has received a report of a Rockwell International Model SNJ–6 (AT–6F) airplane crash that occurred on May 9, 2005, resulting in two fatalities. The investigation revealed a large fatigue crack in the failed lower inboard wing attach angle. The aircraft was used for hire in aerobatic training.

On June 8, 2005, we issued emergency AD 2005–12–51 to require immediate and repetitive inspections of the inboard and outboard, upper and lower wing attach angles (except for the nose angles) of both wings for fatigue cracks; and, if any crack is found, replacement of the cracked angle with a new angle.

*Why is it important to publish this AD?* The FAA found that immediate corrective action was required, that notice and opportunity for prior public comment were impracticable and contrary to the public interest, and that good cause existed to make the AD effective immediately by individual letters issued on June 8, 2005, to all known U.S. operators of Rockwell International (Aircraft Specification No. A–2–575 previously held by North American and recently purchased by Boeing) Models AT–6 (SNJ–2), AT–6A (SNJ–3), AT–6B, AT–6C (SNJ–4), AT–6D (SNJ–5), AT–6F (SNJ–6), BC–1A, SNJ–7, and T–6G airplanes; and Autair Ltd. (Aircraft Specification No. AR–11 previously held by Noorduyn Aviation Ltd.) Model Harvard (Army AT–16) airplanes. These conditions still exist, and the AD is published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

*Will FAA take future rulemaking action on this subject?* The National Transportation Safety Board (NTSB) is still investigating the accident. When all information from the investigation becomes available, FAA may take additional AD action to address continued operational safety of the affected airplanes. This could include, but is not limited to, inspections, modifications, and/or replacement of critical components.

### Comments Invited

*Will I have the opportunity to comment before you issue the rule?* This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2005–24163; Directorate Identifier 2005–CE–30–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

### Authority for This Rulemaking

*What authority does FAA have for issuing this rulemaking action?* Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

### Regulatory Findings

*Will this AD impact various entities?* 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.

*Will this AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this AD:

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

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

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''Docket No. FAA–2005–24163; Directorate Identifier 2005–CE–30–AD'' in your request.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 adding a new AD to read as follows:

**2005–12–51 Rockwell International (Aircraft Specification No. A–2–575 previously held by North American and recently purchased by Boeing) and Autair Ltd. (Aircraft Specification No. AR–11 previously held by Noorduyn Aviation Ltd.):** Amendment 39–14144; Docket No. FAA–2005–24163; Directorate Identifier 2005–CE–30–AD.

**When Does This AD Become Effective?**

(a) This AD becomes effective on June 23, 2005, to all affected persons who did not receive emergency AD 2005–12–51, issued June 8, 2005. Emergency AD 2005–12–51 contained the requirements of this amendment and became effective immediately upon receipt.

**Are Any Other ADs Affected By This Action?**

(b) None.

**What Airplanes Are Affected by This AD?**

(c) This AD affects Models AT–6 (SNJ–2), AT–6A (SNJ–3), AT–6B, AT–6C (SNJ–4), AT–6D (SNJ–5), AT–6F (SNJ–6), BC–1A, Harvard (Army AT–16), SNJ–7, and T–6G airplanes, all serial numbers, that are certificated in any category.

**What Is the Unsafe Condition Presented in This AD?**

(d) This AD is the result of a report of a Rockwell International Model SNJ–6 (AT–6F) airplane crash that occurred on May 9, 2005, resulting in two fatalities. We are issuing this AD to detect and correct cracking in the wing spars before the cracks grow to failure. Such a wing failure could result in the wing separating from the airplane with consequent loss of control of the airplane.

**What Must I Do To Address This Problem?**

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

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Perform a fluorescent penetrant inspection of all inboard and outboard, upper and lower wing attach angles (except for the nose angles) of both wings for cracks. Replace the angles as necessary. | (i) Initially inspect before further flight after June 23, 2005 (the effective date of this AD), unless previously done within the last 10 hours time-in-service (TIS), except for those who received emergency AD 2005–12–51, issued June 8, 2005. Emergency AD 2005–12–51 contained the requirements of this amendment and became effective immediately upon receipt.<br>(ii) Repetitively inspect thereafter every 200 hours TIS.<br>(iii) Replace angles as necessary prior to further flight after the inspection where cracks are found. | Follow the Appendix to this AD. |
| (2) *For all airplanes:* Report to FAA the results of the initial inspection required by paragraph (e)(1) of this AD even if no damage is found and even if the inspection was previously done. The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 and those following sections) and assigned OMB Control Number 2120–0056. | Within 7 days after the inspection required by paragraph (e)(1) of this AD or within 7 days after June 23, 2005 (the effective date of this AD), except that this action was already required upon receipt for those who received emergency AD 2005–12–51.Therefore, those who sent in a report through emergency AD 2005–12–51 do not have to resend that initial report. | Send the form (Figure 1 of this AD) to FAA, Los Angeles ACO, 3960 Paramount Blvd., Lakewood, CA 90712; facsimile: (562) 627–5210. E-mail: *fred.guerin@faa.gov.* |
| (3) You may operate the airplane to return/position the airplane to a home base, hangar, maintenance facility, etc., for the purpose of doing the inspection required by this AD provided you follow the limitations in paragraph (f) of this AD. | You may operate the airplane up to 10 hours TIS provided the flight(s) occur(s) no later than 30 days after June 8, 2005. This is a one-time provision. | Not Applicable. |
| (4) Special flight permits are allowed for this AD. See paragraph (f) of this AD for restrictions. | Use the procedures in 14 CFR part 39 and the restrictions in paragraph (f) of this AD. | Not Applicable. |

BILLING CODE 4910–13–P

**Wing Attachment Angle Inspection Report for:**

**Models AT-6 (SNJ-2), AT-6A (SNJ-3), AT-6B, AT-6C (SNJ-4), AT-6D (SNJ-5), AT-6F (SNJ-6), BC-1A, Harvard (Army AT-16), SNJ-7, And T-6G Airplanes**

Date:_____

Model of aircraft:_____

Aircraft serial number:_____

Aircraft registration number:_____

Hours on airframe (report known or estimated):_____

Cracks found (yes or no):_____

If yes, describe number of cracks, length, location, which angle it occurred (use another sheet if necessary: _____

_____

Type of operation of aircraft (aerobatic, non-aerobatic, for hire, etc.)_____

Address and phone number at aircraft location (FBO or local contact)_____

_____

_____

Name, address, and phone number of aircraft owner (if different from local contact):

_____

_____

_____

Send to: Fred Guerin, ANM-120L
Federal Aviation Administration
Los Angeles Aircraft Certification Office
3960 Paramount Blvd
Lakewood, CA 90712
E-mail: fred.guerin@faa.gov
Facsimile: (562) 627-5210

Figure 1.

BILLING CODE 4910–13–C

**What Are the Flight Restrictions Specified in Paragraphs (e)(3) and (e)(4) of This AD?**

(f) During the time allowed before compliance with the initial inspection required by paragraph (e)(1) of this AD, or for any approved special flight permit, you must adhere to the following limitations:

(1) Acrobatic maneuvers are prohibited.

(2) Flight into known or forecast moderate or severe turbulence is prohibited.

(3) Day visual flight rules (VFR) operation only.

(4) Single pilot operation only (Passengers prohibited).

**May I Request an Alternative Method of Compliance?**

(g) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance or for further information about this AD, contact Fred Guerin, Aerospace Engineer, FAA, Los Angeles ACO, 3960 Paramount Blvd., Lakewood, CA 90712; telephone: (562) 627–5232; facsimile: (562) 627–5210; e-mail: *fred.guerin@faa.gov*.

**Where Do I View the AD Docket?**

(h) To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2005–24163.

Issued in Kansas City, Missouri, on June 14, 2005.

**John R. Colomy,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

## Appendix to AD 2005–12–51

**Wing Attachment Angle Inspection for: Models AT–6 (SNJ–2), AT–6A (SNJ–3), AT–6B, AT–6C (SNJ–4), AT–6D (SNJ–5), AT–6F (SNJ–6), BC–1A, Harvard (Army AT–16), SNJ–7, and T–6G Airplanes**

Procedures:

(1) Remove all outboard wing attach angle covers.

(2) Support outboard wing on appropriate stands to relieve the weight on the wing attach bolts.

(3) On the upper wing attach angles, except for the forward and aft five bolts on the angle, remove all of the through bolts that attach the outboard wing (Do not remove bolts in the nose angle).

(4) Remove all paint down to the bare metal using solvent on outer surface of affected angles. Do not sand or use media blasting or use any method that would cover up or contaminate a crack. This means not using Scotchbrite or a similar abrasive, which can contaminate a crack for penetrant inspection.

(5) Use the penetrant manufacturer's cleaner, acetone, or 90-percent or more alcohol solution to do a final surface cleaning preparation step before the fluorescent penetrant inspection.

(6) Perform an inspection of the outboard and inboard wing attach angles using a high sensitivity fluorescent dye penetrant inspection procedure per the penetrant manufacturer's instructions. Pay particular attention to cracks that may be present in the edge of the spot faces closest to the radius of the angle. Also pay attention to any small cracks that may be emanating from the edge of the fasteners in any row of installed fasteners. Choose a commercially available fluorescent inspection method that requires the use of an ultraviolet (black light) in a darkened environment. Do not use dye penetrant, which is read under normal lighting conditions.

(7) Check the wing attachment angle for condition and for security of rivets and bolts.

(8) If no cracks or major defects are found, replace nuts and bolts following directions in paragraphs (11) and (12) of this appendix of this AD, clean angle, and apply a corrosion protectant coating paint (Alodine alone is not acceptable).

(9) On the upper wing, remove the forward and aft five bolts that were previously left in place, and inspect the remaining uninspected portion of the angles following the above procedure.

(10) On the lower wings, repeat the inspection on the bottom two attach angles in the same sequence as on the top angles.

(11) When replacing bolts in angles, use only nuts, bolts, and torque values as specified in ''Erection and Maintenance No. AN01–60FFA–2'' or ''Erection and Maintenance No. AN01–60F–2'' as applicable to the aircraft model. Bolts may be reused if upon inspection they are found to be in airworthy condition. Nuts may be reused as long as the nylon-locking feature is functional, and they cannot be turned onto the bolt with fingers. Torque values for ¼-inch bolts are 60–65 inch/lb, and for 5/16-inch bolts are 100–105 inch/lb. These torque values supersede those in the manuals.

(12) To assure that the nuts do not contact the shoulder of the wing attach bolts and cause an under torque condition, assure that no more than two threads are protruding from nut after torquing. If more than two threads are protruding, replace with a bolt of the correct length.

(13) If any cracks are found, replace the angle with a new part. Send all cracked angles to Fred Guerin, Aerospace Engineer, FAA, Los Angeles ACO, 3960 Paramount Blvd., Lakewood, CA 90712.

[FR Doc. 05–12151 Filed 6–20–05; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2005–21586; Directorate Identifier 2005–NE–16–AD; Amendment 39–14148; AD 2005–13–11]**

**RIN 2120–AA64**

## Airworthiness Directives; General Electric Company CT64–820–4 Turboprop Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for General Electric Company (GE) CT64–820–4 turboprop engines with stage 1 turbine disk and shaft, part number (P/N) 6004T47P03 or 4921T10P02 installed. This AD requires removing from service these stage 1 turbine disk and shafts at reduced compliance times. This AD results from the discovery by the manufacturer of low-cycle-fatigue (LCF) cracks found in stage 1 turbine disk and shafts, P/Ns 6004T47P03 and 4921T10P02. We are issuing this AD to prevent uncontained failure of the stage 1 turbine disk and shaft, resulting in damage to the airplane.

**DATES:** This AD becomes effective July 6, 2005.

We must receive any comments on this AD by August 22, 2005.

**ADDRESSES:** Use one of the following addresses to comment on this AD:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact GE Aircraft Engines Customer Support Center, M/D 285, 1 Neumann Way, Evendale, OH 45215, telephone (513) 552–3272; fax (513) 552–3329; e-mail address: *GEAE.csc@ae.ge.com*, for the service information identified in this AD.

**FOR FURTHER INFORMATION CONTACT:** Anthony W. Cerra Jr., Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone 781–238–7128; fax 781–238–7199; e-mail address: *anthony.cerra@faa.gov*.

**SUPPLEMENTARY INFORMATION:** GE has informed us that cracks have been found in some retired stage 1 disk and shafts which were removed from military T64 engines and are equivalent to the CT64–820–4 P/Ns 6004T47P03 and 4921T10P02. The cracks were located at ''small feature'' locations. A ''small feature'' location is any rotating hardware feature with drawing radii less than 0.020-inch, that could become potentially life limiting. These cracks were difficult to find due to the nature of their geometry and location on the part. The cracks were confirmed upon metallurgical evaluation of cut-up sections of those parts. This condition, if not corrected, could result in an uncontained failure of the stage 1 turbine disk and shaft, resulting in damage to the airplane.

GE is aware of about 50 engines that are in service. Three of these engines have the affected parts. GE has coordinated the compliance plan with the operator of these three certain serial number engines. The specific compliance times for these engines minimize adverse operator impact, yet maintain the interests of safety. GE is aware of approximately 90 additional engines for which GE does not know if the engines are in service or if they have the affected parts. GE has established the additional removal-from-service compliance times for these other engines in the event that any are still in service. We are using GE's compliance times in this AD.

**FAA's Determination and Requirements of This AD**

Although no airplanes that are registered in the United States use these engines, the possibility exists that the engines could be used on airplanes that are registered in the United States in the future. The unsafe condition described previously is likely to exist or develop on other CT64–820–4 turboprop engines of the same type design. We are issuing this AD to prevent uncontained failure of the stage 1 turbine disk and shaft, resulting in damage to the airplane. This AD requires removing from service stage 1 turbine disk and shafts, P/Ns 6004T47P03 and 4921T10P02 at reduced compliance times.

**FAA's Determination of the Effective Date**

Since there are currently no domestic operators of this engine model, notice and opportunity for public comment before issuing this AD are unnecessary. A situation exists that allows the immediate adoption of this regulation.

**Comments Invited**

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. FAA–2005–21586; Directorate Identifier 2005–NE–16-AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the DMS Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

**Examining the AD Docket**

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the DMS Docket Offices 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.

**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 the regulation:

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

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

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

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

■ 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 adding the following new airworthiness directive:

**2005–13–11 General Electric Company:** Amendment 39–14148. Docket No. FAA–2005–21586; Directorate Identifier 2005–NE–16–AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective July 6, 2005.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to General Electric Company (GE) CT64–820–4 turboprop engines with stage 1 turbine disk and shaft, part number (P/N) 6004T47P03 or 4921T10P02 installed. These engines are installed on, but not limited to, DeHavilland DHC–5D Buffalo airplanes.

**Unsafe Condition**

(d) This AD results from the discovery by the manufacturer of low-cycle fatigue (LCF) cracks found in stage 1 turbine disk and shafts, P/Ns 6004T47P03 and 4921T10P02. We are issuing this AD to prevent uncontained failure of the stage 1 turbine disk and shaft, resulting in damage to the airplane.

**Compliance**

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

**Engine Serial Numbers (SNs) 268537, 268565, and 268637**

(f) For engine serial number (SN) 268537, remove the stage 1 turbine disk and shaft from service at or before accumulating 1,700 cycles-since-new (CSN), or by December 31, 2005, whichever occurs first.

(g) For engine SN 268565, remove the stage 1 turbine disk and shaft from service at or before accumulating 1,585 CSN, or by December 31, 2005, whichever occurs first.

(h) For engine SN 268637, remove the stage 1 turbine disk and shaft from service at or before accumulating 1,345 CSN, or by December 31, 2005, whichever occurs first.

**All Other Engines**

(i) For all other engines that have accumulated 590 CSN or more on the stage 1 turbine disk and shaft on the effective date of this AD, remove stage 1 turbine disk and shaft from service at or before accumulating an additional 10 cycles-in-service, at or before accumulating the service life limit of 1,700 CSN, or by December 31, 2005, whichever occurs first.

(j) For all other engines that have accumulated fewer than 590 CSN on the stage 1 turbine disk and shaft on the effective date of this AD, remove stage 1 turbine disk and shaft from service at the next piece-part-exposure, or before accumulating 600 CSN, or by December 31, 2005, whichever occurs first.

(k) After the effective date of this AD, do not install any stage 1 turbine disk and shaft, P/N 6004T47P03 or 4921T10P02, into any engine.

(l) After the effective date of this AD, do not install any engine with stage 1 turbine disk and shaft, P/N 6004T47P03 or 4921T10P02, into any airplane.

**Definition**

(m) For the purpose of this AD, piece-part exposure is defined as the stage 1 disk and shaft is completely disassembled using the disassembly instructions of the manufacturer's engine manual, or other FAA-approved engine manual.

**Alternative Methods of Compliance**

(n) 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**

(o) Information on determining engine usage in cycles for comparison to CT64 service life limits can be found in GE Service Bulletin CEB No. 93, Revision 2, dated May 30, 1984. GE Alert Service Bulletin No. CT64 S/B 72–A0113, Revision 1, dated May 16, 2005, also pertains to the subject of this AD.

**Material Incorporated by Reference**

(p) None.

Issued in Burlington, Massachusetts, on June 14, 2005.

**Robert Ganley,**

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

[FR Doc. 05–12173 Filed 6–20–05; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2005–20931; Airspace Docket No. 95–AEA–08]**

## Establishment of Class E Airspace; Sutton, WV

**AGENCY:** Federal Aviation Administration (FAA) DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace at Sutton, WV. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft operating into Braxton County Airport, Sutton, WV, under Instrument Flight Rules (IR).

**DATES:** Effective: 0901 UTC October 27, 2005.

**FOR FURTHER INFORMATION CONTACT:** Mr. Francis Jordan, Airspace Specialist, Eastern Terminal Service Unit. Airspace and Operations, ETSU–520, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

**SUPPLEMENTARY INFORMATION:**

**History**

On April 27, 2005, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing a Class E airspace area at Sutton, WV, was published in the **Federal Register** (70 FR 21695–21696). The proposed action would provide controlled airspace to accommodate Standard Instrument Approach Procedures (SIAP), based on area navigation (RNAV), to Braxton County Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before May 27, 2005. No comments to the proposal were received. The rule is adopted as proposed. The coordinates for this airspace docket are based on North America Datum 83. Class E airspace area designations for airspace extending upward from the surface of the earth are published in paragraph 6005 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published in the Order.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) provides controlled Class E airspace extending upward from 700 feet above the surface for aircraft conducting IFR operations within an 8-mile radius of Braxton County Airport, Sutton, WV.

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

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by refernce, Navigation (air).

**Adoption of the Amendment**

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

## PART 71—[AMENDED]

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

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

**§ 71.1 [Amended]**

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

*Paragraph 6005 Class E Airspace Areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AEA WV E5 Sutton, WV (New)**

Braxton County Airport, Sutton, WV
(Lat. 38°41″13′ N., long. 80°39′07″ W.)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Braxton County Airport.

* * * * *

Issued in Jamaica, New York, on June 14, 2005.

**John G. McCartney,**

*Acting Area Director, Eastern Terminal Operations.*

[FR Doc. 05–12146 Filed 6–20–05; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2005–21034; Airspace Docket No. 05–AEA–09]**

### Establishment of Class E–2 Airspace; Bar Harbor, ME

**AGENCY:** Federal Aviation Administration (FAA) DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E–2 airspace at Bar Harbor, ME. Controlled airspace extending upward from the surface is needed to contain aircraft operating under Instrument Flight Rule (IFR) operations into Hancock County-Bar Harbor Airport, Bar Harbor, ME.

**EFFECTIVE DATES:** 0901 UTC September 1, 2005.

**FOR FURTHER INFORMATION CONTACT:** Mr. Francis Jordan, Airspace Specialist, Eastern Terminal Service Unit, Airspace and Operations, ETUS–520, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

**SUPPLEMENTARY INFORMATION:**

**History**

On May 5, 2005, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing Class E–2 airspace area at Bar Harbor, ME, was published in the **Federal Register** (70 FR 23810–23811). The proposed action would provide controlled airspace to accommodate Standard Instrument Approach Procedures (SIAP) to Hancock County-Bar Harbor Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before June 6, 2005. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace area designations for airspace extending upward from the surface of the earth are published in paragraph 6005 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published in the Order.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) provides controlled Class E airspace extending upward from the surface for aircraft conducting IFR operation into Hancock County-Bar Harbor Airport, Bar Harbor, ME.

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

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

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

## PART 71—[AMENDED]

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

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

**§ 71.1 [Amended]**

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

*Paragraph 6002 Class E Airspace Areas designated as a surface area for an airport.*

* * * * *

**ANE ME E2 Bar Harbor, ME**

Hancock Count-Bar Harbor Airport, ME
(Lat. 44°26′59″ N., long. 68°21′41″ W.)

Within a 4.2-mile radius of the Hancock County-Bar Harbor Airport and within 2.7 miles each side of a 204° bearing from the airport, extending from the 4.2-mile radius to 6.2 miles southwest of the airport and within 2.7 miles each side of a 024° bearing from the airport, extending from the 4.2-mile radius to 6.2 miles northeast of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Jamaica, New York on June 14, 2005.

**John G. McCartney,**

*Acting Area Director, Eastern Terminal Operations.*

[FR Doc. 05–12145 Filed 6–20–05; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF STATE

### 22 CFR Part 40

**RIN 1400–AC04**

**[Public Notice 5115]**

### Aliens Inadmissible Under the Immigration and Nationality Act—Unlawful Voters

**AGENCY:** Department of State.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This rule amends the Department's regulations concerning visa ineligibility for aliens who vote unlawfully. We are amending the regulations to comply with the provisions of the Child Citizenship Act of 2000.

**DATES:** The effective date of this regulation is July 21, 2005.

Comment Date: The Department will accept comments from the public up to 60 days from August 22, 2005.

**ADDRESSES:** You may submit comments, identified by any of the following methods:

E-mail: *visaregs@state.gov*. You must include the RIN and the words ''Unlawful Voters Regulation'' in the subject line of your message.

Mail: Chief, Legislation and Regulations Division, Visa Office, U.S. Department of State, 2401 E Street, NW., Washington, DC 20520–0106.

Fax: 202–663–3898. You must include the RIN and the words ''Unlawful Voters Regulation'' in the subject line of your message.

Persons with access to the internet may also view this notice and provide comment by going to the regulations.gov Web site at: *http://www.regulations.gov/index.cfm.*

**FOR FURTHER INFORMATION CONTACT:** Penafrancia D. Salas, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106, 202–663–2878 or email to *visaregs@state.gov.*

**SUPPLEMENTARY INFORMATION:**

**What Is the Authority for This Rule?**

Section 201(b)(1) of Public Law 106–395, the Child Citizenship Act of 2000, amended section 212(a)(10) of the Immigration and Nationality Act (INA) by adding an exception to the ground of inadmissibility, INA 212(a)(10)(D), for aliens who voted in violation of U.S. law.

**What Is the Exception to the Ground of Inadmissibility?**

Under new INA 212(a)(10)(D), in general, an alien will continue to be inadmissible, and therefore ineligible for a visa, if the alien has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation. Nevertheless, pursuant to the new exception, the alien shall not be considered to be inadmissible under any provision of this subsection based on such violation if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such violation that he or she was a citizen.

**Regulatory Analysis and Notices**

*Administrative Procedure Act*

Publication of this regulation as an interim rule is based upon the ''good cause'' exceptions found 5 U.S.C. 553(b). The amendment to the regulation simply implements a legislative mandate without interpretation and codifies current practices. Therefore, we determined that it is appropriate to publish this rule as an interim rule. Nevertheless, we will solicit comments from the public.

*Regulatory Flexibility Act/Executive Order 13272: Small Entities*

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

*Unfunded Mandates Act of 1995*

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

*Small Business Regulatory Enforcement Fairness Act of 1996*

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

*Executive Order 12866*

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

*Executive Order 13132*

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

*Paperwork Reduction Act*

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

**List of Subjects in 22 CFR Part 40**

Aliens, Immigration, Passports and visas.

## PART 40—REGULATIONS PERTAINING TO BOTH NONIMMIGRANTS AND IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

■ 1. The authority citation for part 40 shall continue to read:

**Authority:** 8 U.S.C. 1104.

■ 2. Revise § 40.104 to read as follows:

**§ 40.104 Unlawful voters.**

(a) Subject to paragraph (b) of this section, an alien is ineligible for a visa if the alien has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation.

(b) Such alien shall not be considered to be ineligible under paragraph (a) of this section if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such violation that he or she was a citizen.

Dated: June 8, 2005.

**Maura Harty,**

*Assistant Secretary for Consular Affairs, Department of State.*

[FR Doc. 05–12219 Filed 6–20–05; 8:45 am]

BILLING CODE 4710–06–P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

**[CGD 11–05–013]**

**RIN 1625–AA08**

## Special Local Regulations for Marine Event; San Francisco Giants Fireworks Display, San Francisco Bay, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing special local regulations for the navigable waters of San Francisco Bay dealing with the loading, transport, and launching of fireworks used during a fireworks display to be held after a San Francisco Giants baseball game on July 19, 2005. These special local regulations are intended to prohibit vessels and people from entering into or remaining within the regulated areas in order to ensure the safety of participants and spectators.

**DATES:** This rule is effective from 9 a.m. to 11 p.m. on July 19, 2005.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of the docket CGD 11–05–013 and are available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ensign Trevor Parra, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–5873.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Logistical details surrounding the event were not finalized and presented to the Coast Guard in time to draft and publish an NPRM. As such, the event would occur before the rulemaking process was complete. Because of the dangers posed by the pyrotechnics used in this fireworks display, special local regulations are necessary to provide for the safety of event participants, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in the effective date of this rule would expose mariners to the dangers posed by the pyrotechnics used in this fireworks display.

### Background and Purpose

The San Francisco Giants Baseball Team is sponsoring a brief fireworks display on July 19, 2005 on the waters of San Francisco Bay near SBC Park. The fireworks display is meant for entertainment purposes in support of the San Francisco Giants Baseball Team. These special local regulations are being issued to establish a temporary regulated area in San Francisco Bay around the fireworks launch barge during loading of the pyrotechnics, during the transit of the barge to the display location, and during the fireworks display. This regulated area around the launch barge is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics on the fireworks barge. The Coast Guard has granted the event sponsor a marine event permit for the fireworks display.

### Discussion of Rule

The Coast Guard is establishing temporary special local regulations on specified waters off of the San Francisco waterfront. During the loading of the fireworks barge, while the barge is being towed to the display location, and until the start of the fireworks display, the special local regulations apply to the navigable waters around and under the fireworks barge within a radius of 100 feet. During the 15-minute fireworks display, the area to which these special local regulations apply will increase in size to encompass the navigable waters around and under the fireworks barge within a radius of 1,000 feet. Loading of the pyrotechnics onto the fireworks barge is scheduled to commence at 9 a.m. on July 19, 2005, and will take place at Pier 50 in San Francisco. Towing of the barge from Pier 50 to the display location is scheduled to take place between 8 p.m. and 10 p.m. on July 19, 2005. During the fireworks display, scheduled to commence immediately after the baseball game, the fireworks barge will be located approximately 1,000 feet off of Pier 48 in position 37°46′57.2″ N, 122°23′58.07″ W.

The effect of the temporary special local regulations will be to restrict general navigation in the vicinity of the fireworks barge while the fireworks are loaded at Pier 50, during the transit of the fireworks barge, and until the conclusion of the scheduled display. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. These regulations are needed to keep spectators and vessels a safe distance away from the fireworks barge to ensure the safety of participants, spectators, and transiting vessels.

Pursuant to 33 U.S.C. 1236, persons violating these special local regulations may be liable as follows: suspension or revocation of the license of a licensed officer for incompetence or misconduct; civil penalty of $6,500 for any person in charge of the navigation of a vessel other than a licensed officer; civil penalty of $6,500 for the owner of a vessel (including any corporate officer of a corporation owning the vessel) who is actually on board; and $2,750 for any other person.

### Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Although this regulation prevents traffic from transiting a portion of San Francisco Bay during the event, the effect of this regulation will not be significant due to the small size and limited duration of the regulated area. The entities most likely to be affected are pleasure craft engaged in recreational activities and sightseeing.

### Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may effect owners and operators of pleasure craft engaged in recreational activities and sightseeing. This rule will not have a significant

economic impact on a substantial number of small entities for several reasons: (i) Vessel traffic can pass safely around the area, (ii) vessels engaged in recreational activities and sightseeing have ample space outside of the effected portion of San Francisco Bay to engage in these activities, (iii) this rule will encompass only a small portion of the waterway for a limited period of time, and (iv) the maritime public will be advised in advance of these special local regulations via public notice to mariners.

**Assistance For Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions, options for compliance, or assistance in understanding this rule, please contact Ensign Trevor Parra, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–5873.

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under those sections.

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and record keeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233, Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 100.35–T11–017 to read as follows:

**§ 100.35–T11–017 San Francisco Giants Fireworks Display, San Francisco Bay, CA.**

(a) *Regulated Area.* A regulated area is established for the waters of San Francisco Bay surrounding a barge used as the launch platform for a fireworks display to be held after a San Francisco Giants baseball game. During the loading of the fireworks barge, during the transit of the fireworks barge to the display location, and until the start of the fireworks display, the regulated area encompasses the navigable waters around and under the fireworks barge within a radius of 100 feet. During the 15-minute fireworks display, the regulated area increases in size to encompass the navigable waters around and under the fireworks launch barge within a radius of 1,000 feet. Loading of the pyrotechnics onto the fireworks barge is scheduled to commence at 9 a.m. on July 19, 2005, and will take place at Pier 50 in San Francisco. Towing of the barge from Pier 50 to the display location is scheduled to take place between 8 p.m. and 10 p.m. on July 19, 2005. During the fireworks display, scheduled to start after the baseball game ends (approximately 10:30 p.m. on July 19, 2005), the barge will be located approximately 1,000 feet off of San Francisco Pier 48 in position 37° 46′57.2″ N, 122° 23′58.0″ W.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group San Francisco.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Group San Francisco with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by an Official Patrol.

(d) *Effective Period.* This section will be effective from 9 a.m. to 11 p.m. on July 19, 2005. If the event concludes prior to the scheduled termination time, the Coast Guard will cease enforcement of the special local regulations and will announce that fact via Broadcast Notice to Mariners.

Dated: June 9, 2005.

**K. J. Eldridge,**

*Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.*

[FR Doc. 05–12139 Filed 6–20–05; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[CGD 11–05–009]**

**RIN 1625–AA08**

## Special Local Regulations for Marine Events; San Francisco Giants Fireworks Display, San Francisco Bay, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing special local regulations in the navigable waters of San Francisco Bay dealing with the loading, transport, and launching of fireworks used during a fireworks display to be held after a San Francisco Giants baseball game on June 21, 2005. These special local regulations are intended to prohibit vessels and people from entering into or remaining within the regulated areas in order to ensure the safety of participants and spectators.

**DATES:** This rule is effective from 9 a.m. to 11 p.m. on June 21, 2005.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of the docket [CGD 11–05–009] and are available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Doug Ebbers, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–2770.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Logistical details surrounding the event were not finalized and presented to the Coast Guard in time to draft and publish an NPRM. As such, the event would occur before the rulemaking process was complete. Because of the dangers posed by the pyrotechnics used in this fireworks display, special local regulations are necessary to provide for the safety of event participants, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in the effective date of this rule would expose mariners to the dangers posed by the pyrotechnics used in this fireworks display.

### Background and Purpose

The San Francisco Giants Baseball Team is sponsoring a brief fireworks display on June 21, 2005 in the waters of San Francisco Bay near SBC Park. The fireworks display is meant for entertainment purposes in support of the San Francisco Giants Baseball Team. These special local regulations are being issued to establish a temporary regulated area in San Francisco Bay around the fireworks launch barge during loading of the pyrotechnics, during the transit of the barge to the display location, and during the fireworks display. This regulated area around the launch barge is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics on the fireworks barge. The Coast Guard has granted the event sponsor a marine event permit for the fireworks display.

### Discussion of Rule

The Coast Guard is establishing temporary special local regulations on specified waters off of the San Francisco waterfront. During the loading of the fireworks barge, while the barge is being towed to the display location, and until the start of the fireworks display, the special local regulations apply to the navigable waters around and under the fireworks barge within a radius of 100 feet. During the 20-minute fireworks display, the area to which these special local regulations apply will increase in size to encompass the navigable waters around and under the fireworks barge within a radius of 1,000 feet. Loading of the pyrotechnics onto the fireworks barge is scheduled to commence at 9 a.m. on June 21, 2005, and will take place at Pier 50 in San Francisco. Towing of the barge from Pier 50 to the display location is scheduled to take place between 8 p.m. and 10 p.m. on June 21, 2005. During the fireworks display, scheduled to commence immediately after the baseball game, the fireworks barge will be located

approximately 1,000 feet off of Pier 48 in position 37° 46′57.2″ N, 122° 23′58.0″ W.

The effect of the temporary special local regulations will be to restrict general navigation in the vicinity of the fireworks barge while the fireworks are loaded at Pier 50, during the transit of the fireworks barge, and until the conclusion of the scheduled display. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. These regulations are needed to keep spectators and vessels a safe distance away from the fireworks barge to ensure the safety of participants, spectators, and transiting vessels.

Pursuant to 33 U.S.C. 1236, persons violating these special local regulations may be liable as follows: suspension or revocation of the license of a licensed officer for incompetence or misconduct; civil penalty of $6,500 for any person in charge of the navigation of a vessel other than a licensed officer; civil penalty of $6,500 for the owner of a vessel (including any corporate officer of a corporation owning the vessel) who is actually on board; and $2,750 for any other person.

**Regulatory Evaluation**

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Although this regulation prevents traffic from transiting a portion of San Francisco Bay during the event, the effect of this regulation will not be significant due to the small size and limited duration of the regulated area. The entities most likely to be affected are pleasure craft engaged in recreational activities and sightseeing.

**Small Entities**

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule is not expected to have a significant economic impact on a substantial number of entities, some of which may be small entities. This rule may effect owners and operators of pleasure craft engaged in recreational activities and sightseeing. This rule will not have a significant economic impact on a substantial number of small entities for several reasons: (i) Vessel traffic can pass safely around the area, (ii) vessels engaged in recreational activities and sightseeing have ample space outside of the effected portion of San Francisco Bay to engage in these activities, (iii) this rule will encompass only a small portion of the waterway for a limited period of time, and (iv) the maritime public will be advised in advance of these special local regulations via public notice to mariners.

**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 could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions, options for compliance, or assistance in understanding this rule, please contact Lieutenant Doug Ebbers, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–2770.

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect

on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Technical Standards**

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

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

**Environment**

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation.

Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under those sections. Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

**List of Subjects in 33 CFR Part 100**

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233, Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 100.35–T11–024 to read as follows:

**§ 100.35–T11–024 San Francisco Giants Fireworks Display, San Francisco Bay, CA.**

(a) *Regulated Area.* A regulated area is established for the waters of San Francisco Bay surrounding a barge used as the launch platform for a fireworks display to be held after a San Francisco Giants baseball game. During the loading of the fireworks barge, during the transit of the fireworks barge to the display location, and until the start of the fireworks display, the regulated area encompasses the navigable waters around and under the fireworks barge within a radius of 100 feet. During the 20-minute fireworks display, the regulated area increases in size to encompass the navigable waters around and under the fireworks launch barge within a radius of 1,000 feet. Loading of the pyrotechnics onto the fireworks barge is scheduled to commence at 9 a.m. on June 21, 2005, and will take place at Pier 50 in San Francisco. Towing of the barge from Pier 50 to the display location is scheduled to take place between 8 p.m. and 10 p.m. on June 21, 2005. During the fireworks display, scheduled to start after the baseball game ends (approximately 10:30 p.m. on June 21, 2005), the barge will be located approximately 1,000 feet off of San Francisco Pier 48 in position 37°46′57.2″ N, 122°23′58.0″ W.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group San Francisco.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Group San Francisco with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special Local Regulations.*

(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by an Official Patrol.

(d) *Effective Period.* This section will be effective from 9 a.m. to 11 p.m. on June 21, 2005. If the event concludes prior to the scheduled termination time, the Coast Guard will cease enforcement of the special local regulations and will announce that fact via Broadcast Notice to Mariners.

Dated: June 9, 2005.

**K.J. Eldridge,**

*Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.*

[FR Doc. 05–12140 Filed 6–20–05; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[CGD01–05–052]**

**RIN 1625–AA00**

## Safety Zone: Celebrate the Fourth/ Salem Fireworks—Salem, MA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for the Salem Celebrate the Fourth fireworks on July 4, 2005 in Salem, Massachusetts. The safety zone will prohibit entry into or movement within this portion of Salem Harbor during its effective period.

**DATES:** This rule is effective from 8:30 p.m. EDT on July 4, 2005 to 10 p.m. EDT on July 4, 2005.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CGD01–05–052 and are available for inspection or copying at Sector Boston, 427 Commercial Street, Boston, MA, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Chief Petty Officer Paul English, Sector Boston, Waterways Safety and Response Division, at (617) 223–5750.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. A notice of proposed rulemaking (NPRM) was not published for this regulation because the logistics with respect to the fireworks presentation were not determined with sufficient time to draft and publish an NPRM. Publishing an NPRM was impracticable; any delay

encountered in this regulation's effective date would be contrary to the public interest since the safety zone is needed to prevent traffic from transiting a portion of Salem Harbor during the fireworks event and to provide for the safety of life on navigable waters

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay encountered in this regulation's effective date would be contrary to public interest since the safety zone is needed to prevent traffic from transiting a portion of Salem Harbor during the fireworks display thus ensuring that the maritime public is protected from any potential harm associated with such an event. The zone should have minimal negative impact on vessel transits due to the fact that vessels will be excluded from the area for only 1.5 hours, and vessels will be able to transit in the majority of Salem Harbor during the event.

**Background and Purpose**

This temporary rule establishes a safety zone in Salem Harbor within a four hundred yard radius of the fireworks launch site located on Derby Wharf.

The zone will temporarily restrict movement within this portion of Salem Harbor and is needed to protect the maritime public from the dangers posed by a fireworks display. Marine traffic may transit safely outside of the zone during the effective period. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Public notifications will be made prior to the effective period via safety marine information broadcasts and local notice to mariners.

**Discussion of Rule**

The safety zone is in effect from 8:30 p.m. EDT until 10 p.m. EDT July 4, 2005. Marine traffic may transit safely outside of the safety zone during the event thereby allowing navigation in the majority of Salem Harbor except the portion effected by the zone described herein. Because of the limited time-frame of the effective period and because the zone leaves the majority of Salem Harbor open for navigation, the Captain of the Port anticipates minimal negative impact on vessel traffic due to this event. Public notifications will be made prior to the effective period via Local Notice to Mariners and marine information broadcasts.

**Regulatory Evaluation**

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation of the regulatory policies and procedures of DHS is unnecessary.

Although this rule prevents traffic from transiting a portion of Salem Harbor during the effective period, the effects of this rule will not be significant for several reasons: Vessels will be excluded from the area of the safety zone for only 1.5 hours, vessels will be able to operate in the majority of Salem Harbor during the effective period and advance notifications will be made to the local maritime community by marine information broadcasts and Local Notice to Mariners.

**Small Entities**

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

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Salem Harbor from 8:30 p.m. EDT to 10 p.m. EDT on July 4, 2005.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: this rule will be in effect for only 1.5 hours, vessel traffic can safely pass around the safety zone, and advance notifications will be made to the local maritime community by marine information broadcasts and Local Notice to Mariners.

**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 could better evaluate its effects on them and participate in the rulemaking process.

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from Further environmental documentation. This rule fits the category selected from paragraph (34)(g), as it would establish a safety zone.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measure, Waterways.

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary section 165.T05–052 to read as follows:

**§ 165.T05–052 Safety Zone: Celebrate the Fourth/Salem Fireworks—Salem, Massachusetts.**

(a) *Location.* The following area is a safety zone:

All waters of Salem Harbor in a four hundred yard radius of the fireworks launch site located on Derby Wharf.

(b) *Effective Date.* This section is effective from 8:30 p.m. EDT until 10 p.m. EDT on July 4, 2005.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and Federal law enforcement vessels.

Dated: June 9, 2005.

**James L. McDonald,**

*Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.*

[FR Doc. 05–12118 Filed 6–20–05; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[CGD01–05–017]**

**RIN 1625–AA00**

## Safety Zone: Macy's July 4th Fireworks, East River and Upper New York Bay, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is modifying the permanent safety zone for the annual Macy's July 4th fireworks display found at 33 CFR 165.166 to accommodate an added fireworks discharge site near Liberty Island. This action is necessary to provide for the safety of life on navigable waters during the event. This will restrict vessel traffic in portions of the East River, Hudson River, and Upper New York Bay during the duration of the Macy's July 4th fireworks event.

**DATES:** This rule is effective June 21, 2005.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–05–017) and are available for inspection or copying at room 203, Coast Guard Sector New York, 212 Coast Guard Drive, Staten Island, New York 10305 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander E. Morton, Waterways Management Division, Coast Guard Sector New York (718) 354–4191.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

On April 11, 2005, we published a notice of proposed rulemaking (NPRM) entitled ''Safety Zone: Macy's July 4th Fireworks, East River and Upper New York Bay, NY'' in the **Federal Register** (70 FR 18343). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for

making this rule effective less than 30 days after publication in the **Federal Register**. This rule governs an annual July 4th event and is necessary to provide for the safety of life and property on navigable waters during a large-scale fireworks display.

**Background and Purpose**

The Coast Guard is revising 33 CFR 165.166, the permanent safety zone for the annual Macy's July 4th fireworks displays in the East River and Upper New York Bay, to protect a third fireworks discharge location near Liberty Island, which was not anticipated by the original regulation. The safety zone previously encompassed a portion of the East River from Roosevelt Island to Governor's Island and was defined as all waters of the East River east of a line drawn from the Fireboat Station Pier, Battery Park City, in approximate position 40°42′15.4″ N 074°01′06.8″ W (NAD 1983) to Governors Island Light (2) (LLNR 35010), in approximate position 40°41′34.4″ N 074°01′10.9″ W (NAD 1983); north of a line drawn from Governors Island, in approximate position 40°41′25.3″ N 074°00′42.5″ W (NAD 1983) to the southwest corner of Pier 9A, Brooklyn; south of a line drawn from East 47th Street, Manhattan through the southern point of Roosevelt Island to 46 Road, Brooklyn, and all waters of Newtown Creek west of the Pulaski Bascule Bridge. The revised regulation increases the size of the safety zone to include all waters of the Upper New York Bay south of a line drawn from Pier A (Fireboat Station Pier), Battery Park City, in approximate position 40°42′15.4″ N 074°01′06.8″ W (NAD 1983) to the easternmost corner of the Ellis Island Security Zone, in approximate position 40°41′57.6″ N 074°02′06.7″ W (NAD 1983); and north of a line drawn from Pier 7, Jersey City, NJ, in approximate position 40°41′26.4″ N 074°03′17.3″ W (NAD 1983) to Liberty Island Lighted Gong Buoy 29 (LLNR 34995), in approximate position 40°41′02.2″ N 074°02′24.7″ W (NAD 1983), on to Governor's Island Extension Light (LLNR 35000), in approximate position 40°41′08.3″ N 074°01′35.4″ W (NAD 1983).

The activation period for this expanded safety zone remains unchanged from the previous regulation. The expanded safety zone will remain effective from 6:30 p.m. until 11:30 p.m. on July 4th. If the event is cancelled due to inclement weather, then this safety zone will be effective from 6:30 p.m. until 11:30 p.m. on July 5th. The expanded safety zone prevents vessels from transiting these portions of the East River, Hudson River, and Upper New York Bay, and is needed to protect mariners from the hazards associated with fireworks launched from 6 barges in the area. No vessel may enter the safety zone without permission from the Captain of the Port, New York.

This safety zone covers the minimum area needed and imposes the minimum restrictions necessary to ensure the protection of all vessels and the fireworks handlers aboard the barges.

Public notifications will be made prior to the event via the Local Notice to Mariners, marine information broadcasts, facsimile, and Macy's waterways telephone hotline. In previous years this telephone hotline has been established in early June.

**Discussion of Comments and Changes**

One minor change will be made to the description of the northern boundary of the safety zone on the East River. The regulation text currently indicates the eastern reference point for this boundary as ''46 Road, Brooklyn,'' and is changed to properly identify this reference point as ''46 Road, Queens.''

**Regulatory Evaluation**

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This safety zone temporarily closes a major portion of the East River and Upper New York Bay to vessel traffic. There is a regular flow of traffic through this area; however, the impact of this regulation is expected to be minimal for the following reasons: the limited duration of the event; the extensive, advance advisories that will be made to allow the maritime community to schedule transits before and after the event; the event takes place at a late hour on a national holiday; the event has been held for twenty-three years in succession and is therefore anticipated annually; small businesses may experience an increase in revenue due to the event; advance notifications will be made to the local maritime community by the Local Notice to Mariners, marine information broadcasts, facsimile, and the event sponsor establishes and advertises a telephone hotline which waterways users may call prior to the event for details of the safety zone. This telephone number will be published via the Local Notice to Mariners and facsimile. The number is normally activated in early June each year.

**Small Entities**

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

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

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the East River or Upper New York Bay during the times these zones are activated.

This safety zone would not have a significant economic impact on a substantial number of small entities for the same reasons that the impact is expected to be minimal, listed under Regulatory Evaluation.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. No such assistance was requested.

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

**Federalism**

A rule has implications for federalism under Executive Order 13132,

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph 34(g), of the Instruction, from further environmental documentation. This rule fits paragraph 34(g) as it increases the size of an existing safety zone. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Revise § 165.166(a) to read as follows:

**§ 165.166 Safety Zone: Macy's July 4th Fireworks, East River and Upper New York Bay, NY.**

(a) *Regulated Area.* The following area is a safety zone: All waters of the Upper New York Bay south of a line drawn from Pier A (Fireboat Station Pier), Battery Park City, in approximate position 40°42′15.4″ N 074°01′06.8″ W (NAD 1983) to the easternmost corner of the Ellis Island Security Zone, in approximate position 40°41′57.6″ N 074°02′06.7″ W (NAD 1983); north of a line drawn from Pier 7, Jersey City, NJ, in approximate position 40°41′26.4″ N 074°03′17.3″ W (NAD 1983) to Liberty Island Lighted Gong Buoy 29 (LLNR 34995), in approximate position 40°41′02.2″ N 074°02′24.7″ W (NAD 1983), on to Governor's Island Extension Light (LLNR 35000), in approximate position 40°41′08.3″ N 074°01′35.4″ W (NAD 1983); all waters of the East River north of a line drawn from Governors Island, in approximate position 40°41′25.3″ N 074°00′42.5″ W (NAD 1983) to the southwest corner of Pier 9A, Brooklyn; south of a line drawn from East 47th Street, Manhattan through the southern point of Roosevelt Island to 46 Road, Queens; and all waters of Newtown Creek west of the Pulaski Bascule Bridge.

* * * * *

Dated: June 8, 2005.

**Glenn A. Wiltshire,**

*Captain, U.S. Coast Guard, Captain of the Port, New York.*

[FR Doc. 05–12119 Filed 6–20–05; 8:45 am]

**BILLING CODE 4910–15–P**

**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**36 CFR Part 242**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 100**

## Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Seasonal Adjustments—Copper River

**AGENCIES:** Forest Service, USDA; Fish and Wildlife Service, Interior.

**ACTION:** Seasonal adjustments.

**SUMMARY:** This provides notice of the Federal Subsistence Board's in-season management actions to protect sockeye salmon escapement in the Copper River, while still providing for a subsistence harvest opportunity. The fishing schedules and closures will provide an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on March 21, 2005. Those regulations established seasons, harvest limits, methods, and means relating to the taking of fish and shellfish for subsistence uses during the 2005 regulatory year.

**DATES:** The fishing schedule with a delayed opening for the Chitina Subdistrict of the Upper Copper River District is effective May 16, 2005, through July 13, 2005. The Glennallen Subdistrict of the Upper Copper River District is closed effective May 15, 2005, through May 30, 2005.

**FOR FURTHER INFORMATION CONTACT:** Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Subsistence Program Manager, USDA—Forest Service, Alaska Region, telephone (907) 786–3592.

**SUPPLEMENTARY INFORMATION:**

### Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. The Departments administer Title VIII through regulations at Title 50, Part 100 and Title 36, Part 242 of the Code of Federal Regulations (CFR). Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999 (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, which establish the program structure and determine which Alaska residents are eligible to take specific species for subsistence uses, and the annual Subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2005 fishing seasons, harvest limits, and methods and means were published on March 21, 2005 (70 FR 13377).

Because this action relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Fisheries (BOF), manages sport, commercial, personal use, and State subsistence harvest on all lands and waters throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents as provided by Title VIII of ANILCA. In providing this priority, the Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

These adjustments are necessary because of the need to maintain the viability of salmon stocks in the Copper River based on in-season run assessments. These actions are authorized and in accordance with 50 CFR 100.19(d–e) and 36 CFR 242.19(d–e).

*Copper River—Chitina Subdistrict*

In December 2001, the Board adopted regulatory proposals establishing a new Federal subsistence fishery in the Chitina Subdistrict of the Copper River. This fishery is open to Federally qualified users having customary and traditional use of salmon in this Subdistrict. The State conducts a personal use fishery in this Subdistrict that is open to all Alaska residents.

Management of the fishery is based on the numbers of salmon returning to the Copper River. A larger than predicted salmon run will allow additional fishing time. A smaller than predicted run will require restrictions to achieve upriver passage and spawning escapement goals. A run that approximates the pre-season forecast will allow fishing to proceed similar to the pre-season schedule with some adjustments made to fishing time based on in-season data. Adjustments to the preseason schedule are expected as a normal function of an abundance-based management strategy. State and Federal managers, reviewing and discussing all available in-season information, will make these adjustments.

While Federal and State regulations currently differ for this Subdistrict, the Board indicated that Federal in-season management actions regarding fishing periods were expected to mirror State actions. The State established a preseason schedule of allowable fishing periods based on daily projected sonar estimates. This preseason schedule is intended to distribute the harvest throughout the salmon run and provide salmon for upriver subsistence fisheries and the spawning escapement. The salmon season is closed until the first open period scheduled for June 4, 2005, at 12:01 pm. Shown below are the fishing schedule openings for the Chitina Subdistrict of the Copper River:

Saturday, June 4, 12:01 p.m.–Sunday, June 5, 12:01 p.m.
Wednesday, June 8, 12:01 a.m.–Sunday, June 12, 11:59 p.m.
Monday, June 13, 12:01 a.m.–Sunday, June 19, 11:59 p.m.
Monday, June 20, 12:01 a.m.–Sunday, June 26, 11:59 p.m.
Monday, June 27, 12:01 a.m.–Sunday, July 3, 11:59 p.m.
Tuesday, July 5, 12:01 a.m.–Sunday, July 10, 11:59 p.m.

Wednesday, July 13, 8:00 a.m.–Sunday, July 17, 11:59 p.m.
Tuesday, July 19, 12:01 a.m.–Sunday, July 24, 11:59 p.m.
Monday, July 25, 12:01 a.m.–Friday, September 30, 11:59 p.m.

State personal use and Federal subsistence fisheries in this Subdistrict close simultaneously by regulation on September 30, 2005. No deviation from this date is anticipated.

*Copper River—Glennallen Subdistrict*

In December 2000, the Board adopted a regulatory proposal opening the Glennallen Subdistrict of the Copper River to Federally qualified users May 15. This allowed Federally qualified users to harvest salmon prior to the State subsistence fishing season that opens June 1. This fishery is open to Federally qualified users having customary and traditional use of salmon in this Subdistrict. The State conducts a personal use fishery in this Subdistrict that is open to all Alaska residents. Salmon migrating through the Glennallen Subdistrict during this period are likely to spawn in upper river tributaries based on prior studies conducted by the Alaska Department of Fish and Game. In 2003, Federally-qualified users harvested approximately 750 salmon in the Glennallen Subdistrict during May. None of this harvest appears to have occurred upstream of the Gakona River.

The State has briefly delayed the opening of the commercial fishery near the mouth of the Copper River predicated on the pre-season forecast. Production from the early portion of the natural run may be weak because of low inriver escapements prior to mid June in brood years 1999 and 2000. If Miles Lake sonar estimates are substantially below the forecasted levels, both the State and the Board will reduce the open periods in the Chitina Subdistrict as described in the Copper River Salmon Management Plan (5 AAC 24.360). Management of the fishery is based on the numbers of salmon returning to the Copper River. A larger than predicted salmon run will allow additional fishing time. A smaller than predicted run will require restrictions to achieve upriver passage and spawning escapement goals.

In May of 2004, Federally qualified users that harvest salmon upstream of the Gakona River strongly expressed concerns that their harvest is declining and that one of the causes of this decline is harvest of salmon downstream. Harvest data from 1996 through 2003 suggest that this may be a valid concern. No data regarding early run escapement is available until the Miles Lake sonar is operational and salmon passing the sonar site have arrived within the Glennallen Subdistrict (approximately 3 weeks' travel time). Therefore, this action utilizes a conservative approach and restricts the fishery until data from the Miles Lake sonar are available.

The Glennallen Subdistrict of the Copper River will be closed to the harvest of salmon until June 1, 2005.

Federally qualified users downstream of the Gakona River are not expected to be significantly impacted by this action because they have ample opportunity to harvest additional salmon stocks that enter the Subdistrict later to spawn in tributaries downstream of the Gakona River.

State and Federal subsistence fisheries in this Subdistrict close simultaneously by regulation on September 30, 2005. No deviation from this date is anticipated.

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for these adjustments are impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate conservation measures could seriously affect the continued viability of fish populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest.

Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive additional public notice and comment procedures prior to implementation of these actions and pursuant to 5 U.S.C. 553(d)(3) to make this rule effective as indicated in the **DATES** section.

**Conformance With Statutory and Regulatory Authorities**

*National Environmental Policy Act Compliance*

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) was signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940, published May 29, 1992), implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999 (64 FR 1276.)

*Compliance With Section 810 of ANILCA*

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

*Paperwork Reduction Act*

The adjustment and emergency closures do not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995.

*Other Requirements*

The adjustments have been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as boat, fishing gear, and gasoline dealers. The number of small entities affected is unknown; however, the effects will be seasonally and geographically-limited in nature and will likely not be significant. The Departments certify that the adjustments will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for

consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the adjustments have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the adjustments will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the adjustments meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the adjustments do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands. Cooperative salmon run assessment efforts with ADF&G will continue.

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 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As these actions are not expected to significantly affect energy supply, distribution, or use, they are not significant energy actions and no Statement of Energy Effects is required.

*Drafting Information*

Bill Knauer drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Nancy Swanton, Alaska Regional Office, National Park Service; Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; and Steve Kessler, USDA-Forest Service, provided additional guidance.

**Authority:** 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: June 1, 2005.

**Thomas H. Boyd,**

*Acting Chair, Federal Subsistence Board.*

Dated: June 1, 2005.

**Steve Kessler,**

*Subsistence Program Leader, USDA-Forest Service.*

[FR Doc. 05–12158 Filed 6–20–05; 8:45 am]

**BILLING CODE 3410–11–P; 4310–55–P**

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 65

**[Docket No. FEMA–D–7573]**

## Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule lists communities where modification of the Base (1% annual chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

**DATES:** These modified BFEs are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Director reconsider the changes. The modified elevations may be changed during the 90-day period.

**ADDRESSES:** The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

**SUPPLEMENTARY INFORMATION:** The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in BFEs are in accordance with 44 CFR 65.4.

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

*Regulatory Flexibility Act.* The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42

U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

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

*Executive Order 12612, Federalism.* This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

*Executive Order 12778, Civil Justice Reform.* This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR Part 65**

Flood insurance, floodplains, reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 65 is amended to read as follows:

## PART 65—[AMENDED]

■ 1. The authority citation for Part 65 continues to read as follows:

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

**§ 65.4 [Amended]**

■ 2. The tables published under the authority of § 65.4 are amended as shown below:

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effectie date of modification | Community number |
|---|---|---|---|---|---|
| Connecticut: New Haven. | City of Meriden ... | February 22, 2005; March 1, 2005; Record-Journal. | The Honorable Mark Benigni, Mayor of the City of Meriden, 142 East Main Street, City Hall, Meriden, Connecticut 06450. | February 15, 2005 ..... | 090081 C |
| New Hampshire: Hillsborough. | Town of Peterborough. | April 28, 2005; May 5, 2005; *The Peterborough Transcript*. | Ms. Pam Brenner, Peterborough Town Administrator, 1 Grove Street, Peterborough, New Hampshire 03458. | August 4, 2005 ..... | 330101 A |
| Pennsylvania: Montgomery. | Township of Horsham. | May 13, 2005; May 20, 2005; *The Intelligence*. | Mr. Michael J. McGee, Manager of the Townshp of Horsham, 1025 Horsham Road, Horsham, Pennsylvania 19044. | August 19, 2005 ..... | 420700 E |
| Pennsylvania: Lycoming. | Township of McIntyre. | April 22, 2005; April 29, 2005; *Williamsport Sun Gazette*. | Mr. Albert Boyer, Chairman of the Township of McIntyre, Board of Supervisors, 12886 Route 14, Roaring Branch, Pennsylvania 17765. | July 29, 2005 ..... | 42065 E |
| Virginia: Fauquier | Unincorporated Areas. | May 12; 2005; May 19, 2005; *The Fauquier Citizen*. | Mr. Paul McCulla, Acting Fauquier County Administrator, 10 Hotel Street, Suite 204, Warrenton, Virginia 20186. | August 18, 1005 ..... | 510055 A |

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: June 14, 2005.

**David I. Maurstad,**

*Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.*

[FR Doc. 05–12169 Filed 6–20–05; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 65

## Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** Modified Base (1% annual chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

**EFFECTIVE DATES:** The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

**ADDRESSES:** The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

**SUPPLEMENTARY INFORMATION:** FEMA makes the final determinations listed below of modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or

to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in BFEs are in accordance with 44 CFR 65.4.

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

*Regulatory Flexibility Act.* The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

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

*Executive Order 12612, Federalism.* This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

*Executive Order 12778, Civil Justice Reform.* This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR Part 65**

Flood insurance, floodplains, reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 65 is amended to read as follows:

## PART 65—[AMENDED]

■ 1. The authority citation for Part 65 continues to read as follows:

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

### § 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Alabama: Colbert (FEMA Docket No. D–7567). | City of Muscle Shoals. | December 10, 2004; December 17, 2004; *Times Daily*. | The Honorable David H. Bradford, Mayor of the City of Muscle Shoals, P.O. Box 2624, Muscle Shoals, Alabama 35662. | November 30, 2004 .. | 010047 C |
| Connecticut: Fairfield (FEMA Docket No. D–7567). | Town of Greenwich. | December 6, 2004; December 13, 2004; *Greenwich Time*. | Mr. Jim Lash, Town of Greenwich First Selectman, Town Hall, 101 Field Point Road, Greenwich, Connecticut 06830. | November 23, 2004 ... | 090008 C |
| Florida: | | | | | |
| Duval (FEMA Docket No. D–7567). | City of Jacksonville. | October 22, 2004; October 29, 2004; *The Florida Times-Union*. | The Honorable John Peyton, Mayor of the City of Jacksonville, City Hall at St. James, 4th Floor, 117 West Duval Street, Suite 400, Jacksonville, Florida 32202. | October 15, 2004 ..... | 120077 E |
| Lake (FEMA Docket No. D–7567). | Unincorporated Areas. | December 10, 2004; December 17, 2004; *Orlando Sentinel*. | Mr. William A. Neron, Lake County Manager, P.O. Box 7800, Tavares, Florida 32778. | March 16, 2005 ..... | 120421 D |
| Lake (FEMA Docket No. D–7567). | Unincorporated Areas. | November 17, 2004; November 24, 2004; *Orlando Sentinel*. | Mr. William A. Neron, Lake County Manager, P.O. Box 7800, Tavares, Florida 32778. | November 4, 2004 .... | 120421 D |
| Polk (FEMA Docket No. D–7567). | City of Lake Wales. | November 17, 2004; November 24, 2004; *The News Chief*. | Mr. Tony Otte, Lake Wales City Manager, P.O. Box 1320, Lake Wales, Florida 33859. | February 23, 2005 ..... | 120390 G |
| Polk (FEMA Docket No. D–7567). | Unincorporated Areas. | November 17, 2004; November 24, 2004; *The News Chief*. | Mr. Michael Herr, Polk County Manager, P.O. Box 9005, Drawer BC 01, Bartow, Florida 33831–9005. | February 23, 2005 ..... | 120261 G |
| St. Johns (FEMA Docket No. D–7567). | Unincorporated Areas. | October 22, 2004; October 29, 2004; *The St. Augustine Record*. | Mr. Ben W. Adams, II, St. Johns County Administrator, 4020 Lewis Speedway, St. Augustine, Florida 32084. | October 13, 2004 ..... | 125147 H |
| Georgia: | | | | | |
| Cherokee (FEMA Docket No. D–7567). | Unincorporated Areas. | October 29, 2004; November 5, 2004; *Cherokee Tribune*. | Mr. Michael Byrd, Chairman of the Cherokee County Board of Commissioners, 90 North Street, Suite 310, Canton, Georgia 30114. | October 20, 2004 ..... | 130424 B |
| Dekalb (FEMA Docket No. D–7567). | Unincorporated Areas. | December 23, 2004; December 30, 2004; *The Champion*. | Mr. Vernon Jones, Chief Executive Officer of Dekalb County, 1300 Commerce Drive, Decatur, Georgia 30030. | December 14, 2004 .. | 130065 H |

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Bibb and Jones (FEMA Docket No. D–7567). | City of Macon ..... | October 29, 2004; November 5, 2004; *The Macon Telegraph*. | The Honorable C. Jack Ellis, Mayor of the City of Macon, 700 Poplar Street, Macon, Georgia 31201. | February 4, 2005 ..... | 130011 D,E |
| Bulloch (FEMA Docket No. D–7567). | City of Statesboro | November 4, 2004; November 11, 2004; *Statesboro Herald*. | The Honorable William Hatcher, Mayor of the City of Statesboro, P.O. Box 348, Statesboro, Georgia 30459–0348. | February 10, 2005 ..... | 130021 C |
| Kentucky: (FEMA Docket No. D–7567). | Lexington-Fayette Urban County Government. | November 5, 2004; November 12, 2004; *Lexington Herald-Leader*. | The Honorable Teresa Isaac, Mayor of the Lexington-Fayette, Urban County Government, Lexington-Fayette Government Building, 200 East Main Street, 12th Floor, Lexington, Kentucky 40507. | October 28, 2004 ..... | 210067 C |
| Tennessee: | | | | | |
| Decatur (FEMA Docket No. D–7567). | Unincorporated Areas. | December 8, 2004; December 15, 2004; *The News-Leader*. | The Honorable Kenneth Broadway, Mayor of Decatur County, P.O. Box 488, Decaturville, Tennessee 38329. | February 1, 2005 ..... | 470041 C |
| Henry (FEMA Docket No. D–7567). | Unincorporated Areas. | November 8, 2004; November 15, 2004; *The Paris Post-Intelligencer*. | The Honorable Brent Greer, Mayor of Henry County, P.O. Box 7, Paris, Tennessee 38242. | February 14, 2005 ..... | 470228 D |
| Texas: Tarrant (FEMA Docket No. D–7567). | City of Southlake | October 14, 2004, October 21, 2004, *Fort Worth Star Telegram*. | The Honorable Andy Wambsganss, Mayor of the City of Southlake, 1400 Main Street, Suite 270, Southlake, Texas 76092. | October 7, 2004 ..... | 480612 H |
| Virginia: Fauquier (FEMA Docket No. D–7567). | Town of Warrenton. | October 28, 2004, November 4, 2004, *Fauquier Citizen*. | The Honorable George B. Fitch, Mayor of the Town of Warrenton, Municipal Building, 18 Court Street, Warrenton, Virginia 20186. | February 3, 2004 ..... | 510057 A |

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: June 14, 2005.

**David I. Maurstad,**

*Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.*

[FR Doc. 05–12168 Filed 6–20–05; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### 44 CFR Part 67

### Final Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**EFFECTIVE DATES:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

**ADDRESSES:** The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

**SUPPLEMENTARY INFORMATION:** FEMA makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate, has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

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

*Regulatory Flexibility Act.* The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is

exempt from the requirements of the Regulatory Flexibility Act because final or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

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

*Executive Order 12612, Federalism.* This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

*Executive Order 12778, Civil Justice Reform.* This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR Part 67**

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

## PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

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

**§ 67.11 [Amended]**

■ 2. The tables published under the authority of § 67.11 are amended as follows:

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD) |
|---|---|
| **Florida** | |
| **Collier County (Unincorporated Areas) (FEMA Docket No. D–7524)** | |
| *Gulf of Mexico:* | |
| Approximately 300 feet west of the intersection of Commerce Street and Gulf Shore Drive | •18 |
| At the intersection of Seagull Avenue and Vanderbilt Drive | •13 |
| Approximately 800 feet southwest of the intersection of Glendale Avenue and Venetian Way | •13 |
| At the intersection of Guava Drive and Coconut Circle South | •6 |
| **Maps available for inspection** at the Collier County Administrative Building, 3301 Tamiami Trail, Naples, Florida. | |
| **Everglades (City), Collier County (FEMA Docket No. D–7524)** | |
| *Gulf of Mexico:* | |
| At the intersection of Jasmine Street and Storter Avenue | •8 |
| At the intersection of Evergreen Street and Copeland Avenue | •7 |
| At end of Airport Road, where it meets Everglade Airport | •10 |
| At intersection of Begonia Street and Buckner Avenue | •7 |
| **Maps available for inspection** at the Everglades City Hall, 102 Broadway, Everglades, Florida. | |
| **Marco Island (City), Collier County (FEMA Docket No. D–7524)** | |
| *Gulf of Mexico:* | |
| At intersection of Crescent Street and Thrush Court | •8 |
| At the intersection of Honduras Avenue and Stillwater Court | •7 |
| Approximately 2,000 feet west of the intersection of Huron Court and Swallow Avenue | •10 |
| Approximately 900 feet southwest of intersection of South Barfield Drive and Heights Court | •16 |
| **Maps available for inspection** at the Marco Island City Hall, 50 Bald Eagle Drive, Marco Island, Florida. | |
| **Naples (City), Collier County (FEMA Docket No. D–7524)** | |
| *Gulf of Mexico:* | |
| Approximately 600 feet west of intersection of Yucca Road and Gulf Shore Boulevard North | •16 |
| At the intersection of Gordon Drive and Champney Bay Court | •13 |
| At the intersection of Yucca Road and Banyan Boulevard | •10 |
| **Maps available for inspection** at the Naples City Hall, 735 8th Street South, Naples, Florida. | |

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: June 14, 2005.

**David I. Maurstad,**

*Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.*

[FR Doc. 05–12170 Filed 6–20–05; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF DEFENSE

### 48 CFR Parts 204, 208, 209, 212, 213, 215, 217, 219, 222, 223, 225, 227, 233, 235, 236, 237, 242, 247, 252, and 253 and Appendix F to Chapter 2

**[DFARS Case 2001–D003]**

### Defense Federal Acquisition Regulation Supplement; Geographic Use of the Term ''United States''

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to standardize the use of the term ''United States'' and associated geographic terms, in accordance with definitions found in the Federal Acquisition Regulation.

**EFFECTIVE DATE:** June 21, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2001–D003.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule amends the DFARS to standardize the use of geographic terms, for consistency with the definitions of the following terms found in section 2.101 of the Federal Acquisition Regulation: ''United States''; ''contiguous United States''; ''customs territory of the United States''; and ''outlying areas''.

DoD published a proposed rule at 69 FR 65121 on November 10, 2004. DoD received no comments on the proposed rule. DoD has adopted the proposed rule as a final rule, with the following exceptions:

○ The proposed changes to DFARS 204.670–1 and 253.204–70 are not included in the final rule. These changes will be addressed in a separate DFARS case relating to the DD Form 350, Individual Contracting Action Report.

○ The proposed change to DFARS 236.602–1(a)(i)(6)(A)(*2*) is not included in the final rule. This text was removed

from the DFARS in the final rule published at 69 FR 75000 on December 15, 2004.

○ The proposed revision to the clause at DFARS 252.225–7039, Restriction on Acquisition of Totally Enclosed Lifeboat Survival Systems, is not included in the final rule. This clause was proposed for deletion in the proposed rule published at 70 FR 14628 on March 23, 2005.

○ The final rule includes technical amendments at DFARS 247.571 to update cross-references.

○ The final rule includes changes to the clause at DFARS 252.212–7001, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items, to update referenced clause dates.

○ The final rule reflects the revisions to DFARS 252.225–7003 and 252.225–7004, and the addition of DFARS 252.225–7006, included in the final rule published at 70 FR 20838 on April 22, 2005.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**B. Regulatory Flexibility Act**

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule standardizes DFARS terminology, but makes no substantive change to policy.

**C. Paperwork Reduction Act**

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

**List of Subjects in 48 CFR Parts 204, 208, 209, 212, 213, 215, 217, 219, 222, 223, 225, 227, 233, 235, 236, 237, 242, 247, 252, and 253**

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR Parts 204, 208, 209, 212, 213, 215, 217, 219, 222, 223, 225, 227, 233, 235, 236, 237, 242, 247, 252, and 253 and Appendix F to Chapter 2 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 204, 208, 209, 212, 213, 215, 217, 219, 222, 223, 225, 227, 233, 235, 236, 237, 242, 247, 252, and 253 and Appendix F to subchapter I continues to read as follows:

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

## PART 204—ADMINISTRATIVE MATTERS

■ 2. Section 204.904 is amended by revising paragraph (1)(v) to read as follows:

**204.904 Reporting payment information to the IRS.**

(1) * * *

(v) Any contract with a State, the District of Columbia, or an outlying area of the United States; or a political subdivision, agency, or instrumentality of any of the foregoing;

* * * * *

## PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 3. Section 208.7002 is amended by revising paragraph (a)(3) and paragraph (a)(4) introductory text to read as follows:

**208.7002 Assignment authority.**

(a) * * *

(3) Outside the contiguous United States, by the Unified Commanders; and

(4) For acquisitions to be made in the contiguous United States for commodities not assigned under paragraphs (a)(1), (2), or (3) of this section, by agreement of agency heads (10 U.S.C. 2311).

* * * * *

## PART 209—CONTRACTOR QUALIFICATIONS

■ 4. Section 209.406–2 is amended by revising paragraph (a) introductory text to read as follows:

**209.406–2 Causes for debarment.**

(a) Any person shall be considered for debarment if criminally convicted of intentionally affixing a label bearing a ''Made in America'' inscription to any product sold in or shipped to the United States or its outlying areas that was not made in the United States or its outlying areas (10 U.S.C. 2410f).

* * * * *

## PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 5. Section 212.602 is amended by revising paragraph (b)(ii) to read as follows:

**212.602 Streamlined evaluation of offers.**

(b) * * *

(ii) For the acquisition of transportation in supply contracts that will include a significant requirement for transportation of items outside the contiguous United States, also evaluate offers in accordance with the criterion at 247.301–71.

* * * * *

## PART 213—SIMPLIFIED ACQUISITION PROCEDURES

■ 6. Section 213.270 is amended by revising paragraph (c)(1) to read as follows:

**213.270 Use of the Governmentwide commercial purchase card.**

* * * * *

(c) * * *

(1) The place of performance is entirely outside the United States and its outlying areas.

* * * * *

■ 7. Section 213.307 is amended in paragraph (b)(i)(B)(2) by revising the first sentence to read as follows:

**213.307 Forms.**

* * * * *

(b)(i) * * *

(B) * * *

*(2)* Classified acquisitions when the purchase is made within the United States or its outlying areas. * * *

* * * * *

## PART 215—CONTRACTING BY NEGOTIATION

■ 8. Section 215.404–76 is amended by revising paragraph (d) to read as follows:

**215.404–76 Reporting profit and fee statistics.**

* * * * *

(d) Contracting offices outside the United States and its outlying areas are exempt from reporting.

* * * * *

## PART 217—SPECIAL CONTRACTING METHODS

■ 9. Section 217.7005 is revised to read as follows:

**217.7005 Solicitation provision.**

Use the provision at 252.217–7002, Offering Property for Exchange, when offering nonexcess personal property for exchange. Allow a minimum of 14 calendar days for the inspection period in paragraph (b) of the clause if the exchange property is in the contiguous United States. Allow at least 21 calendar days outside the contiguous United States.

■ 10. Section 217.7102 is amended as follows:

■ a. By revising paragraph (a) introductory text;

■ b. In paragraph (a)(2), in the first sentence, by removing ''Which possess'' and adding in its place ''Possess''; and

■ c. By revising paragraph (b). The revised text reads as follows:

**217.7102 General.**

(a) Activities shall enter into master agreements for repair and alteration of vessels with all prospective contractors located within the United States or its outlying areas, which—

* * * * *

(b) Activities may use master agreements in work with prospective contractors located outside the United States and its outlying areas.

* * * * *

■ 11. Section 217.7103–3 is amended by revising paragraph (a) introductory text to read as follows:

**217.7103–3 Solicitations for job orders.**

(a) When a requirement arises within the United States or its outlying areas for the type of work covered by the master agreement, solicit offers from prospective contractors that—

* * * * *

## PART 219—SMALL BUSINESS PROGRAMS

■ 12. Section 219.800 is amended in paragraph (a) by revising the fourth sentence to read as follows:

**219.800 General.**

(a) * * * Consistent with the provisions of this subpart, this authority is hereby redelegated to DoD contracting officers within the United States or its outlying areas, to the extent that it is consistent with any dollar or other restrictions established in individual warrants. * * *

* * * * *

## PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 13. Section 222.7201 is amended by revising paragraph (a) to read as follows:

**222.7201 Contract clauses.**

(a) Use the clause at 252.222–7002, Compliance with Local Labor Laws (Overseas), in solicitations and contracts for services or construction to be performed outside the United States and its outlying areas.

* * * * *

## PART 223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 14. Section 223.570–4 is amended by revising paragraph (b)(2) to read as follows:

**223.570–4 Contract clause.**

* * * * *

(b) * * *

(2) When performance or partial performance will be outside the United States and its outlying areas, unless the contracting officer determines such inclusion to be in the best interest of the Government; or

* * * * *

## PART 225—FOREIGN ACQUISITION

■ 15. Section 225.7014 is revised to read as follows:

**225.7014 Restriction on overseas military construction.**

For restriction on award of military construction contracts to be performed in the United States outlying areas in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf, see 236.274(a).

## PART 227—PATENTS, DATA, AND COPYRIGHTS

**227.7103–17 [Amended]**

■ 16. Section 227.7103–17 is amended in paragraph (b) in the second sentence, and in paragraph (c), by removing ''possessions'' and adding in its place ''outlying areas''.

**227.7203–17 [Amended]**

■ 17. Section 227.7203–17 is amended in paragraph (b) in the second sentence, and in paragraph (c), by removing ''possessions'' and adding in its place ''outlying areas''.

## PART 233—PROTESTS, DISPUTES, AND APPEALS

■ 18. Section 233.215–70 is revised to read as follows:

**233.215–70 Additional contract clause.**

Use the clause at 252.233–7001, Choice of Law (Overseas), in solicitations and contracts when contract performance will be outside the United States and its outlying areas, unless otherwise provided for in a government-to-government agreement.

## PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

■ 19. Section 235.071 is amended by revising paragraph (a) to read as follows:

**235.071 Additional contract clauses.**

(a) Use the clause at 252.235–7002, Animal Welfare, or one substantially the same, in solicitations and contracts awarded in the United States or its outlying areas involving research on live vertebrate animals.

* * * * *

## PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

**236.274 [Amended]**

■ 20. Section 236.274 is amended in paragraph (a) introductory text by removing ''territories and possessions'' and adding in its place ''outlying areas''.

**236.570 [Amended]**

■ 21. Section 236.570 is amended in paragraph (c)(1) by removing ''territory or possession'' and adding in its place ''outlying area''.

## PART 237—SERVICE CONTRACTING

■ 22. Section 237.102–70 is amended by revising paragraph (a)(1) to read as follows:

**237.102–70 Prohibition on contracting for firefighting or security-guard functions.**

(a) * * *

(1) The contract is to be carried out at a location outside the United States and its outlying areas at which members of the armed forces would have to be used for the performance of firefighting or security-guard functions at the expense of unit readiness;

* * * * *

■ 23. Section 237.7301 is amended by revising paragraph (a)(1) to read as follows:

**237.7301 Definitions.**

* * * * *

(a) * * *

(1) Is located in the United States or its outlying areas;

* * * * *

## PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 24. Section 242.1402 is amended by revising the section heading to read as follows:

**242.1402 Volume movements within the contiguous United States.**

* * * * *

## PART 247—TRANSPORTATION

■ 25. Section 247.571 is amended as follows:

■ a. In paragraphs (a)(1), (2), and (3), by removing ''247.572–1(d)'' and adding in its place ''247.572–1(c)''; and

■ b. By revising paragraph (c)(1) introductory text to read as follows:

**247.571 Policy.**

* * * * *

(c)(1) Any vessel used under a time charter contract for the transportation of supplies under this section shall have

any reflagging or repair work, as defined in the clause at 252.247–7025, Reflagging or Repair Work, performed in the United States or its outlying areas, if the reflagging or repair work is performed—

* * * * *

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 26. Section 252.209–7002 is amended by revising the clause date and paragraph (a)(3) to read as follows:

**252.209–7002 Disclosure of ownership or control by a foreign government.**

* * * * *

**Disclosure of Ownership or Control by a Foreign Government**

**(JUN 2005)**

(a) * * *

(3) *Foreign government* includes the state and the government of any country (other than the United States and its outlying areas) as well as any political subdivision, agency, or instrumentality thereof.

* * * * *

■ 27. Section 252.212–7000 is amended as follows:

■ a. By revising the clause date to read ''(JUN 2005)'';

■ b. By redesignating paragraph (a)(2) as paragraph (a)(3); and

■ c. By adding a new paragraph (a)(2) to read as follows:

**252.212–7000 Offeror representations and certifications—Commercial Items.**

* * * * *

(a) * * *

(2) *United States* means the 50 States, the District of Columbia, outlying areas, and the outer Continental Shelf as defined in 43 U.S.C. 1331.

* * * * *

■ 28. Section 252.212–7001 is amended as follows:

■ a. By revising the clause date to read ''(JUN 2005)''; and

■ b. In paragraph (b) by revising entries ''252.225–7001'' through ''252.225–7038'' to read as follows:

**252.212–7001 Contract Terms and Conditions required to implement statutes or executive orders applicable to defense acquisitions of commercial items.**

* * * * *

(b) * * *

| | | |
|---|---|---|
| _____ | 252.225–7001 | Buy American Act and Balance of Payments Program (JUN 2005) (41 U.S.C. 10a–10d, E.O. 10582). |
| _____ | 252.225–7012 | Preference for Certain Domestic Commodities (JUN 2004) (10 U.S.C. 2533a). |
| _____ | 252.225–7014 | Preference for Domestic Specialty Metals (JUN 2005) (10 U.S.C. 2533a). |
| _____ | 252.225–7015 | Restriction on Acquisition of Hand or Measuring Tools (JUN 2005) (10 U.S.C. 2533a). |
| _____ | 252.225–7016 | Restriction on Acquisition of Ball and Roller Bearings (JUN 2005) (_____Alternate I) (APR 2003) (10 U.S.C. 2534 and Section 8099 of Public Law 104–61 and similar sections in subsequent DoD appropriations acts). |
| _____ | 252.225–7021 | Trade Agreements (JUN 2005) (19 U.S.C. 2501–2518 and 19 U.S.C. 3301 note). |
| _____ | 252.225–7027 | Restriction on Contingent Fees for Foreign Military Sales (APR 2003) (22 U.S.C. 2779). |
| _____ | 252.225–7028 | Exclusionary Policies and Practices of Foreign Governments (APR 2003) (22 U.S.C. 2755). |
| _____ | 252.225–7036 | Buy American Act—Free Trade Agreements—Balance of Payments Program (JUN 2005) (_____Alternate I) (JAN 2005) (41 U.S.C. 10a–10d and 19 U.S.C. 3301 note). |
| _____ | 252.225–7038 | Restriction on Acquisition of Air Circuit Breakers (JUN 2005) (10 U.S.C. 2534(a)(3)). |

* * * * *

■ 29. Section 252.225–7000 is amended by revising the clause date and paragraph (a) to read as follows:

**252.225–7000 Buy American Act—Balance of Payments Program Certificate.**

* * * * *

**Buy American Act—Balance of Payments Program Certificate**

**(JUN 2005)**

(a) *Definitions. Domestic end product, foreign end product, qualifying country, qualifying country end product,* and *United States* have the meanings given in the Buy American Act and Balance of Payments Program clause of this solicitation.

* * * * *

■ 30. Section 252.225–7001 is amended by revising the clause date and adding paragraph (a)(8) to read as follows:

**252.225–7001 Buy American Act and Balance of Payments Program.**

* * * * *

**Buy American Act and Balance of Payments Program (JUN 2005)**

(a) * * *

(8) *United States* means the 50 States, the District of Columbia, and outlying areas.

* * * * *

■ 31. Section 252.225–7003 is amended as follows:

■ a. By revising the clause date to read ''(JUN 2005)'';

■ b. By redesignating paragraphs (a) through (d) as paragraphs (b) through (e) respectively; and

■ c. By adding a new paragraph (a) to read as follows:

**252.225–7003 Report of intended performance outside the United States and Canada—Submission with offer.**

* * * * *

(a) *Definition. United States*, as used in this provision, means the 50 States, the District of Columbia, and outlying areas.

* * * * *

■ 32. Section 252.225–7004 is amended as follows:

■ a. By revising the clause date to read ''(JUN 2005)'';

■ b. By redesignating paragraphs (a) through (c) as paragraphs (b) through (d) respectively; and

■ c. By adding a new paragraph (a) to read as follows:

**252.225–7004 Report of intended performance outside the United States and Canada—Submission after award.**

* * * * *

(a) *Definition. United States*, as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

* * * * *

■ 33. Section 252.225–7005 is amended as follows:

■ a. By revising the clause date to read ''(JUN 2005)'';

■ b. By redesignating paragraphs (a) through (c) as paragraphs (b) through (d) respectively;

■ c. In newly designated paragraph (c)(3)(iv) by removing ''(b)'' and adding ''(c)'' in its place; and

■ d. By adding a new paragraph (a) to read as follows:

**252.225–7005 Identification of expenditures in the United States.**

* * * * *

(a) *Definition. United States*, as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

* * * * *

■ 34. Section 252.225–7006 is amended as follows:

■ a. By revising the clause date to read ''(JUN 2005)'';

■ b. By redesignating paragraphs (a) through (e) as paragraphs (b) through (f) respectively;
■ c. In newly designated paragraph (b), in the introductory text, by removing ''paragraph (b)'' and adding in its place ''paragraph (c)'';
■ d. In newly designated paragraph (f)(3), by removing ''(a) through (d)'' and adding in its place ''(b) through (e)''; and
■ e. By adding a new paragraph (a) to read as follows:

**252.225–7006 Quarterly reporting of actual contract performance outside the United States.**

* * * * *

(a) *Definition. United States*, as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

* * * * *

■ 35. Section 252.225–7011 is revised to read as follows:

**252.225–7011 Restriction on acquisition of supercomputers.**

As prescribed in 225.7012–3, use the following clause:

**Restriction on Acquisition of Supercomputers (JUN 2005)**

Supercomputers delivered under this contract shall be manufactured in the United States or its outlying areas.

(End of clause)

■ 36. Section 252.225–7013 is amended by revising the clause date, paragraph (a)(1), paragraph (b) introductory text, paragraph (f)(1)(i)(A), and the first sentence of paragraph (h) introductory text to read as follows:

**252.225–7013 Duty-free entry.**

* * * * *

**Duty-Free Entry (JUN 2005)**

(a) * * *

(1) *Customs territory of the United States* means the 50 States, the District of Columbia, and Puerto Rico.

* * * * *

(b) Except as provided in paragraph (i) of this clause, or unless supplies were imported into the customs territory of the United States before the date of this contract or the applicable subcontract, the price of this contract shall not include any amount for duty on—

* * * * *

(f) * * *

(1)(i) * * *

(A) Prepare any customs forms required for the entry of foreign supplies into the customs territory of the United States in connection with this contract; and

* * * * *

(h) The Contractor shall notify the Administrative Contracting Officer (ACO) in writing of any purchase of eligible products or qualifying country supplies to be accorded duty-free entry, that are to be imported into the customs territory of the United States for delivery to the Government or for incorporation in end items to be delivered to the Government. * * *

* * * * *

■ 37. Section 252.225–7014 is amended by revising the clause date and paragraph (b) to read as follows:

**252.225–7014 Preference for domestic specialty metals.**

* * * * *

**Preference for Domestic Specialty Metals (JUN 2005)**

* * * * *

(b) Any specialty metals incorporated in articles delivered under this contract shall be melted in the United States or its outlying areas.

* * * * *

■ 38. Section 252.225–7015 is revised to read as follows:

**252.225–7015 Restriction on acquisition of hand or measuring tools.**

As prescribed in 225.7002–3(c), use the following clause:

**Restriction on Acquisition of Hand or Measuring Tools (JUN 2005)**

Hand or measuring tools delivered under this contract shall be produced in the United States or its outlying areas.

(End of clause)

■ 39. Section 252.225–7016 is amended by revising the clause date and paragraph (b) to read as follows:

**252.225–7016 Restriction on Acquisition of Ball and Roller Bearings.**

* * * * *

**Restriction on Acquisition of Ball and Roller Bearings (JUN 2005)**

* * * * *

(b) Except as provided in paragraph (c) of this clause, all ball and roller bearings and ball and roller bearing components (including miniature and instrument ball bearings) delivered under this contract, either as end items or components of end items, shall be wholly manufactured in the United States, its outlying areas, or Canada. Unless otherwise specified, raw materials, such as preformed bar, tube, or rod stock and lubricants, need not be mined or produced in the United States, its outlying areas, or Canada.

* * * * *

■ 40. Section 252.225–7018 is amended by revising the clause date, paragraph (b) in the second sentence, and paragraph (c)(1) to read as follows:

**252.225–7018 Notice of prohibition of certain contracts with foreign entities for the conduct of ballistic missile defense research, development, test, and evaluation.**

* * * * *

**Notice of Prohibition of Certain Contracts With Foreign Entities for the Conduct of Ballistic Missile Defense Research, Development, Test, and Evaluation (JUN 2005)**

* * * * *

(b) * * * However, foreign governments and firms are encouraged to submit offers, since this provision is not intended to restrict access to unique foreign expertise if the contract will require a level of competency unavailable in the United States or its outlying areas.

(c) * * *

(1) The contract will be performed within the United States or its outlying areas;

* * * * *

■ 41. Section 252.225–7019 is amended by revising the clause date and paragraph (a) to read as follows:

**252.225–7019 Restriction on acquisition of anchor and mooring chain.**

* * * * *

**Restriction on Acquisition of Anchor and Mooring Chain (JUN 2005)**

(a) Welded shipboard anchor and mooring chain, four inches or less in diameter, delivered under this contract—

(1) Shall be manufactured in the United States or its outlying areas, including cutting, heat treating, quality control, testing, and welding (both forging and shot blasting process); and

(2) The cost of the components manufactured in the United States or its outlying areas shall exceed 50 percent of the total cost of components.

* * * * *

■ 42. Section 252.225–7021 is amended by revising the clause date and paragraph (a)(11) to read as follows:

**252.225–7021 Trade agreements.**

* * * * *

**Trade Agreements (JUN 2005)**

(a) * * *

(11) *United States* means the 50 States, the District of Columbia, and outlying areas.

* * * * *

■ 43. Section 252.225–7022 is amended by revising the clause date and paragraph (b) to read as follows:

**252.225–7022 Restriction on acquisition of polyacrylonitrile (PAN) carbon fiber.**

* * * * *

**Restriction on Acquisition of Polyacrylonitrile (PAN) Carbon Fiber (JUN 2005)**

* * * * *

(b) PAN carbon fibers contained in the end product shall be manufactured in the United States, its outlying areas, or Canada using PAN precursor produced in the United States, its outlying areas, or Canada.

* * * * *

■ 44. Section 252.225–7023 is amended by revising the clause date and paragraph (a) to read as follows:

**252.225–7023 Restriction on acquisition of vessel propellers.**

* * * * *

**Restriction on Acquisition of Vessel Propellers (JUN 2005)**

(a) Except as provided in paragraph (b) of this clause, the Contractor shall deliver under this contract, whether as end items or components of end items, vessel propellers—

(1) Manufactured in the United States, its outlying areas, or Canada; and

(2) For which all component castings were poured and finished in the United States, its outlying areas, or Canada.

* * * * *

■ 45. Section 252.225–7025 is amended by revising the clause date and paragraph (a)(1) introductory text to read as follows:

**252.225–7025 Restriction on acquisition of forgings.**

* * * * *

**Restriction on Acquisition of Forgings (JUN 2005)**

(a) * * *

(1) *Domestic manufacture* means manufactured in the United States, its outlying areas, or Canada if the Canadian firm—

* * * * *

■ 46. Section 252.225–7031 is amended as follows:

■ a. By revising the clause date to read ''(JUN 2005)'';

■ b. By redesignating paragraph (a)(2) as paragraph (a)(3); and

■ c. By adding a new paragraph (a)(2) to read as follows:

**252.225–7031 Secondary Arab boycott of Israel.**

* * * * *

(a) * * *

(2) *United States* means the 50 States, the District of Columbia, outlying areas, and the outer Continental Shelf as defined in 43 U.S.C. 1331.

* * * * *

■ 47. Section 252.225–7036 is amended by revising the clause date and paragraph (a)(9) to read as follows:

**252.225–7036 Buy American Act—Free Trade Agreements—Balance of Payments Program.**

* * * * *

**Buy American Act—Free Trade Agreements—Balance of Payments Program (JUN 2005)**

(a) * * *

(9) *United States* means the 50 States, the District of Columbia, and outlying areas.

* * * * *

■ 48. Section 252.225–7037 is revised to read as follows:

**252.225–7037 Evaluation of Offers for Air Circuit Breakers.**

As prescribed in 225.7006–4(a), use the following provision:

**Evaluation of Offers for Air Circuit Breakers (JUN 2005)**

(a) The offeror shall specify, in its offer, any intent to furnish air circuit breakers that are not manufactured in the United States or its outlying areas, Canada, or the United Kingdom.

(b) The Contracting Officer will evaluate offers by adding a factor of 50 percent to the offered price of air circuit breakers that are not manufactured in the United States or its outlying areas, Canada, or the United Kingdom.

(End of provision)

■ 49. Section 252.225–7038 is revised to read as follows:

**252.225–7038 Restriction on Acquisition of Air Circuit Breakers.**

As prescribed in 225.7006–4(b), use the following clause:

**Restriction on Acquisition of Air Circuit Breakers (JUN 2005)**

Unless otherwise specified in its offer, the Contractor shall deliver under this contract air circuit breakers manufactured in the United States or its outlying areas, Canada, or the United Kingdom.

(End of clause)

■ 50. Section 252.225–7043 is amended as follows:

■ a. By revising the clause date to read ''(JUN 2005)'';

■ b. By redesignating paragraphs (a) through (c) as paragraphs (b) through (d) respectively;

■ c. In newly designated paragraph (b), in the introductory text, by removing ''paragraph (b)'' and adding in its place ''paragraph (c)''; and

■ d. By adding a new paragraph (a) to read as follows:

**252.225–7043 Antiterrorism/force protection policy for defense contractors outside the United States.**

* * * * *

(a) *Definition. United States,* as used in this clause, means, the 50 States, the District of Columbia, and outlying areas.

* * * * *

■ 51. Section 252.225–7044 is amended as follows:

■ a. By revising the clause date to read ''(JUN 2005)''; and

■ b. In paragraph (a) by revising the definition of ''United States'' to read as follows:

**252.225–7044 Balance of Payments Program—Construction Material.**

* * * * *

(a) * * *

''United States'' means the 50 States, the District of Columbia, and outlying areas.

* * * * *

■ 52. Section 252.225–7045 is amended as follows:

■ a. By revising the clause date to read ''(JUN 2005)''; and

■ b. In paragraph (a) by revising the definition of ''United States'' to read as follows:

**252.225–7045 Balance of Payments Program—Construction Material Under Trade Agreements.**

* * * * *

(a) * * *

*United States* means the 50 States, the District of Columbia, and outlying areas.

* * * * *

■ 53. Section 252.247–7025 is amended by revising the clause date and paragraph (b) introductory text to read as follows:

**252.247–7025 Reflagging or Repair Work.**

**Reflagging or Repair Work (JUN 2005)**

* * * * *

(b) *Requirement.* Unless the Secretary of Defense waives this requirement, reflagging or repair work shall be performed in the United States or its outlying areas, if the reflagging or repair work is performed—

* * * * *

## PART 253—FORMS

■ 54. Section 253.213–70 is amended by revising paragraph (a)(2) to read as follows:

**253.213–70 Instructions for completion of DD Form 1155.**

(a) * * *

(2) The contractor is located in the contiguous United States or Canada.

* * * * *

**Appendix F to Chapter 2—Material Inspection and Receiving Report F–104 [Amended]**

■ 55. Appendix F to Chapter 2 is amended in Part 1, Section F–104, as follows:
■ a. In paragraph (a)(5)(i) introductory text by removing ''*Continental United States*'' and adding in its place ''*Contiguous United States*''; and
■ b. In paragraph (a)(5)(ii), in the first sentence, by removing ''continental U.S.'' and adding in its place ''contiguous United States''.

[FR Doc. 05–12100 Filed 6–20–05; 8:45 am]

BILLING CODE 5001–08–P

## DEPARTMENT OF DEFENSE

### 48 CFR Part 252

### Defense Federal Acquisition Regulation Supplement; Technical Amendments

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is making technical amendments to a Defense Federal Acquisition Regulation Supplement clause addressing unique identification and valuation of items delivered under DoD contracts. The amendments clarify cross-references and correct an Internet address.

**DATES:** Effective June 21, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Michele Peterson, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0311; facsimile (703) 602–0350.

**List of Subjects in 48 CFR Part 252**

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR Part 252 is amended as follows:

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR Part 252 continues to read as follows:

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

**252.211–7003 [Amended]**

■ 2. Section 252.211–7003 is amended as follows:
■ a. By revising the clause date to read ''(JUN 2005)';
■ b. In paragraph (c)(3)(i)(C), in the second sentence, by removing ''*http://www.acq.osd.mil/dpap/UID/guides.html*'' and adding in its place ''*http://www.acq.osd.mil/dpap/UID/guides.htm*'';
■ c. In paragraph (d) introductory text, by adding ''(1)(i) or (ii)'' after ''paragraph (c)''; and
■ d. In paragraph (e) introductory text, by removing ''*Embedded DoD serially managed subassemblies, components, and parts. The*'' and adding in its place ''For embedded DoD serially managed subassemblies, components, and parts that require unique item identification under paragraph (c)(1)(iii) of this clause, the''.

[FR Doc. 05–12095 Filed 6–20–05; 8:45 am]

BILLING CODE 5001–08–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 1809, 1837, and 1852

**RIN 2700–AC60**

### Contractor Access to Sensitive Information

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts with changes the proposed rule published in the **Federal Register** on December 5, 2003 (68 FR 67995—67998). This final rule amends the NASA Federal Acquisition Regulation (FAR) Supplement (NFS) by providing policy and procedures on how NASA will acquire services to support management activities and administrative functions when performing those services requires the contractor to have access to sensitive information submitted by other contractors. NASA's increased use of contractors to support management activities and administrative functions, coupled with implementing Agency-wide electronic information systems, requires establishing consistent procedures for protecting sensitive information from unauthorized use or disclosure.

**EFFECTIVE DATE:** June 21, 2005.

**FOR FURTHER INFORMATION CONTACT:** David Forbes, NASA Headquarters, Contract Management Division, Washington, DC 20546, (202) 358–2051, e-mail: *David.P.Forbes@nasa.gov*.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

On December 5, 2003, NASA published in the **Federal Register** (68 FR 67995—67998) a proposed revision to the NFS prescribing policy, procedures, and clauses to address how NASA will acquire services to support management activities and administrative functions when performing those services requires the service provider to have access to ''confidential'' information submitted by other contractors. One of the comments that NASA received in response to this publication relates to a fundamental concept and demands attention at the outset. As published, the proposed rule used the word ''confidential'' to describe the types of information that required special attention when turned over to a service provider. NASA intended this word to describe a general class of information, largely of a business or management nature, the value of which arose mostly from the fact that it was not readily known to the public. NASA never intended this word to refer to one of the standard classifications of information for national security purposes, as in ''confidential-secret-top secret.'' Nevertheless, concerns have arisen that using the word might cause confusion with national security information. To avoid possible confusion, we have replaced the word ''confidential'' with the word ''sensitive.'' This revision should clarify that the proposed rule deals with business and management information, the value of which lies primarily in the fact that is not generally known to the public. The proposed rule does not implement or refer to the classification of information for national security purposes.

With regard to more general background information, NASA's essential procurement operations generate large amounts of ''sensitive information,'' both from offerors and contractors. Traditionally, NASA civil servants received, analyzed, and used this information to ensure that the Agency spent tax dollars in a responsible and consistent manner. The Trade Secrets Act and other statutes have for years imposed criminal liabilities on government employees who disclosed this type of information to unauthorized outside parties. Offerors and contractors have willingly provided sensitive information about their operations, costs, business practices, and other matters, knowing that NASA would not provide another contractor (''service provider'') access to this information without first ensuring that the parties had complied with FAR 9.505–4. As a condition to allowing a service provider access to another contractor's proprietary information, FAR 9.505–4 would require that the parties execute a satisfactory protection/use agreement. Central to this process were notice to the owner of the

information before any access occurred and the opportunity to develop acceptable terms and conditions governing the service provider's use of the information. From a practical standpoint, this approach could work only after the Government had selected a service provider to perform clearly defined tasks using identified information from a known source that could consent to terms and conditions governing the access.

With many more contractor personnel supporting government operations, NASA must find ways to accommodate the increasing number of situations requiring non-government personnel to safeguard contractor sensitive information. Multiple, inter-related third-party protection agreements between service providers and other contractors that submit information they claim to be ''sensitive'' will simply not work on a large scale. To establish a more efficient, realistic, modern, across-the-board solution, the NFS revisions, published for public comment in the **Federal Register** on December 5, 2003 (68 FR 67995—67998), proposed a self-executing system of procurement policy, procedures, and clauses to allow NASA activities to rely routinely on private sector service providers to support day-to-day operations throughout the Agency.

The published NFS revisions proposed two new clauses to implement this self-executing system of policies and procedures. The first clause at 1852.237–72, Access to Sensitive Information, would go into all solicitations and contracts for services to allow access to sensitive information, whenever it is needed to support NASA's management activities and administrative functions. As published, this ''Access'' clause delineated the service provider's responsibilities to limit to the purposes specified in the contract its use of any sensitive information, to safeguard the information from unauthorized outside disclosure, and to train employees and obtain their written commitments to use the information in an authorized manner, only. Because of concerns under the Paperwork Reduction Act, NASA has revised the proposed ''Access'' clause to require that the service provider obtain only a simple affirmation from each employee that he/she has received training and will comply with the lessons learned regarding the use and protection of sensitive information under the contract.

The second clause at 1852.237–73, Release of Sensitive Information, goes into all solicitations and contracts, and notifies offerors and contractors that NASA may, subject to the enumerated protections mandated by the ''Access'' clause at 1852.237–72, release their sensitive information to service providers that support NASA activities and functions. This ''Release'' clause assures offerors and contractors, by reciting the express protections incorporated into the service provider's contract through the ''Access'' clause, that their information will remain sensitive. Essentially, the ''Release'' clause announces NASA's broad intent to make necessary sensitive information available to service providers, but only in accordance with strict limitations enumerated in the companion ''Access'' clause. These enumerated limitations mandate strict, specific, and express safeguards and procedures to protect that information.

Comments on the proposed rule were received from an industry association and NASA field installations. The comments received were considered in formulation of this final rule. This final rule adopts the proposed rule with changes. The changes are made to clarify contractor roles, to emphasize the protection of sensitive information, and to provide the owners of sensitive information assurance that their data will continue to receive protection. The changes include revising the term ''receiving contractor'' to ''service provider;'' providing a sample legend to identify sensitive information; and identifying the serious consequences for unauthorized use or disclosure.

The following summarizes the comments received from NASA's publication of the proposed rule and provides responses.

*1. Comment:* Was it necessary for the NASA Assistant Administrator for Procurement to waive in its entirety FAR 9.505–4, Obtaining Access to Proprietary Information? Could a less drastic solution help NASA without impacting the owners of sensitive information by simply revising the NFS to relieve contracting officers of overseeing a multitude of third party protection agreements and leave the terms of protection and their enforcement to the service providers and owners, themselves? Under this approach, the contracting officer would only identify each NASA service provider to the owners of needed sensitive information and then leave these parties free to arrange for acceptable terms of protection.

*Response:* In a real world, competitive environment, it was necessary for NASA to waive FAR 9.505–4 in its entirety. Implicitly, FAR 9.505–4 assumes an agency has already awarded a contract to a service provider that needs access to specific information owned by another contractor. In this scenario, the protections that the owner will demand before granting access to specific sensitive information are the only significant unknowns. The assumptions behind FAR 9.505–4 are simply not valid in the early phases of a competitive procurement. Even without burdening the contracting officer to oversee third-party protection agreements, FAR 9.505–4 would require each potential service provider in a competitive procurement to know in advance of submitting a proposal, the exact information needed to perform as specified in the solicitation, what contractors own that information, and what protections those owners deemed acceptable as a condition to granting access to the information. This level of pre-proposal information would simply not be available in a competitive procurement. As a more realistic and useful alternative, the revised NFS relies not on individual third-party protection agreements, but rather prescribes standardized, reciprocal contract clauses to protect sensitive information. A ''Release'' clause goes into the information owner's contract to document consent to release and to delineate the extensive, specific protections that the service provider will implement. A reciprocal ''Access'' clause goes into the service provider's contract to place strict controls over its activities. Under the new ''Release'' clause, the owner of sensitive information expressly consents to access, as needed by NASA service providers. To gain this necessary access, however, the service provider must have expressly agreed, through the new ''Access'' clause, to comply with and implement an extensive number of binding and enumerated protections.

*2. Comment:* NASA has received a large quantity of ''sensitive information'' in connection with solicitations and contracts that did not contain the new ''Release'' clause. The offerors and contractors that submitted this information are not bound by the clause and have not expressly agreed that NASA service providers may have access to their sensitive information. In view of the broad waiver of FAR 9.505–4, how will NASA contracting officers avoid violating the Trade Secrets Act by giving service providers access to sensitive information that was not subject to the ''Release'' clause?

*Response:* This point may be valid in those situations when a service provider requests access to information that NASA has received pursuant to contracts that did not contain the

''Release'' clause. To address contracts that did not contain the clause at 1852.237–73, the NFS will provide internal guidance for NASA contracting officers and requiring activities instructing them to examine all requests from service providers for access to sensitive information. This examination should first determine whether NASA possesses responsive information. If so, the requiring activity should next assess whether access to that information is crucial to the service provider's ability to perform. If the requiring activity possesses the requested information and it is crucial to performing the needed services, then the contracting officer must try to identify and contact the owner of the information to determine whether it claims that the information is ''sensitive.'' At this point, the contracting officer should attempt to negotiate a modification to the owner's contract to incorporate the ''Release'' clause and proceed from there. Because the service provider's contract will contain extensive protections for the sensitivity of the information, NASA expects that most owners will agree to incorporate the ''Release'' clause into their existing contracts. If the owner refuses to modify its contract to include the ''Release'' clause, but persists in claiming the information is sensitive, the requiring activity should prepare a preliminary assessment for the contracting officer addressing whether the claim has a valid factual basis. This analysis should address whether NASA might have persuasive grounds to challenge the claim. If there appears to be persuasive basis for challenging the owner's claim, the contracting officer should seek advice from Center counsel before taking any further action. If, on the other hand, the claim appears to be valid, the requiring activity should re-examine the relationship of the information to the services needed. The service provider may be able to perform acceptably without the requested information. Additionally, the contracting officer may be able to facilitate reaching an agreement on acceptable terms of protection. The contracting officer and the requiring activity should examine all alternatives to obtain the needed support. But, without clear evidence that the owner of the sensitive information has consented to release, NASA will not expose its employees to the risk of violating 18 USC. 1905.

*3. Comment:* One comment blankly asserted that the proposed rule might violate 41 USC. 418a with respect to ''technical data.'' Although not clearly articulated, NASA assumes the comment is referring to the following language in 41 USC. 418a:

> * * * the United States may not require persons who have developed products or processes offered or to be offered for sale to the public as a condition for the procurement of such products or processes by the United States, to provide to the United States technical data relating to the design, development, or manufacture of such products or processes * * *.

*Response:* This prohibition deals with how Federal agencies define their procurement requirements for information. An agency may not require a company to forfeit private intellectual property rights in technical data as a condition to receiving a government contract. NASA notes simply that the proposed rule has nothing to do with defining procurement requirements for information. Rather, the proposed rule focuses on how NASA manages information that offerors and contractors have already delivered to the Government as part of submitting proposals or performing contracts. The assertion that the proposed rule might violate 41 USC. 418a appears to flow from two faulty premises. First, the proposed rule is not concerned primarily with ''technical data'' of a ''scientific or technical nature,'' but instead focuses on ''information incidental to contract administration, such as financial, administrative, cost or pricing or management information.'' The FAR expressly excludes this latter type of information from the definition of ''technical data.'' Second, the proposed rule is not concerned with how NASA defines procurement requirements for information owned by its contractors. The proposed rule simply enables service providers to obtain access to information they need to support Agency management activities and administrative functions. In most cases, the owners will have already submitted this information as a matter incidental to contract administration.

*4. Comment:* NASA intends to rely more and more heavily on the private sector to support essential management activities and administrative functions. Most of these activities and functions involve access to sensitive information submitted by offerors in the process of competing for awards, or by contractors as part of performance. Asking the owners of sensitive information to provide access to other contractors, some of which may be business rivals, is an inherently difficult issue and could seriously discourage competition. To promote trust, the NFS should, as a minimum, prescribe standard terms and conditions for the organizational conflicts of interest (OCI) avoidance plan and require the contracting officer to approve each offeror's proposed approach to this important document.

*Response:* Logically, there can be no standard approach to avoiding OCI's, which are by their nature unique to the individual contractor. The service provider must thoroughly analyze its own situation, including the services to be rendered, the information needed to perform those services, other procurements for which the service provider may intend to compete, and specific mechanisms the service provider is willing to implement to mitigate, neutralize, or eliminate foreseeable possible conflicts of interest. In addition to recognizing that each service provider's OCI's are essentially unique, any avoidance plan must flow from performance-based contracting principles to be acceptable today. As such, the buyer defines only the final outcomes to be achieved, not the methods of getting there. Consequently, the NFS will leave the details of any OCI avoidance plan to the service provider that must live by it. The contracting officer in concert with Center counsel is responsible for receiving and reviewing the plan for reasonable completeness and communicating any substantive weaknesses and omissions discovered to the service provider for necessary revisions. The contracting officer will incorporate the accepted plan into the contract as a compliance document. If the service provider fails to mitigate all potential conflicts and/or unauthorized disclosures and uses occur, the service provider must take adequate corrective actions. If the corrective actions are not adequate, the contracting officer may terminate the contract.

*5. Comment:* The Assistant Administrator for Procurement's broad waiver of FAR 9.505–4 could cause NASA employees to violate the Trade Secrets Act, 18 U.S.C. 1905, because not all of the information owners would have expressly consented to release through the new ''Release'' clause. Moreover, with respect to technical data, the proposed rule might also violate 41 U.S.C. 418a, which requires the FAR to prescribe regulations governing the allocation of rights in data developed through contracts using tax dollars. The Assistant Administrator's authority to waive rules relating to Organizational Conflicts of Interest does not extend the requirements of other statutes.

*Response:* The Trade Secrets Act prohibits government employees from releasing trade secret information to any extent not authorized by law. The Office

of Federal Procurement Policy Act authorized NASA to issue the NFS. NASA is adding the new ''Release'' clause to the NFS in accordance with the OFPP Act. Therefore, releasing information pursuant to the ''Release'' clause would be ''authorized by law'' and not violate the Trade Secrets Act. Presumably, therefore, this comment relates to sensitive information that NASA received under contracts or other agreements that did not contain the new ''Release'' clause. The NFS will contain detailed procedural guidance instructing requiring activities and contracting officers how to deal with this type of information. This procedural guidance will first instruct the contracting officer/requiring activity to contact the owner of the information to evaluate its claim to be entitled to protection and to seek agreement to incorporate the new ''Release'' clause. Alternatively, the contracting officer should try to facilitate an individualized agreement on acceptable terms of protection. If the information appears to be entitled to protection, but the owner is unwilling to accept the ''Release'' clause or to negotiate specific, tailored terms of protection, the contracting officer/requiring activity should examine on a more detailed level how much access the service provider actually needs. On closer examination, it may be possible that different, less comprehensive services could satisfy the requiring activity.

In accordance with 41 U.S.C. 418a, both the FAR and the NFS have promulgated regulations dealing with how agencies acquire and allocate rights to data developed under government contracts. The Assistant Administrator for Procurement's waiver of FAR 9.505–4 does not, however, relate to how NASA acquires and allocates rights in data. The waiver relates, instead, to information submitted in support of proposals or in the course of performing contracts. Most of this information is not ''technical data,'' which the Government procures for its own value. Rather, the revised NFS generally uses the term ''sensitive information'' to refer to financial and administrative information that is incidental to contract administration. As such, the Assistant Administrator for Procurement's waiver of FAR 9.505–4 does not affect 41 U.S.C. 418a or the requirements of any other statute or binding instruction.

*6. Comment:* The proposed rule does not define the term ''sensitive information'' clearly and, as a result, fails to exclude from the operation of the clauses cost or pricing data, other financial information, administrative or management information, and the like. The term ''sensitive information'' should not be broader in scope than ''data'' as defined in FAR Part 27, which specifically excludes information incidental to contract administration.

*Response:* NASA understands that FAR Part 27 specifically excludes information incidental to contract administration from the definition of ''data.'' In contrast, the new NFS coverage focuses primarily on information incidental to contract administration, not technical data. As the published proposed rule noted, the primary purpose of the new coverage is to allow a service provider access to information necessary to support NASA activities and functions, as civil servants did in the past.

*7. Comment:* The proposed rule implies that NASA need only protect data ''developed at private expense.'' The definition of ''trade secret'' does not depend on the concept of development costs. A trade secret covers a variety of forms of information that derive economic value, actual or potential, from not being generally known to the public. NASA needs to continue to protect any trade secret or it will compromise the property rights of companies, with which it currently does business. FAR 27.402 instructs agencies to avoid doing so.

*Response:* NASA agrees that the term ''trade secret'' extends to many types of information that derive economic value from not being generally known to the public. But, with regard to protecting contractors'' legitimate property rights, FAR 27.402 establishes the following policy: ''* * * the Government recognizes that its contractors may have a legitimate proprietary interest (*e.g.*, a property right or other valid economic interest) in data *resulting from private investment*.'' (Emphasis added.) It seems fairly clear from this language, that FAR 27.402 envisions protecting only sensitive or proprietary information that a contractor has developed at private expense. Without meeting this simple test, the FAR implicitly does not recognize as ''legitimate'' a contractor's claim for trade secret protection.

*8. Comment:* The revised NFS would require the holders of ''ordinary procurement'' contracts to identify ''sensitive information,'' but provides no instructions on how to do so. Moreover, NASA will continue to obtain sensitive information under contracting vehicles, such as ''Space Act Agreements,'' that are not covered by the new ''Release'' clause. What will tell these contractors how to identify ''sensitive information?''

*Response:* The revised NFS deals with how service providers obtain access to the information they need to support NASA operations, not with particular property rights resulting from the expenditure of tax dollars. As such, the NFS does not need to prescribe a particular legend to instruct contractors on how to identify their own sensitive information. For the contractor's convenience, however, the revised ''Release'' clause provides a sample notice identifying sensitive information. The new ''Access'' clause prescribes what service providers must do to protect the information they receive to support NASA operations. The NFS governs NASA contracts, not ''other transactions'' authorized by the Space Act. Generally, however, NASA does not acquire property and services for the expenditure of tax dollars under ''other transactions.''

*9. Comment:* Under the new ''Access'' clause, a service provider can allow access to sensitive information only to employees that need it to perform the specified support. Yet, the clause does not prescribe any process for determining which employees have a ''need-to-know'' sensitive information or what sanctions NASA may impose for unauthorized use.

*Response:* Performance-based contracting principles call for NASA to define only the final performance outcomes, not how the contractor is to achieve those objectives. The revised NFS allows the contractor to define how it will achieve the specified outcomes for NASA. Assigning work and functions among its employees is certainly within the contractor's discretion. The revised section 1837.203–70 does instruct the contracting officer to monitor the effectiveness of the contractor's system for encouraging employees to avoid unauthorized uses and disclosures. The revised clause at 1852.237–72 also describes the administrative remedies available to the contracting officer to encourage service providers to comply with their new obligations to protect sensitive information and avoid unauthorized uses or disclosures.

*10. Comment:* The new ''Access'' clause requires service providers to obtain express, binding written use agreements from their employees to protect sensitive information and use it only for the purposes of performing the specified services. Doing so is likely to be a tremendous administrative burden. Additionally, the service provider has no obligation to keep different companies' information segregated.

*Response:* As published, the new ''Access'' clause did require contractors to obtain express, binding written agreements from their employees to protect sensitive information and use it

only for performing the services specified. After considering comments on this language, NASA decided to revise the clause to require contractors to obtain written acknowledgements from their employees that they have received training in how to protect sensitive information and will adhere to the lessons learned in providing services under the contract. This simple acknowledgement does not require contractors to collect information. Certainly, a much more onerous burden would flow from a greatly expanded system of interrelated third party non-disclosure agreements among all the entities that provide sensitive information in the course of submitting competitive proposals or performing contracts for NASA. With regard to segregating different companies' information, that responsibility is implicit in the obligation to use information only to perform the specified services.

*11. Comment:* A potentially tremendous burden on the contracting officer, far exceeding any imposed by FAR 9.505–4, will be determining what information in NASA's possession is ''sensitive'' and who owns it. Moreover, NASA has information from companies that may no longer do business with the Government, or may no longer be in operation, at all; others have gone on to other businesses; and some may never have a contract containing the new ''Release'' clause. These situations, effectively, deprive NASA of the owner's consent to release sensitive information and expose government employees to possible violations of 18 U.S.C. 1905. If breaches and unauthorized disclosures occur, the NFS does not provide guidelines to the contracting officer on what actions are appropriate and/or effective.

*Response:* While some of these observations may be valid, none requires regulatory coverage beyond internal guidance for NASA operations. With regard to contracts that do not contain the ''Release'' clause, we are developing NFS internal guidance that begins by recognizing that in the course of proposing, the service provider will delve into the solicitation requirements to determine what information is needed to perform. The service provider should then request access to specifically identified information from the contracting officer/requiring activity. At that point, the requiring activity should try to determine whether NASA possesses the identified information, who owns it, and whether that owner claims to be entitled to protection. The contracting officer should then contact the owner to discuss incorporating the new ''Release'' clause. If the owner asserts the identified information is sensitive and entitled to protection, but resists incorporating the ''Release'' clause, the contracting officer should attempt to negotiate satisfactory, alternate terms of protection. The contracting officer should try to include the owner and the service provider in this process. At the same time, the contracting officer, with the assistance of Center counsel, should evaluate whether there is a valid factual basis for claiming that the information is sensitive and entitled to protection. If the owner continues to resist access, the contracting officer should, next, explore whether some reduced level of support, not requiring access to sensitive information, might be satisfactory. With regard to a service provider's unauthorized uses or disclosures, the clause at 1852.237–72 describes some of the administrative responses available to the contracting officer.

*12. Comment:* 1852.237–73(c) should specify whether and how the parties may challenge the sensitivity of information, including the process to follow and the owner's rights to redress.

*Response:* The new NFS purposely defines ''sensitive information'' to exclude ''technical data,'' as defined in the FAR. Sensitive information is incidental to contract administration and, generally, does not have independent value to its owners. Consequently, a highly structured, formalistic challenge process seems neither necessary nor desirable. Any challenge would have to show the following basic elements:

(a) Private investment developed the information or the Government generated it and it qualifies for an exception to the Freedom of Information Act.

(b) The information must not currently be in the public domain.

(c) The information may embody trade secretes or commercial or financial information.

(d) The information may be sensitive or privileged.

The NFS will provide only general guidance in this area, recognizing these are very difficult judgments. Until the contracting officer decides for sound reasons to challenge an owner's claim that information is sensitive and entitled to protection, NASA and its service provider will comply with the owner's assertions.

**B. Executive Order 12866 and Regulatory Flexibility Act**

This final rule does not meet the definition of ''significant'' under Executive 12866. NASA certifies that this final rule will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, *et. seq.*), because the new, streamlined approach of having each service provider implement specific safeguards and procedures should offer the same or better protection for sensitive information belonging to small business entities than does the current system of third party agreements, envisioned by FAR 9.505–4. Moreover, this final rule should ease the burden on small business entities by not requiring them to enter multiple, interrelated third party agreements with numerous service contractors that support NASA's management activities and administrative functions.

**C. Paperwork Reduction Act**

The proposed NFS revisions simply amplify and clarify NASA's implementation of FAR 9.504, coverage that has existed for nearly 20 years. NASA has published these NFS revisions for public comment and received no challenges, objections, or concerns regarding the information collection requirements associated with providing services that will entail access to sensitive information. Because access to sensitive information is necessary to perform the specified services, solicitations will require all bidders and offerors to submit preliminary analyses of potential conflicts of interests. Further, each awarded contract that will entail access to sensitive information will also require the service provider to submit a comprehensive organizational conflicts of interest avoidance plan, as a deliverable report during performance.

Over the years, NASA has requested and OMB has approved various information collections necessary to evaluate bids and proposals submitted for the award of contracts, as well as for contract reports required to manage approved programs and projects. The OMB approval numbers currently in effect for these various categories of information collections are as follows:

1. OMB No. 2700–0085, bids and proposals with an estimated value more than $500,000.

2. OMB No. 2700–0089, reports required for contracts with an estimated value more than $500,000.

3. OMB No. 2700–0087, bids and proposals with an estimated value less than $500,000.

4. OMB No. 2700–0088, reports required on contracts valued at less than $500,000.

5. OMB No. 2700–0086, purchase orders for goods and services with an estimated value of $100,000 or less.

Our requests for OMB approval for these information collections have noted that NASA prepares solicitations for bids and proposals and defines requirements for contract deliverables in accordance with the OFPP Policy Act, as amended by Pub. L. 96–83, the National Aeronautics and Space Act of 1958, as amended, the Federal Acquisition Regulation (FAR), the NASA FAR Supplement, and approved mission requirements. In seeking OMB approval, NASA has described and administratively tracked these information collections in generic, functional terms, and categorized the requests based on the estimated dollar values of the purchase orders or contracts supporting the procurements in question.

As described above, these information collections cover broad functional procurement needs, at all dollar values relevant to NASA's current contracting practices. Consequently, OMB's current approvals adequately cover the proposed rule's requirements that, during the evaluation phase of each procurement, all bids and offers must contain preliminary analyses of potential conflicts of interest and that after award each new service provider must submit a comprehensive conflicts of interest avoidance plan for inclusion in the contract as a compliance document. In our view, the Paperwork Reduction Act does not require any further action in support of this final rule.

**List of Subjects in 48 CFR Parts 1809, 1837, and 1852**

Government Procurement.

**Tom Luedtke,**

*Assistant Administrator for Procurement.*

■ Accordingly, 48 CFR Parts 1809, 1837, and 1852 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 1809, 1837, and 1852 continues to read as follows:

**Authority:** 42 USC. 2473(c)(1)

## PART 1809—CONTRACTOR QUALIFICATIONS

■ 2. Add section 1809.505–4 to read as follows:

**1809.505–4 Obtaining access to sensitive information.**

(b) In accordance with FAR 9.503, the Assistant Administrator for Procurement has determined that it would not be in the Government's interests for NASA to comply strictly with FAR 9.505–4(b) when acquiring services to support management activities and administrative functions. The Assistant Administrator for Procurement has, therefore, waived the requirement that before gaining access to other companies' proprietary or sensitive (see 1837.203–70) information contractors must enter specific agreements with each of those other companies to protect their information from unauthorized use or disclosure. Accordingly, NASA will not require contractors and subcontractors and their employees in procurements that support management activities and administrative functions to enter into separate, interrelated third party agreements to protect sensitive information from unauthorized use or disclosure. As an alternative to numerous, separate third party agreements, 1837.203–70 prescribes detailed policy and procedures to protect contractors from unauthorized use or disclosure of their sensitive information. Nothing in this section waives the requirements of FAR 37.204 and 1837.204.

## PART 1837—SERVICE CONTRACTING

■ 3. Add sections 1837.203–70, 1837.203–71, and 1837.203–72 to read as follows:

**1837.203–70 Providing contractors access to sensitive information.**

(a)(1) As used in this subpart, ''sensitive information'' refers to information that the contractor has developed at private expense or that the Government has generated that qualifies for an exception to the Freedom of Information Act, which is not currently in the public domain, may embody trade secrets or commercial or financial information, and may be sensitive or privileged, the disclosure of which is likely to have either of the following effects: To impair the Government's ability to obtain this type of information in the future; or to cause substantial harm to the competitive position of the person from whom the information was obtained. The term is not intended to resemble the markings of national security documents as in sensitive-secret-top secret.

(2) As used in this subpart, ''requiring organization'' refers to the NASA organizational element or activity that requires specified services to be provided.

(3) As used in this subpart, ''service provider'' refers to the service contractor that receives sensitive information from NASA to provide services to the requiring organization. (b)(1) To support management activities and administrative functions, NASA relies on numerous service providers. These contractors may require access to sensitive information in the Government's possession, which may be entitled to protection from unauthorized use or disclosure.

(2) As an initial step, the requiring organization shall identify when needed services may entail access to sensitive information and shall determine whether providing access is necessary for accomplishing the Agency's mission. The requiring organization shall review any service provider requests for access to information to determine whether the access is necessary and whether the information requested is considered ''sensitive'' as defined in paragraph (a)(1) of this section.

(c) When the requiring organization determines that providing specified services will entail access to sensitive information, the solicitation shall require each potential service provider to submit with its proposal a preliminary analysis of possible organizational conflicts of interest that might flow from the award of a contract. After selection, or whenever it becomes clear that performance will necessitate access to sensitive information, the service provider must submit a comprehensive organizational conflicts of interest avoidance plan.

(d) This comprehensive plan shall incorporate any previous studies performed, shall thoroughly analyze all organizational conflicts of interest that might arise because the service provider has access to other companies' sensitive information, and shall establish specific methods to control, mitigate, or eliminate all problems identified. The contracting officer, with advice from Center counsel, shall review the plan for completeness and identify to the service provider substantive weaknesses and omissions for necessary correction. Once the service provider has corrected the substantive weaknesses and omissions, the contracting officer shall incorporate the revised plan into the contract, as a compliance document.

(e) If the service provider will be operating an information technology system for NASA that contains sensitive information, the operating contract shall include the clause at 1852.204–76, Security Requirements for Unclassified Information Technology Resources, which requires the implementation of an Information Technology Security Plan to protect information processed, stored, or transmitted from unauthorized access, alteration, disclosure, or use.

(f) NASA will monitor performance to assure any service provider that requires access to sensitive information follows the steps outlined in the clause at 1852.237–72, Access to Sensitive Information, to protect the information from unauthorized use or disclosure.

**1837.203–71 Release of contractors' sensitive information.**

Pursuant to the clause at 1852.237–73, Release of Sensitive Information, offerors and contractors agree that NASA may release their sensitive information when requested by service providers in accordance with the procedures prescribed in 1837.203–70 and subject to the safeguards and protections delineated in the clause at 1852.237–72, Access to Sensitive Information. As required by the clause at 1852.237–73, or other contract clause or solicitation provision, contractors must identify information they claim to be ''sensitive'' submitted as part of a proposal or in the course of performing a contract. The contracting officer shall evaluate all contractor claims of sensitivity in deciding how NASA should respond to requests from service providers for access to information.

**1837.203–72 NASA contract clauses.**

(a) The contracting officer shall insert the clause at 1852.237–72, Access to Sensitive Information, in all solicitations and contracts for services that may require access to sensitive information belonging to other companies or generated by the Government.

(b) The contracting officer shall insert the clause at 1852.237–73, Release of Sensitive Information, in all solicitations, contracts, and basic ordering agreements.

## PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Add sections 1852.237–72 and 1852.237–73 to read as follows:

**1852.237–72 Access to Sensitive Information.**

As prescribed in 1837.203–72(a), insert the following clause:

**Access to Sensitive Information**

**(June 2005)**

(a) As used in this clause, ''sensitive information'' refers to information that a contractor has developed at private expense, or that the Government has generated that qualifies for an exception to the Freedom of Information Act, which is not currently in the public domain, and which may embody trade secrets or commercial or financial information, and which may be sensitive or privileged.

(b) To assist NASA in accomplishing management activities and administrative functions, the Contractor shall provide the services specified elsewhere in this contract.

(c) If performing this contract entails access to sensitive information, as defined above, the Contractor agrees to—

(1) Utilize any sensitive information coming into its possession only for the purposes of performing the services specified in this contract, and not to improve its own competitive position in another procurement.

(2) Safeguard sensitive information coming into its possession from unauthorized use and disclosure.

(3) Allow access to sensitive information only to those employees that need it to perform services under this contract.

(4) Preclude access and disclosure of sensitive information to persons and entities outside of the Contractor's organization.

(5) Train employees who may require access to sensitive information about their obligations to utilize it only to perform the services specified in this contract and to safeguard it from unauthorized use and disclosure.

(6) Obtain a written affirmation from each employee that he/she has received and will comply with training on the authorized uses and mandatory protections of sensitive information needed in performing this contract.

(7) Administer a monitoring process to ensure that employees comply with all reasonable security procedures, report any breaches to the Contracting Officer, and implement any necessary corrective actions.

(d) The Contractor will comply with all procedures and obligations specified in its Organizational Conflicts of Interest Avoidance Plan, which this contract incorporates as a compliance document.

(e) The nature of the work on this contract may subject the Contractor and its employees to a variety of laws and regulations relating to ethics, conflicts of interest, corruption, and other criminal or civil matters relating to the award and administration of government contracts. Recognizing that this contract establishes a high standard of accountability and trust, the Government will carefully review the Contractor's performance in relation to the mandates and restrictions found in these laws and regulations. Unauthorized uses or disclosures of sensitive information may result in termination of this contract for default, or in debarment of the Contractor for serious misconduct affecting present responsibility as a government contractor.

(f) The Contractor shall include the substance of this clause, including this paragraph (f), suitably modified to reflect the relationship of the parties, in all subcontracts that may involve access to sensitive information

(End of clause)

**1852.237–73 Release of sensitive information.**

As prescribed in 1837.203–72(b), insert the following clause:

**Release of Sensitive Information**

**(June 2005)**

(a) As used in this clause, ''sensitive information'' refers to information, not currently in the public domain, that the Contractor has developed at private expense, that may embody trade secrets or commercial or financial information, and that may be sensitive or privileged.

(b) In accomplishing management activities and administrative functions, NASA relies heavily on the support of various service providers. To support NASA activities and functions, these service providers, as well as their subcontractors and their individual employees, may need access to sensitive information submitted by the Contractor under this contract. By submitting this proposal or performing this contract, the Contractor agrees that NASA may release to its service providers, their subcontractors, and their individual employees, sensitive information submitted during the course of this procurement, subject to the enumerated protections mandated by the clause at 1852.237–72, Access to Sensitive Information.

(c)(1) The Contractor shall identify any sensitive information submitted in support of this proposal or in performing this contract. For purposes of identifying sensitive information, the Contractor may, in addition to any other notice or legend otherwise required, use a notice similar to the following:

Mark the title page with the following legend:

This proposal or document includes sensitive information that NASA shall not disclose outside the Agency and its service providers that support management activities and administrative functions. To gain access to this sensitive information, a service provider's contract must contain the clause at NFS 1852.237–72, Access to Sensitive Information. Consistent with this clause, the service provider shall not duplicate, use, or disclose the information in whole or in part for any purpose other than to perform the services specified in its contract. This restriction does not limit the Government's right to use this information if it is obtained from another source without restriction. The information subject to this restriction is contained in pages [insert page numbers or other identification of pages].

Mark each page of sensitive information the Contractor wishes to restrict with the following legend:

Use or disclosure of sensitive information contained on this page is subject to the restriction on the title page of this proposal or document.

(2) The Contracting Officer shall evaluate the facts supporting any claim that particular information is ''sensitive.'' This evaluation shall consider the time and resources necessary to protect the information in accordance with the detailed safeguards mandated by the clause at 1852.237–72, Access to Sensitive Information. However, unless the Contracting Officer decides, with the advice of Center counsel, that reasonable grounds exist to challenge the Contractor's claim that particular information is sensitive,

NASA and its service providers and their employees shall comply with all of the safeguards contained in paragraph (d) of this clause.

(d) To receive access to sensitive information needed to assist NASA in accomplishing management activities and administrative functions, the service provider must be operating under a contract that contains the clause at 1852.237–72, Access to Sensitive Information. This clause obligates the service provider to do the following:

(1) Comply with all specified procedures and obligations, including the Organizational Conflicts of Interest Avoidance Plan, which the contract has incorporated as a compliance document.

(2) Utilize any sensitive information coming into its possession only for the purpose of performing the services specified in its contract.

(3) Safeguard sensitive information coming into its possession from unauthorized use and disclosure.

(4) Allow access to sensitive information only to those employees that need it to perform services under its contract.

(5) Preclude access and disclosure of sensitive information to persons and entities outside of the service provider's organization.

(6) Train employees who may require access to sensitive information about their obligations to utilize it only to perform the services specified in its contract and to safeguard it from unauthorized use and disclosure.

(7) Obtain a written affirmation from each employee that he/she has received and will comply with training on the authorized uses and mandatory protections of sensitive information needed in performing this contract.

(8) Administer a monitoring process to ensure that employees comply with all reasonable security procedures, report any breaches to the Contracting Officer, and implement any necessary corrective actions.

(e) When the service provider will have primary responsibility for operating an information technology system for NASA that contains sensitive information, the service provider's contract shall include the clause at 1852.204–76, Security Requirements for Unclassified Information Technology Resources. The Security Requirements clause requires the service provider to implement an Information Technology Security Plan to protect information processed, stored, or transmitted from unauthorized access, alteration, disclosure, or use. Service provider personnel requiring privileged access or limited privileged access to these information technology systems are subject to screening using the standard National Agency Check (NAC) forms appropriate to the level of risk for adverse impact to NASA missions. The Contracting Officer may allow the service provider to conduct its own screening, provided the service provider employs substantially equivalent screening procedures.

(f) This clause does not affect NASA's responsibilities under the Freedom of Information Act.

(g) The Contractor shall insert this clause, including this paragraph (g), suitably modified to reflect the relationship of the parties, in all subcontracts that may require the furnishing of sensitive information.

(End of clause)

[FR Doc. 05–12191 Filed 6–20–05; 8:45 am]

BILLING CODE 7510–01–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Parts 571, 575, 577, 582

**[Docket No. NHTSA–2005–21564]**

### Vehicle Safety Hotline; Technical Amendment

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** This document contains technical amendments to Part 571, *Federal motor vehicle safety standards;* Part 575, *Consumer information;* Part 577, *Defect and noncompliance notification;* and Part 582, *Insurance cost information regulation.* Specifically, we are updating the telephone number that should be used to reach NHTSA's Vehicle Safety Hotline, and adding our web address. This amendment updates the pertinent contact information without making any substantive changes to our regulations.

**DATES:** The technical amendments to parts 571, 575, and 582 are effective June 21, 2006. The technical amendment to Part 577 is effective July 21, 2005. Voluntary compliance is permitted before that time.

**FOR FURTHER INFORMATION CONTACT:** Mr. George Feygin, Office of Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820); NHTSA, 400 Seventh Street, SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** In several regulations, NHTSA specifies that vehicle manufacturers, child seat manufacturers, or automobile dealers must provide the telephone number for our Vehicle Safety Hotline so that consumers concerned about safety recalls or potential defects could contact this agency. That telephone number has changed. This document amends the relevant sections of the CFR to correct the telephone number and to add our web address so that consumers can access the safety recall and defect information online. We are also changing the text in the Part 582 information form to reflect our current New Car Assessment Program efforts.

This technical amendment will not impose or relax any substantive requirements or burdens on manufacturers. Except for Part 577, we are providing a lead-time of one year in order to afford affected parties time to update the relevant contact information where necessary. Therefore, NHTSA finds for good cause that any notice and opportunity for comment on these correcting amendments are not necessary.

In consideration of the foregoing, this document amends the CFR by updating the contact information for the Vehicle Safety Hotline.

**List of Subjects in 49 CFR Parts 571, 575, 577, 582**

Consumer protection; Insurance; Motor vehicles; Motor vehicle safety; Reporting and recordkeeping requirements; Tires.

■ 49 CFR Parts 571, 575, 577, 582 are amended by making the following technical amendments:

## PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

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

**Authority:** 49 U.S.C. 322, 2011, 30115, 30166 and 30177; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.213 is amended by revising sections S5.5.2(m), S5.5.5(k), S5.6.1.7, and S5.6.2.2 to read as follows:

**§ 571.213 Standard No. 213; Child restraint systems.**

* * * * *

S5.5.2 * * *

(m) The following statement, inserting an address and telephone number: ''Child restraints could be recalled for safety reasons. You must register this restraint to be reached in a recall. Send your name, address and the restraint's model number and manufacturing date to (insert address) or call (insert telephone number). For recall information, call the U.S. Government's Vehicle Safety Hotline at 1–888–327–4236 (TTY: 1–800–424–9153), or go to *http://www.NHTSA.gov.*''

* * * * *

(k) The following statement, inserting an address and telephone number: ''Child restraints could be recalled for safety reasons. You must register this restraint to be reached in a recall. Send your name, address and the restraint's model number and manufacturing date to (insert address) or call (insert telephone number). For recall information, call the U.S. Government's Vehicle Safety Hotline at 1–888–327–

4236 (TTY: 1–800–424–9153), or go to *http://www.NHTSA.gov.*''

* * * * *

S5.6.1.7 The instructions shall include the following statement, inserting an address and telephone number: ''Child restraints could be recalled for safety reasons. You must register this restraint to be reached in a recall. Send your name, address and the restraint's model number and manufacturing date to (insert address) or call (insert telephone number). For recall information, call the U.S. Government's Vehicle Safety Hotline at 1–888–327–4236 (TTY: 1–800–424–9153), or go to *http://www.NHTSA.gov*.''

* * * * *

S5.6.2.2 The instructions for each built-in child restraint system other than a factory-installed restraint, shall include the following statement, inserting an address and telephone number: ''Child restraints could be recalled for safety reasons. You must register this restraint to be reached in a recall. Send your name, address and the restraint's model number and manufacturing date to (insert address) or call (insert telephone number). For recall information, call the U.S. Government's Vehicle Safety Hotline at 1–888–327–4236 (TTY: 1–800–424–9153), or go to *http://www.NHTSA.gov*.''

* * * * *

## PART 575—CONSUMER INFORMATION

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

**Authority:** 49 U.S.C. 32302, 30111, 30115, 30117, 30166, and 30168, and Pub. L. 106'414, 114 Stat. 1800; delegation of authority at 49 CFR 1.50.

■ 4. Section 575.6 is amended by revising the fourth paragraph of section 2(i) to read as follows:

**§ 575.6 Requirements.**

* * * * *

(2)(i) * * *

To contact NHTSA, you may call the Vehicle Safety Hotline toll-free at 1–888–327–4236 (TTY: 1–800–424–9153); go to *http://www.safercar.gov*; or write to: Administrator, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. You can also obtain other information about motor vehicle safety from *http://www.safercar.gov.*

* * * * *

## PART 577—DEFECT AND NONCOMPLIANCE NOTIFICATION

■ 5. The authority citation continues to read as follows:

**Authority:** 49 U.S.C. 30102, 30103, 30116'30121, 30166; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

■ 6. Section 577.5 is amended by revising paragraph (g)(1)(vii) to read as follows:

**§ 577.5 Notification pursuant to a manufacturer's decision.**

* * * * *

(g) * * *

(1) * * *

(vii) A statement informing the owner that he or she may submit a complaint to the Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; or call the toll-free Vehicle Safety Hotline at 1–888–327–4236 (TTY: 1–800–424–9153); or go to *http://www.safercar.gov*, if the owner believes that:

* * * * *

## PART 582—INSURANCE COST INFORMATION REGULATION

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

**Authority:** 49 U.S.C. 32303; delegation of authority at 49 CFR 1.50(f).

■ 2. Section 582.5 is amended by revising the second paragraph after ''Please Note:'' to read as follows:

**§ 582.5 Information form.**

* * * * *

Test data relating to vehicle crashworthiness and rollover ratings are available from NHTSA's New Car Assessment Program (NCAP). NCAP test results demonstrate relative frontal and side crash protection in new vehicles, and relative rollover resistance. Information on vehicles that NHTSA has tested in the NCAP program can be obtained from *http://www.safercar.gov* or by calling NHTSA's toll-free Vehicle Safety Hotline at 1–888–327–4236 (TTY: 1–800–424–9153).

* * * * *

Issued: June 14, 2005.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. 05–12114 Filed 6–20–05; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 041110317–4364–02; I.D. 061505C]**

### Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

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

**ACTION:** Temporary rule; inseason quota transfer.

**SUMMARY:** NMFS announces that it has approved the request of the State of Rhode Island to transfer 50,186 lb (22,764 kg) of commercial summer flounder quota to the States of Maine, Connecticut, New York, Delaware, and Maryland, and the Commonwealth of Massachusetts, in accordance with the Atlantic States Marine Fisheries Commission (ASMFC) Addendum XV to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). In addition, NMFS is revising commercial summer flounder quota numbers for the States of North Carolina and Maryland from those published in a previous Addendum XV transfer. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

**DATES:** Effective June 16, 2005 through December 31, 2005, unless NMFS publishes a superseding document in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Mike Ruccio, Fishery Management Specialist, (978) 281–9104, FAX (978) 281–9135.

**SUPPLEMENTARY INFORMATION:** Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The ASMFC adopted Addendum XV to the FMP in November 2004. The Addendum is being implemented under the adaptive management and framework procedures that are part of the FMP. Addendum XV establishes a program, for 2005 and 2006, that allocates the increase in commercial summer flounder quota (from the 2004 amount) differently than the existing

allocation scheme, in order to reduce the amount of fish that must be discarded as bycatch in the commercial fishery in states with relatively low summer flounder quotas. The transfer of quota from donor states will allow recipient states to marginally increase trip limits, thereby decreasing the amount of summer flounder discarded at sea.

The final rule implementing Amendment 5 to the FMP that was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the approval of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.100(d). The Regional Administrator is required to consider the criteria set forth in § 648.100(d)(3) in the evaluation of requests for quota transfers or combinations. The Regional Administrator has reviewed those criteria and approved the quota transfer requests submitted by the State of Rhode Island.

Consistent with Addendum XV, Rhode Island, a designated ''donor state,'' has voluntarily employed the quota transfer provisions of the FMP to transfer a total of 50,186 lb (22,764 kg) to be allocated as follows: Maine 937 lb (425 kg); Connecticut 13,095 lb (5,940 kg); New York 9,763 lb (4,428 kg); Delaware 2,887 lb (1,310); Maryland 13,230 lb (6,001 kg); and Massachusetts 10,274 lb (4,660 kg) (see Table 1).

In addition, this action corrects a previous quota transfer involving North Carolina and Maryland published on June 7, 2005 (70 FR 33042). This previous quota transfer notice effected an Addendum XV transfer from North Carolina to Maine, Massachusetts, Connecticut, New York, and Maryland. In agreeing to this previous transfer, Maryland accepted only half of the quota offered by North Carolina, but the transfer published on June 7, 2005, inadvertently transferred to Maryland the full amount offered by North Carolina (23,153 lb (10,502 kg)). Therefore, this action deducts half of this amount (11,577 lb (5,251 kg)) from Maryland and restores the same amount to North Carolina. The corrected quotas involved in that transfer are listed in Table 1.

TABLE 1. SUMMER FLOUNDER COMMERCIAL QUOTA TRANSFERS

| | Amount Transferred | | 2005 Quota[1] | | 2005 Revised Quota | |
|---|---|---|---|---|---|---|
| State | lb | kg | lb | kg | lb | kg |
| Rhode Island | -50,186 | -22,764 | 2,818,232 | 1,278,350 | 2,768,046 | 1,255,586 |
| Maine | 937 | 425 | 11,459 | 5,198 | 12,396 | 5,623 |
| Massachusetts | 10,274 | 4,660 | 1,209,499 | 548,629 | 1,219,773 | 553,289 |
| Connecticut | 13,095 | 5,940 | 446,313 | 202,448 | 459,408 | 208,387 |
| New York | 9,763 | 4,428 | 1,404,519 | 637,090 | 1,414,282 | 641,518 |
| Delaware[2] | 2,887 | 1,310 | -47,415 | -21,507 | -44,528 | -20,198 |
| Maryland[3] | 13,230 | 6,001 | 388,534 | 176,239 | 390,187 | 176,989 |
| North Carolina | 0 | 0 | 4,597,745 | 2,085,537 | 4,609,322 | 2,090,788 |

[1] Reflects quotas as published on June 7, 2005 (70 FR 33042), inclusive of previous Addendum XV and ''safe harbor'' transfers.
[2] Landings of summer flounder in Delaware by vessels holding commercial Federal fisheries permits are prohibited for the 2005 calendar year.
[3] Maryland net change between transfer (13,230 lb (6,001 kg)) and revision (-11,577 lb (5,251 kg)) is 1,673 lb (759 kg).

### Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: June 15, 2005.

**Anne M. Lange,**

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

[FR Doc. 05–12204 Filed 6–16–05; 12:58 pm]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 041126332–5039–02; I.D. 061405B]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pollock from the Aleutian Islands Subarea to the Bering Sea Subarea

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

**ACTION:** Temporary rule; reallocation.

**SUMMARY:** NMFS is reallocating the projected unused amounts of Community Development Quota (CDQ), incidental catch allowance (ICA) and non-CDQ pollock from the Aleutian Islands subarea to the Bering Sea subarea. These actions are necessary to allow the 2005 total allowable catch (TAC) of pollock in the Aleutian Islands subarea to be harvested.

**DATES:** Effective June 21, 2005, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2005.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 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.

In the Aleutian Islands subarea, the 2005 A season allowance of non-CDQ pollock is 9,800 metric tons (mt), the ICA of pollock is 1,200 mt, and the CDQ pollock is 760 mt, as established by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005),

for the period 1200 hrs, A.l.t., January 1, 2005, through 1200 hrs, A.l.t., June 10, 2005.

As of May 21, 2005, the Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that the following A season apportionments of pollock in the Aleutian Islands subarea will not be harvested: 9,600 of non-CDQ pollock, 460 mt of ICA pollock and 760 mt of CDQ pollock. Therefore, in accordance with § 679.20(a)(5)(iii)(B)(*4*), NMFS reallocates 9,600 mt of non-CDQ pollock and 760 mt of CDQ pollock from the Aleutian Islands subarea to the Bering Sea subarea B season allocations. In accordance with § 679.20(a)(5)(iii)(B)(*2*)(*ii*), NMFS reallocates 460 mt from the Aleutian Islands subarea pollock ICA to the B season non-CDQ directed pollock fishery.

Also, the Regional Administrator has determined that the B season ICA is in excess of the necessary amount and is reallocating the excess B season apportionment of the ICA to the directed pollock fishery. In accordance with § 679.20(a)(5)(iii)(B)(*2*)(*ii*), NMFS reallocates 140 mt from the B season apportionment of the Aleutian Islands subarea pollock ICA to the B season non-CDQ directed pollock fishery.

Furthermore, the Regional Administrator has determined through consultation with the Aleut Corporation and the CDQ groups that 4,900 mt of the B season non-CDQ pollock and 1,140 mt of the B season CDQ pollock allocations in the Aleutian Islands subarea will not be harvested. Therefore, in accordance with § 679.20(a)(5)(iii)(B)(*4*), NMFS apportions 4,900 mt of non-CDQ pollock and 1,140 mt of CDQ pollock from the Aleutian Islands subarea to the Bering Sea subarea B season allocations. Table 3 has been revised to reflect this reallocation.

The harvest specifications for pollock in the Aleutian Islands subarea included in the harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005) are revised as follows: 200 mt to the A season allowance of non-CDQ pollock, 740 mt to the A season allowance of ICA pollock, 0 mt to the A season allowance of CDQ pollock, 1,000 mt to the B season allowance of non-CDQ pollock, 660 to the B season allowance of ICA pollock, and 0 mt to the B season allowance of CDQ pollock.

Pursuant to § 679.20(a)(5), Tables 3 and 10 are revised for the 2005 B season consistent with this reallocation. Footnote 1 continues to state the allocations under regulations at § 679.20(a)(5).

TABLE 3—2005 AND 2006 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA)[1]

[Amounts are in metric tons]

| Area and sector | 2005 Allocations | 2005 A season[1] | | 2005 B season[1] | 2006 Allocations | 2006 A season[1] | | 2006 B season[1] |
|---|---|---|---|---|---|---|---|---|
| | | A season DFA | SCA harvest limit[2] | B season DFA | | A season DFA | SCA harvest limit[2] | B season DFA |
| Bering Sea subarea | 1,478,500 | ..... | ..... | ..... | 1,487,756 | ..... | ..... | ..... |
| CDQ DFA | 147,850 | 59,140 | 41,398 | 90,610 | 148,776 | 59,510 | 41,657 | 89,265 |
| ICA[1] | 44,577 | ..... | ..... | ..... | 44,856 | ..... | ..... | ..... |
| AFA Inshore | 643,037 | 257,215 | 180,050 | 393,072 | 647,062 | 258,825 | 181,177 | 388,237 |
| AFA Catcher/Processors[3] | 514,429 | 205,772 | 144,040 | 314,458 | 517,650 | 207,060 | 144,942 | 310,590 |
| Catch by C/Ps | 470,703 | 188,281 | ..... | 287,729 | 473,650 | 189,460 | ..... | 284,190 |
| Catch by CVs[3] | 43,726 | 17,491 | ..... | 26,729 | 44,000 | 17,600 | ..... | 26,400 |
| Unlisted C/P Limit[4] | 2,572 | 1,029 | ..... | 1,572 | 2,588 | 1,035 | ..... | 1,553 |
| AFA Motherships | 128,607 | 51,443 | 36,010 | 78,614 | 129,412 | 51,765 | 36,235 | 77,647 |
| Excessive Harvesting Limit[5] | 225,063 | ..... | ..... | ..... | 226,472 | ..... | ..... | ..... |
| Excessive Processing Limit[6] | 385,822 | ..... | ..... | ..... | 388,237 | ..... | ..... | ..... |
| Total Bering Sea DFA | 1,433,923 | 573,570 | 401,498 | 876,754 | 1,487,756 | 577,160 | 404,012 | 865,740 |
| Aleutian Islands subarea[1] | 2,600 | ..... | ..... | ..... | 19,000 | ..... | ..... | ..... |
| CDQ DFA | ..... | ..... | ..... | ..... | 1,900 | 760 | ..... | 1,140 |
| ICA | 1,400 | 740 | ..... | 660 | 2,000 | 1,200 | ..... | 800 |
| Aleut Corporation | 1,200 | 200 | ..... | 1,000 | 15,100 | 9,800 | ..... | 5,300 |
| Bogoslof District ICA[7] | 10 | ..... | ..... | ..... | 10 | ..... | ..... | ..... |

[1]Under § 679.20(a)(5)(i)(A), the Bering Sea subarea pollock after subtraction for the CDQ DFA - 10 percent and the ICA - 3.35 percent, the pollock TAC is allocated as a DFA as follows: inshore component - 50 percent, catcher/processor component - 40 percent, and mothership component - 10 percent. In the Bering Sea subarea, the A season, January 20 - June 10, is allocated 40 percent of the DFA and the B season, June 10 - November 1 is allocated 60 percent of the DFA. The Aleutian Islands (AI) directed pollock fishery allocation to the Aleut Corporation remains after first subtracting for the CDQ DFA - 10 percent and second the ICA - 2,000 mt. The Aleut Corporation directed pollock fishery is closed to directed fishing until the management provisions for the AI directed pollock fishery become effective under Amendment 82. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the directed pollock fishery.

[2]In the Bering Sea subarea, no more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of SCA before April 1 or inside the SCA after April 1. If 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1.

[3]Under § 679.20(a)(5)(i)(A)(*4*), not less than 8.5 percent of the DFA allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.

[4]Under § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

[5]Under § 679.20(a)(5)(i)(A)(*6*) NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the pollock DFAs.

[6]Under § 679.20(a)(5)(i)(A)(*7*) NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the pollock DFAs.

[7]The Bogoslof District is closed by the final harvest specifications to directed fishing for pollock. The amounts specified are for ICA only, and are not apportioned by season or sector.

TABLE 10—2005 AND 2006 BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS

[Amounts are in metric tons]

| Cooperative name and member vessels | Sum of member vessel's official catch histories[1] | Percentage of inshore sector allocation | 2005 Annual cooperative allocation | 2006 Annual cooperative allocation |
|---|---|---|---|---|
| *Akutan Catcher Vessel Association*<br>ALDEBARAN, ARCTIC EXPLORER, ARCTURUS, BLUE FOX, CAPE KIWANDA, COLUMBIA, DOMINATOR, EXODUS, FLYING CLOUD, GOLDEN DAWN, GOLDEN PISCES, HAZEL LORRAINE, INTREPID EXPLORER, LESLIE LEE, LISA MELINDA, MARK I, MAJESTY, MARCY J, MARGARET LYN, NORDIC EXPLORER, NORTHERN PATRIOT, NORTHWEST EXPLORER, PACIFIC RAM, PACIFIC VIKING, PEGASUS, PEGGY JO, PERSEVERANCE, PREDATOR, RAVEN, ROYAL AMERICAN, SEEKER, SOVEREIGNTY, TRAVELER, VIKING EXPLORER | 245,922 | 28.130% | 182,925 | 182,018 |
| *Arctic Enterprise Association*<br>BRISTOL EXPLORER, OCEAN EXPLORER, PACIFIC EXPLORER | 36,807 | 4.210% | 27,378 | 27,242 |
| *Northern Victor Fleet Cooperative*<br>ANITA J, COLLIER BROTHERS, COMMODORE, EXCALIBUR II, GOLDRUSH, HALF MOON BAY, MISS BERDIE, NORDIC FURY, PACIFIC FURY, POSEIDON, ROYAL ATLANTIC, SUNSET BAY, STORM PETREL | 73,656 | 8.425% | 54,788 | 54,516 |
| *Peter Pan Fleet Cooperative*<br>AJ, AMBER DAWN, AMERICAN BEAUTY, ELIZABETH F, MORNING STAR, OCEAN LEADER, OCEANIC, PACIFIC CHALLENGER, PROVIDIAN, TOPAZ, WALTER N | 23,850 | 2.728% | 17,740 | 17,652 |
| *Unalaska Cooperative*<br>ALASKA ROSE, BERING ROSE, DESTINATION, GREAT PACIFIC, MESSIAH, MORNING STAR, MS AMY, PROGRESS, SEA WOLF, VANGUARD, WESTERN DAWN | 106,737 | 12.209% | 79,395 | 79,001 |
| *UniSea Fleet Cooperative*<br>ALSEA, AMERICAN EAGLE, ARGOSY, AURIGA, AURORA, DEFENDER, GUN-MAR, MAR-GUN, NORDIC STAR, PACIFIC MONARCH, SEADAWN, STARFISH, STARLITE, STARWARD | 213,521 | 24.424% | 158,824 | 158,037 |
| *Westward Fleet Cooperative*<br>ALASKAN COMMAND, ALYESKA, ARCTIC WIND, CAITLIN ANN, CHELSEA K, DONA MARTITA, FIERCE ALLEGIANCE, HICKORY WIND, OCEAN HOPE 3, PACIFIC KNIGHT, PACIFIC PRINCE, VIKING, WESTWARD I | 173,744 | 19.874% | 129,236 | 128,595 |
| Open access AFA vessels | 0 | 0.00% | 0 | 0 |
| Total inshore allocation | 874,238 | 100% | 650,287 | 647,062 |

[1]According to regulations at § 679.62(e)(1), the individual catch history for each vessel is equal to the vessel's best 2 of 3 years inshore pollock landings from 1995 through 1997 and includes landings to catcher/processors for vessels that made 500 or more mt of landings to catcher/processors from 1995 through 1997.

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Aleutian Islands subarea pollock to the Bering Sea subarea B season. At the end of May 2005, NMFS was notified by the Aleut Corporation and the CDQ groups that the pollock allocations in the Aleutian Islands subarea will not be harvested. Since the B season opens June 10, it is important to immediately inform the industry as to the final Bering Sea subarea B season allocations. Immediate notification is necessary in order to allow an orderly transition into the B season and to provide timely information to allow for the orderly conduct and efficient operation of this fishery thereby allowing the industry to plan for the fishing season and avoid potential disruption to the fishing fleet as well as processors.

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: June 14, 2005.

**John H. Dunnigan**

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

[FR Doc. 05–12205 Filed 6–20–05; 8:45 am]

**BILLING CODE 3510–22–S**

# Proposed Rules

Federal Register
Vol. 70, No. 118
Tuesday, June 21, 2005

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 996

**[Docket No. FV05–996–2PR]**

## Change in Minimum Quality and Handling Standards For Domestic and Imported Peanuts Marketed in the United States

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule would change the peanut quality and handling standards (Standards) to require that domestic and imported peanuts be dried to 18 percent moisture or less prior to inspection and to 10.49 percent or less prior to storing or milling. Virginia-type peanuts used for seed must be dried to 18 percent or less prior to inspection and to 11.49 percent or less prior to storing or milling. The Standards and the Peanut Standards Board (Board) were established by the Department of Agriculture (USDA), pursuant to section 1308 of the Farm Security and Rural Investment Act of 2002. The Board suggested changing the peanut quality and handling standards to allow handlers and importers to receive or acquire high moisture peanuts to promote the development of new drying technologies, increase efficiencies and reduce costs to the industry.

**DATES:** Comments must be received by July 6, 2005.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov* or *www.regulations.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

**FOR FURTHER INFORMATION CONTACT:** Dawana J. Clark or Kenneth G. Johnson, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 4700 River Road, Unit 155, Riverdale, Maryland 20737; telephone (301) 734–5243, Fax: (301) 734–5275 or George J. Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; telephone (202) 720–2491, Fax: (202) 720–8938; or E-mail: *dawana.clark@usda.gov*, kenneth.johnson@usda.gov or *george.kelhart@usda.gov*.

Small businesses may request information on complying with this rule by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *jay.guerber@usda.gov*.

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under section 1308 of the Farm Security and Rural Investment Act of 2002 (Public Law 107–171), 7 U.S.C. 7958, hereinafter referred to as the ''Farm Bill.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

### Background

Section 1308 of the Farm Bill requires that USDA take several actions with regard to peanuts marketed in the United States: Ensure mandatory inspection on all peanuts marketed in the United States; establish the Board comprised of producers and industry representatives to advise USDA; develop peanut quality and handling standards; and modify those quality and handling standards when needed. An interim final rule was published in the **Federal Register** (67 FR 57129) on September 9, 2002, terminating the previous peanut programs and establishing standards in Part 996 to insure the continued inspection of 2002 crop year peanuts and subsequent crop year peanuts, 2001 crop year peanuts not yet inspected, and 2001 crop year failing peanuts that had not yet met disposition standards. The initial Board was selected and announced on December 5, 2002. A final rule finalizing the interim final rule was published in the **Federal Register** (68 FR 1145) on January 9, 2003, to continue requiring all domestic and imported peanuts marketed in the United States to be handled consistent with the handling standards and officially inspected against the quality standards of the new program. The peanut quality and handling standards were later revised in rules published in the **Federal Register** (68 FR 46919, August 7, 2003, and 68 FR 53490, September 11, 2003). The provisions of this program continue in force and effect until modified, suspended, or terminated.

Pursuant to the Farm Bill, USDA has consulted with Board members in its review of the handling and quality standards for the 2005 and subsequent crop years. The quality and handling standards are intended to assure that satisfactory quality and wholesome peanuts are used in domestic and import peanut markets. All peanuts intended for human consumption must be officially inspected and graded by the Federal or Federal-State Inspection Service and, if necessary, undergo chemical testing by a USDA laboratory or a private laboratory approved by USDA.

Under the Standards, § 996.30(b) Moisture specifies ''No handler or importer shall receive or acquire farmers stock peanuts for subsequent disposition to human consumption outlets containing more than 10.49 percent moisture: *Provided*, That peanuts of a higher moisture may be received and dried to not more than 10.49 percent moisture prior to storing or milling: And *Provided further*, That

Virginia-type peanuts used for seed may be received or acquired containing up to 11.49 percent moisture.''

High Moisture peanuts are farmers stock peanuts that have a moisture content, when harvested, in excess of 10.49 percent moisture. In order to ensure that high moisture peanuts are dried to or below 10.49 percent moisture, growers must dry the peanuts on individual wagons/trailers. Often farmers stock peanuts are dried, taken to a sheller or handler, inspected and found to still be too high in moisture content, and must then be returned for additional drying at the grower's farm, at a handler/buying point facility, or at another location. Not all buying points, especially those in very rural locations, have drying facilities. This results in inefficiencies and added costs.

Handlers may receive high moisture peanuts, but cannot acquire them. Peanuts that are received cannot be mixed, commingled or otherwise lose their identity. Accordingly, any high moisture deliveries from a producer cannot be mixed with other high moisture deliveries. However, the inability to commingle high moisture peanut deliveries for drying slows producer deliveries and raises drying costs. It also raises inspection costs because the peanuts need to be inspected a second time to verify moisture levels prior to handler acquisition.

In response to requests from industry representatives and the Board, USDA allowed a trial relaxation in incoming peanut requirements for the 2004 crop year only. The Standards continued to require that farmers stock peanuts be dried to 10.49 percent moisture or less before storing or milling. However, wagonloads or lots of farmers stock peanuts grading between 10.50 and 18.00 percent moisture could be commingled at the handler/buying point facilities and bulk dried by handlers, in agreement with each producer of the wagonloads or lots being commingled. An 18 percent moisture limit recognizes the difficulties in the Inspection Service's use of its shelling equipment for peanuts with more than 18 percent moisture. After drying, a second inspection for moisture only was performed by Federal-State inspectors and documented accordingly. When the commingled lot was presented for the second ''moisture only'' inspection, the buying point was required to provide documentation identifying the specific lots or wagonloads which constituted the commingled lot. In the event that a commingled lot, after bulk drying, still did not meet the 10.49 percent moisture requirement, the lot could be further dried and re-inspected until the lot contained no more than 10.49 percent moisture.

This temporary relaxation was the culmination of several meetings and requests from the Board and the peanut industry to bring the high moisture issue to conclusion. The Board made several recommendations regarding high moisture peanuts in 2003 and 2004. However, prior to the Board's discussion of any changes for 2005 crop peanuts, the Department's Farm Service Agency (FSA) identified an FSA program issue requiring resolution before implementation of any relaxation to the standard. Under FSA's loan program (7 CFR part 1421), high moisture peanuts must be segregated by each producer and dried to a moisture content not exceeding 10.49 percent. If high moisture peanuts from more than one producer are commingled and batch dried, the quality, quantity, and identity of each participating producer's peanuts would be lost. As such, those high moisture peanuts would not be eligible for FSA marketing assistance loans (MAL) or loan deficiency payments (LDP).

These concerns have been resolved through a formulation of a revised FSA Form 1007 (a combined inspection certificate and calculation worksheet) that identifies and tracks high moisture peanut shipments. Inspection procedures and reporting requirements would remain unchanged. The original peanut inspection notesheet/certificate would accompany the FSA Form 1007 with the converted high moisture factors from the high moisture conversion charts provided by the National Peanut Research Laboratory (NPRL). The NPRL conversion charts provide a guide for varying levels of high moisture peanuts received and the converted grade factor equivalents when dried down to an acceptable level without having to conduct another inspection on the dried down peanuts.

The Board met on March 16, 2005, and unanimously recommended that § 996.30(b) be modified so that handlers and importers may receive or acquire farmers stock peanuts for subsequent disposition to human consumption outlets containing more than 18 percent moisture: *Provided*, That farmers stock peanuts be dried to not more than 18 percent moisture prior to inspection and grading. If the sound mature kernel and sound splits grade is 60 or below on a lot of peanuts that contains moisture between 10.49 and 18 percent, the lot of peanuts shall be dried to a moisture level of 10.49 or below prior to inspection and grading. Valencia peanuts may only be inspected at moisture levels 10.49 and below. All farmers stock peanuts must be dried to not more than 10.49 percent moisture prior to storing or milling: *Provided*, That Virginia-type peanuts used for seed must be dried to 18 percent or less prior to inspection and to 11.49 percent or less prior to storing or milling.

On March 23, 2005, the Board's implementation sub-committee recommended the removal from the Board's recommendation of the moisture requirement on peanuts with a sound mature kernel plus sound splits grade of 60 or below.

According to a number of Board members, allowing handlers and importers to receive high moisture peanuts could make a significant difference in the efficient acquisition and warehousing of farmers' stock peanuts each fall. Allowing the acquisition of high moisture peanuts would allow handlers to accumulate a number of loads and batch dry them at the same time. These Board members indicated that this could speed up drying, grading, and movement of peanuts at harvest, which would be especially important when adverse weather conditions during harvest could cause peanut quality to deteriorate. According to some Board members, it would also reduce drying and inspection costs.

Therefore under this proposal, domestic and imported peanuts must be dried to 18 percent or less prior to inspection and 10.49 percent or less prior to storing or milling. Virginia-type peanuts used for seed must be dried to 18 percent or less prior to inspection and to 11.49 percent or less prior to storing or milling.

**Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Analysis Act (RFA) the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS had prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. There are approximately 55 peanut shelling entities, operating approximately 70 shelling plants, and 25 importers subject to regulation under the peanut program. An estimated two-thirds of the handlers and nearly all of the importers may be classified as small entities, based on documents and reports received by USDA. Small agricultural service firms, which include handlers and importers,

are defined by the Small Business Administration (13 CFR 121.201), as those having annual receipts of less than $6,000,000.

An approximation of the number of peanut farms that could be considered small agricultural businesses under the SBA definition (less than $750,000 in annual receipts) can be obtained from the 2002 Agricultural Census, which is the most recent information on the number of farms categorized by size. There were 7,551 peanut farms with annual agricultural sales valued at less than $500,000 in 2002, representing 87 percent of the total number of peanut farms in the U.S. (8,640). Since the Agricultural Census does not use $750,000 in sales as a category, $500,000 in sales is the closest approximation. Assuming that most of the sales from those farms are attributable to peanuts, the percentage of small peanut farms in 2002 (less than $750,000 in sales) was likely a few percentage points higher than 87 percent, and may have shifted by a small amount since 2002. Thus, the proportion of small peanut farms is likely to be close to 90 percent.

According to the National Agricultural Statistics Service (NASS), the two-year average peanut production for the 2003 and 2004 crop years was 4.203 billion pounds, harvested from average acreage of 1.353 million, yielding an average of 3,106 pounds per acre. The average value of production for the two-year period was $816.904 million. The average grower price over the two-year period was $0.194 per pound, and the average value per harvested acre was $604. Dividing the two year average value of production ($816.904 million) by the estimated 8,640 peanut farms (2002 Agricultural Census) yields an estimated average peanut sales revenue per farm of approximately $94,440. Average peanut acreage per farm is 156.

The Agricultural Census provides data on the value of annual sales of all agricultural products from peanut farms in terms of ranges. The value of annual agricultural product sales of the median peanut farm in 2002 was between $50,000 and $99,999. The median is the midpoint ranging from the largest to the smallest.

Several producers may own a single farm jointly, or, conversely, a producer may own several farms. In the peanut industry, there is, on average, more than one producer per farm. Dividing the two year average value of production of $816.904 million by 14,186 peanut producers (Farm Service Agency 2004 estimate) results in an estimate of average revenue per producer of approximately $57,585.

The current 14 custom blanchers, 8 custom remillers, 4 oil mill operators, 4 USDA and 15 USDA-approved private chemical (aflatoxin) laboratories are subject to this rule to the extent that they must comply with reconditioning provisions under § 996.50 and reporting and recordkeeping requirements under § 996.71.

These requirements are applied uniformly to these entities, whether large or small. In addition, there are currently 10 State inspection programs (Inspection Service) that will perform inspections under this peanut program.

Importers of peanuts cover a broad range of business entities, including fresh and processed food handlers and commodity brokers who buy agricultural products on behalf of others. Some large, corporate handlers are also importers of peanuts. AMS is not aware of any peanut producers who imported peanuts during any of the recent quota years.

The majority of peanut importers have annual receipts under $6,000,000. Some importers use customs brokers' import services. These brokers are usually held accountable by the importer to see that entry requirements under § 996.60 and reporting and recordkeeping requirements under § 996.71 are met. These reporting requirements are not applied disproportionately to small customs brokers.

In view of the foregoing, it can be concluded that the majority of peanut producers, handlers, importers, and above-mentioned entities may be classified as small businesses.

This proposal would change the minimum peanut quality and handling standards so that handlers may receive or acquire peanuts with a moisture content of up to 18 percent. The Board suggested changing the minimum peanut quality and handling standards to allow handlers to receive or acquire high moisture peanuts to promote the development of new drying technologies, increase efficiencies and reduce costs to the industry.

USDA has considered alternatives to the suggested change to the quality and handling standards. The Farm Bill requires USDA to consult with the Board on these standards. An alternative would be to continue the current standards for the 2005 crop year. The current Board's recommended change to the handling and quality standards issue was raised during last year's USDA/Board standards review but was tabled until an inter-agency collaboration (AMS and FSA) could coordinate their respective peanut handling and loan regulations. However, because of the anticipated benefits of the recommended change, USDA believes the implementation of the Board's suggested change would be preferable to continuing without change. The Board's meeting was open to a wide audience and all interested persons were invited to attend the meeting and provide input.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. A small business guide on complying with AMS fresh fruit, vegetable, and specialty crop programs similar to this peanut program may be viewed at the following Web site: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide or compliance with this program should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on the Board's recommendation to change the quality and handling standards. Interested persons also are invited to submit information on the regulatory and economic impact of this action on small businesses. A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule, if adopted, should be in place as soon as possible for the 2005 crop year. Any comments timely received will be considered before a final determination is made in this matter.

**Information Collection**

The Farm Bill specifies in section 1601(c)(2)(A) that the standards established pursuant to it, may be implemented without regard to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Furthermore, this rule does not change the existing information collection burden.

Section 1601 of the Farm Bill also provides that promulgation of or amendments to the standards may be implemented without extending interested parties an opportunity to comment. However, due to the nature of the proposed changes, interested parties are provided 15 days to file comments.

**List of Subjects 7 CFR Part 996**

Food grades and standards, Imports, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 996 is proposed to be amended as follows:

## PART 996—MINIMUM QUALITY AND HANDLING STANDARDS FOR DOMESTIC AND IMPORTED PEANUTS MARKETED IN THE UNITED STATES

1. The authority citation for 7 CFR Part 996 continues to read as follows:

**Authority:** 7 U.S.C. 7958.

2. Paragraph (b) of § 996.30 is revised to read as follows:

**§ 996.30 Incoming quality standards.**

* * * * *

(b) *Moisture.* Domestic and imported peanuts shall be dried to 18 percent or less prior to inspection and to 10.49 percent or less prior to storing or milling: *Provided*, That Virginia-type peanuts used for seed shall be dried to 18 percent or less prior to inspection and to 11.49 percent or less prior to storing or milling.

* * * * *

Dated: June 13, 2005.

**Barry L. Carpenter,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05–12156 Filed 6–20–05; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2005–21275; Directorate Identifier 2005–CE–28–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; The Cessna Aircraft Company Models 208 and 208B Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for all The Cessna Aircraft Company (Cessna) Models 208 and 208B airplanes. This proposed AD would require you to install a pilot assist handle, Cessna part number SK208–146–2, for all affected airplanes, install deicing boots on landing gear struts and cargo pod on certain Cessna Models 208 and 208B airplanes, and make changes to the Pilot's Operating Handbook (POH) and FAA-approved Airplane Flight Manual (AFM), and to the POH and AFM Supplement S1 for all affected airplanes. This proposed AD results from reports of several accidents and of problematic events involving the affected airplanes during operations in icing conditions, including nine events in the 2004–2005 icing season, and ground icing conditions. We are issuing this proposed AD to prevent ice adhering to critical surfaces. Ice adhering to critical surfaces could result in a reduction in airplane performance with the consequences that the airplane cannot perform a safe takeoff, climb, or maintain altitude.

**DATES:** We must receive any comments on this proposed AD by August 22, 2005.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., NASSIF Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the NASSIF Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this proposed AD, contact The Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277–7706; telephone: (316) 517–5800; facsimile: (316) 942–9006.

To view the comments to this proposed AD, go to *http://dms.dot.gov.* The docket number is FAA–2005–21275; Directorate Identifier 2005–CE–28–AD.

**FOR FURTHER INFORMATION CONTACT:** Paul Pellicano, Aerospace Engineer (Icing), FAA, Small Airplane Directorate, c/o Atlanta Aircraft Certification Office (ACO), One Crown Center, 1985 Phoenix Boulevard, Suite 450, Atlanta, GA 30349; telephone: (770) 703–6064; facsimile: (770) 703–6097.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

*How do I comment on this proposed AD?* We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include the docket number, ''FAA–2005–21275; Directorate Identifier 2005–CE–28–AD'' at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2005–21275; Directorate Identifier 2005–CE–28–AD. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

*Are there any specific portions of this proposed AD I should pay attention to?* We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

### Docket Information

*Where can I go to view the docket information?* You may view the AD docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern standard time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES.** You may also view the AD docket on the Internet at *http://dms.dot.gov.* The comments will be available in the AD docket shortly after the DMS receives them.

### Discussion

*What events have caused this proposed AD?* The FAA has received several reports of accidents and incidents concerning problems with Cessna Models 208 and 208B airplanes during operations in icing conditions. This includes a total of six accidents in the previous two icing seasons and nine incidents in the past few months. One-third of the Model 208 icing related accidents occurred as a result of loss of control after takeoff in ground icing conditions. One-third are suspected to

have occurred in supercooled large droplets, icing conditions outside the 14 CFR part 25 Appendix C certification envelope. The Cessna Models 208 and 208B are certificated to 14 CFR part 23, but 14 CFR part 23 references 14 CFR part 25 Appendix C for icing certification.

Findings from the accidents conclude that there was a reduction in airplane performance due to drag from airframe ice accretion. The airplanes could not perform a safe takeoff, climb, or maintain altitude.

*What is the potential impact if FAA took no action?* Ice adhering to critical surfaces could result in a reduction in airplane performance with the consequence that the airplane cannot climb or maintain altitude.

*Is there service information that applies to this subject?* Cessna has issued the following service information:

—Service Bulletin No. CAB04–9, dated October 4, 2004;
—Service Kit No. SK208–146, dated October 4, 2004;
—Service Bulletin No. CAB95–19, dated October 13, 1995;
—Service Bulletin No. CAB93–20, Revision 1, dated October 13, 1995; and
—Accessory Kit No. AK208–6C, issued December 2, 1991, Revision C, dated August 27, 1993.

*What are the provisions of this service information?* The service information includes procedures for:

—Adding a low airspeed in icing warning system, a windshield ice indicator assembly, a pilot assist handle, and an enlarged windshield anti-ice panel; and
—Installing cargo pod and landing gear deice system.

**FAA's Determination and Requirements of this Proposed AD**

*What has FAA decided?* We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. For this reason, we are proposing AD action.

*What would this proposed AD require?* This proposed AD would require you to:

—Install the pilot assist handle (part number (P/N) SK208–146–2) for all Cessna Models 208 and 208B airplanes;
—Install Cessna Accessory Kit AK208–6C for all Cessna Models 208 and 208B airplanes equipped with pneumatic deicing boots for flight into known icing; and
—Make changes to the Pilot's Operating Handbook (POH) and FAA-approved Airplane Flight Manual (AFM), and to the POH and AFM Supplement S1.

*How does the revision to 14 CFR part 39 affect this proposed AD?* On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

**Costs of Compliance**

*How many airplanes would this proposed AD impact?* We estimate that this proposed AD affects 743 airplanes in the U.S. registry.

*What would be the cost impact of this proposed AD on owners/operators of the affected airplanes?* We estimate the following costs to do the proposed installation of the pilot assist handle (P/N SK208–146–2) for all Cessna Models 208 and 208B airplanes:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 5 work hours × $65 = $325 | $858 | $1,183 | 743 × $1,183 = $878,969 |

We estimate the following costs to do the proposed installation of the Cessna Accessory Kit AK208–6C for certain Cessna Modes 208 and 208B:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. Operators |
|---|---|---|---|
| 37 work hours × $65 = $2,405 | $6,000 | $8,405 | 372 × $8,405 = $3,126,660 |

We estimate the following costs to do the proposed changes to the Pilot's Operating Handbook (POH) and FAA-approved Airplane Flight Manual (AFM), and to the POH and AFM Supplement S1:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 1 work hour × $65 = $65 | Not Applicable | $65 | 743 × $65 = $48,295 |

**Authority for This Rulemaking**

*What authority does FAA have for issuing this rulemaking action?* Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

**Regulatory Findings**

*Would this proposed AD impact various entities?* We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on

the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

*Would this proposed AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this proposed AD:

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

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

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

We prepared a summary of the costs to comply with this proposed AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket FAA–2005–21275; Directorate Identifier 2005–CE–28–AD'' in your request.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**The Cessna Aircraft Company:** Docket No. FAA–2005–21275; Directorate Identifier 2005–CE–28–AD

**When Is the Last Date I Can Submit Comments on This Proposed AD?**

(a) We must receive comments on this proposed airworthiness directive (AD) by August 22, 2005.

**What Other ADs Are Affected by This Action?**

(b) None.

**What Airplanes Are Affected by This AD?**

(c) This AD affects Models 208 and 208B, all serial numbers, that are certificated in any category.

**What Is the Unsafe Condition Presented in This AD?**

(d) This AD is the result of reports of several accidents and of problematic events involving the affected airplanes during operations in icing conditions, including nine events in the 2004–2005 icing season, and ground icing conditions. The actions specified in this AD are intended to prevent ice adhering to critical surfaces. Ice adhering to critical surfaces could result in a reduction in airplane performance, with the consequence that the airplane cannot perform a safe takeoff, climb, or maintain altitude. The pilot assist handle will allow a pre-takeoff visual/tactile check of the wing upper surface to be safely conducted in ground icing conditions.

**What Must I Do To Address This Problem?**

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

| Actions | Compliance | Procedures |
|---|---|---|
| (1) *For Cessna Models 208 and 208B:* Install the pilot assist handle (part number (P/N) SK208–146–2). | Within the next 125 days after the effective date of this AD, unless already done. | Follow Cessna Caravan Service Bulletin No. CAB04–9, dated October 4, 2004 and Cessna Caravan Service Kit No. SK208–146, dated October 4, 2004. |
| (2) *For any Cessna Model 208B airplane with Pratt & Whitney of Canada Ltd., PT6A–114 Turbo Prop engine installed (600 SHP) or equivalent, and equipped with pneumatic deicing boots for flight into known icing:* Install Cessna Accessory Kit AK208–6C. | Within the next 125 days after the effective date of this AD, unless already done. | Follow Cessna Caravan Service Bulletin No. CAB95–19, dated October 13, 1995, and Cessna Caravan Accessory Kit No. AK208–6C, issued December 2, 1991, Revision C, dated August 27, 1993. |
| (3) *For any Cessna Models 208 and 208B airplanes equipped with pneumatic deicing boots for flight into known icing and not included in Paragraph (e)(2):* Install Cessna Accessory Kit AK208–6C. | Within the next 125 days after the effective date of this AD, unless already done. | Follow Cessna Caravan Service Bulletin No. CAB93–20, Revision 1, dated October 13, 1995, and Cessna Caravan Acessory Kit no. AK208–6C, issued December 2, 1991, Revision C, dated August 27, 1993. |
| (4) *For all Cessna Models 208 and 208B equipped with pneumatic deicing boots:* Make the changes (identified in the Appendix to this AD) to the Cessna Models 208 or 208B Pilot's Operating Handbook (POH) and FAA approved Airplane Flight Manual (AFM) or FAA-approved later versions of the POH and AFM that incorporate the same information addressed in this AD. | Before further flight after the installation required by paragraph (e)(2) or (e)(3) of this AD. | You may make the changes by pen or other permanent means and insert a copy of this AD into the appropriate sections of the POH. |

(f) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may do the flight manual and POH changes requirement of this AD. Make an entry in the aircraft records showing compliance with this portion of the AD following section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

**May I Request an Alternative Method of Compliance?**

(g) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Atlanta Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Paul Pellicano, Aerospace Engineer (Icing), FAA, Small Airplane Directorate, c/o Atlanta ACO, One Crown Center, 1985 Phoenix Boulevard, Suite 450, Atlanta, GA 30349; telephone: (770) 703–6064; facsimile: (770) 703–6097.

**May I Get Copies of the Documents Referenced in This AD?**

(h) To get copies of the documents referenced in this AD, contact The Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277–7706; telephone: (316) 517–5800; facsimile: (316)

942–9006. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., NASSIF Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov*. The docket number is Docket No. FAA–2005–21275; Directorate Identifier 2005–CE–28–AD.

Issued in Kansas City, Missouri, on June 14, 2005.

**John R. Colomy,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

### Appendix to Docket No. FAA–2005–21275; Changes to the Cessna Models 208 or 208B Pilot's Operating Handbook (POH) and FAA Approved Airplane Flight Manual

*Affected Cessna Models 208 or 208B Pilot's Operating Handbook (POH) and FAA Approved Airplane Flight Manual (AFM) Supplement S1:*

1. Cessna Model 208 (600 SHP) Pilot's Operating Handbook, Supplement S1, Revision 5, D1307–S1–05, dated March 2, 2005.

2. Cessna Model 208 (675 SHP) Pilot's Operating Handbook, Supplement S1, Revision 5, D1352–S1–05, dated March 2, 2005.

3. Cessna Model 208B (600 SHP) Pilot's Operating Handbook, Supplement S1, Revision 5, D1309–S1–05, dated March 2, 2005.

4. Cessna Model 208B (675 SHP) Pilot's Operating Handbook, Supplement S1, Revision 6, D1329–S1–06, dated March 2, 2005.

*Remove the following paragraph under ''REQUIRED EQUIPMENT'' in the Limitations section of the Affected Cessna Models 208 or 208B Pilot's Operating Handbook (POH), Supplement S1*:

''The following additional equipment is not required for flight into icing conditions as defined by FAR 25, but may be installed on early serial airplanes by using optional accessory Kit AK208–6. On later serial airplanes, this equipment may be included with the flight into known icing package. If installed, this equipment must be fully operational:''

*Affected Cessna Models 208 or 208B Pilot's Operating Handbook (POH) and FAA Approved Airplane Flight Manuals or FAA-approved later versions that incorporate the same information addressed in this AD*:

1. Cessna Model 208 (600 SHP) Pilot's Operating Handbook, Revision 33, D1307–33–13PH, dated October 30, 2002.

2. Cessna Model 208 (675 SHP) Pilot's Operating Handbook, Revision 6, D1352–6–13PH, dated October 30, 2002.

3. Cessna Model 208B (600 SHP) Pilot's Operating Handbook, Revision 28, D1309–28–13PH, dated October 30, 2002.

4. Cessna Model 208B (675 SHP) Pilot's Operating Handbook, Revision 22, D1329–22–13PH, dated October 30, 2002.

*Add the following to the equipment listed under ''FLIGHT INTO KNOWN ICING'' in the ''KINDS OF OPERATION LIMITS'' in the LIMITATIONS section of the FAA approved Flight Manual (AFM) or FAA-approved later versions that incorporate the same information addressed in this AD:*

''Lower main landing gear leading edge deice boots''

''Cargo pod nosecap deice boot''

[FR Doc. 05–12149 Filed 6–20–05; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2005–20768; Directorate Identifier 2005–CE–16–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Burkhart Grob Model G 103 C Twin III SL Sailplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede Airworthiness Directive (AD) 97–24–09, which applies to Burkhart Grob Model G 103 C Twin III SL sailplanes. AD 97–24–09 currently requires repetitively inspecting the propeller bearing and upper pulley wheel for increased play and, if increased play is found, modifying the propeller bearing and pulley wheel. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this proposed AD to prevent loss of the sailplane propeller caused by increased play in the current design propeller bearing and upper pulley wheel. This could result in loss of control of the sailplane.

**DATES:** We must receive any comments on this proposed AD by July 25, 2005.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., NASSIF Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the NASSIF Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this proposed AD, contact GROB LUFT-und, Raumfahrt, Lettenbachstrasse 9, D–86874 tussenhausen-Mattsies, Federal Republic of Germany; telephone: +49 8268 998139; facsimile: +49 8268 998200.

To view the comments to this proposed AD, go to *http://dms.dot.gov*. The docket number is FAA–2005–20768; Directorate Identifier 2005–CE–16–AD.

**FOR FURTHER INFORMATION CONTACT:** Gregory A. Davison, Aerospace Engineer, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

*How do I comment on this proposed AD?* We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include the docket number, ''FAA–2005–20768; Directorate Identifier 2005–CE–16–AD'' at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2005–20768; Directorate Identifier 2005–CE–16–AD. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

*Are there any specific portions of this proposed AD I should pay attention to?* We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this

proposed AD in light of those comments and contacts.

**Docket Information**

*Where can I go to view the docket information?* You may view the AD docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern standard time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES.** You may also view the AD docket on the Internet at *http://dms.dot.gov*. The comments will be available in the AD docket shortly after the DMS receives them.

**Discussion**

*Has FAA taken any action to this point?* Increased play in the propeller bearing and pulley wheel on a Burkhart Grob Model G 103 C Twin III SL sailplane caused us to issue AD 97–24–09, Amendment 39–10216 (62 FR 62945, November 26, 1997). AD 97–24–09 currently requires the following on Grob Model G 103 C Twin III SL sailplanes:

—Repetitively inspecting the propeller bearing and upper pulley wheel for increased play; and

—If increased play is found, modifying the propeller bearing and pulley wheel with a part of improved design.

*What has happened since AD 97–24–09 to initiate this proposed action?* The LBA, which is the airworthiness authority for Germany, recently notified FAA of the need to change AD 97–24–09. On April 24, 2002, Grob issued Service Bulletin 869–18/3, dated May 24, 2002, further revising the installation requirements (torque values) specified in their previous bulletin. Specifically, the service bulletin includes procedures for modifying the grooved nut of the upper pulley wheel.

*What action did the LBA take?* The LBA classified this service bulletin as mandatory and issued German AD 1996–206/3, dated August 22, 2002, to ensure the continued airworthiness of these sailplanes in Germany.

*Did the LBA inform the United States under the bilateral airworthiness agreement?* These Grob Model G 103 C Twin III SL sailplanes are manufactured in Germany and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the LBA has kept us informed of the situation described above.

**FAA's Determination and Requirements of This Proposed AD**

*What has FAA decided?* We have examined the LBA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other Burkhart Grob Model G 103 C Twin III SL sailplanes of the same type design that are registered in the United States, we are proposing AD action to prevent loss of the sailplane propeller caused by increased play in the current design propeller bearing and upper pulley wheel. This could result in loss of control of the sailplane.

*What would this proposed AD require?* This proposed AD would supersede AD 97–24–09 with a new AD that would incorporate the actions in the previously-referenced service bulletin.

*How does the revision to 14 CFR part 39 affect this proposed AD?* On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

**Costs of Compliance**

*How many sailplanes would this proposed AD impact?* We estimate that this proposed AD affects 8 sailplanes in the U.S. registry.

*What would be the cost impact of this proposed AD on owners/operators of the affected sailplanes?* We estimate the following costs to do this proposed modification:

| Labor cost | Parts cost | Total cost per sailplane | Total cost on U.S. operators |
|---|---|---|---|
| 6 workhours × $65 = $390 | N/A | $390 | $3,120 |

**Authority for This Rulemaking**

*What authority does FAA have for issuing this rulemaking action?* Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

**Regulatory Findings**

*Would this proposed AD impact various entities?* We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

*Would this proposed AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this proposed AD:

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

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

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

We prepared a summary of the costs to comply with this proposed AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket FAA–2005–20768;

Directorate Identifier 2005–CE–16–AD'' in your request.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 97–24–09, Amendment 39–10216 (62 FR 62945, November 26, 1997), and by adding a new AD to read as follows:

**Burkhart Grob Luft-und:** Docket No. FAA–2005–20768; Directorate Identifier 2005–CE–16–AD.

**When Is the Last Date I Can Submit Comments on This Proposed AD?**

(a) We must receive comments on this proposed airworthiness directive (AD) by July 25, 2005.

**What Other ADs Are Affected by This Action?**

(b) This AD supersedes AD 97–24–09, Amendment 39–10216.

**What Sailplanes Are Affected by This AD?**

(c) This AD affects the Model G 103 C Twin III SL sailplanes, serial numbers 35002 through 35051, that are certificated in any category.

**What is the Unsafe Condition Presented in This AD?**

(d) This AD is the result of increased play of the propeller bearing. The actions specified in this AD are intended to prevent loss of the sailplane propeller caused by increased play in the current design propeller bearing and upper pulley wheel. This could result in loss of control of the sailplane.

**What Must I Do To Address This Problem?**

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

| Actions | Compliance | Procedures |
|---|---|---|
| Modify the propeller bearing and upper pulley wheel by installing a new securing plate (part number 103SL–W–6400.12) and tightening the grooved nut. Use the new torque values as specified in the Burkhart Grob Service Bulletin MSB869–18/3, dated May 24, 2002. | Within 25 engine operating hours after the effective date of this AD. | Follow Burkhart Grob Service Bulletin MSB869–18, dated March 7, 1996 (including the reissued page 6 from Burkhart Grob Service Bulletin MSB869–18/2, dated July 3, 1996, issued as a complement and a correction to Burkhart Grob Service Bulletin MSB869–18, dated March 7, 1996) and Burkhart Grob Service Bulletin MSB869–18/3, dated May 24, 2002. Use the new torque values as specified in the Burkhart Grob Service Bulletin MSG869–18/3, dated May 24, 2002. |

**May I Request an Alternative Method of Compliance?**

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any alternative methods of compliance, contact Gregory A. Davison, Aerospace Engineer, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4149.

**Is There Other Information That Relates to This Subject?**

(g) LBA Airworthiness Directive 1996–206/3, dated August 22, 2002; Burkhart Grob Service Bulletin MSB869–18, dated March 7, 1996; Grob Service Bulletin MSB869–18/2, dated July 3, 1996; and Grob Service Bulletin MSB869–18/3, dated May 24, 2002, also address the subject of this AD.

**May I Get Copies of the Documents Referenced in This AD?**

(h) To get copies of the documents referenced in this AD, contact GROB LUFT-und, Raumfahrt, Lettenbachstrasse 9, D–86874 tussenhausen-Mattsies, Federal Republic of Germany; telephone: +49 8268 998139; facsimile: +49 8268 998200. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., NASSIF Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.* This is docket number FAA–2005–20768; Directorate ID 2005–CE–16–AD.

Issued in Kansas City, Missouri, on June 15, 2005.

**John R. Colomy,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05–12178 Filed 6–20–05; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[REG–134030–04 and REG–133791–02]**

**RIN 1545–BD60 and RIN 1545–BA88**

## Credit for Increasing Research Activities; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to notice of proposed rulemaking.

**SUMMARY:** This document contains corrections to a notice of proposed rulemaking relating to the computation and allocation of the credit for increasing research activities for members of a controlled group of corporations, including consolidated groups, or a group of trades or businesses under common control.

**FOR FURTHER INFORMATION CONTACT:** Nicole R. Cimino at (202) 622–3120 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The proposed regulations that are the subject of these corrections are under section 951(a) of the Internal Revenue Code.

**Correction of Publication**

Accordingly, the publication of the notice of proposed rulemaking (REG–134030–04 and REG–133791–02), which was the subject of FR Doc. 05–10236, is corrected as follows:

1. On page 29662, column 3, in the preamble, under the paragraph heading ''Background and Explanation of Provisions'', line 5 from the bottom, the language ''December 31, 2004. The text

of those'' is corrected to read ''May 24, 2005. The text of those''.

**Cynthia E. Grigsby,**

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

[FR Doc. 05–12138 Filed 6–20–05; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF COMMERCE

## United States Patent and Trademark Office

## 37 CFR Part 1

**[Docket No.: 2004–P–038]**

**RIN 0651–AB79**

## Changes To Implement the Patent Search Fee Refund Provisions of the Consolidated Appropriations Act, 2005

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Notice of proposed rule making.

**SUMMARY:** Among other changes to patent and trademark fees, the Consolidated Appropriations Act, 2005 (Consolidated Appropriations Act), splits the patent application filing fee into a separate filing fee, search fee and examination fee. The Consolidated Appropriations Act also provides that the United States Patent and Trademark Office (Office) may refund part or all of the excess claim fee and the search fee in certain situations. This notice proposes changes to the rules of practice to implement the provisions for refunding the search fee for applicants who file a written declaration of express abandonment before an examination has been made of the application.

**COMMENT DEADLINE DATE:** To be ensured of consideration, written comments must be received on or before August 22, 2005. No public hearing will be held.

**ADDRESSES:** Comments should be sent by electronic mail message over the Internet addressed to *AB79.Comments@uspto.gov*. Comments may also be submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313–1450, or by facsimile to (571) 273–7735, marked to the attention of Robert W. Bahr. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet. If comments are submitted by mail, the Office prefers that the comments be submitted on a DOS formatted 3½ inch disk accompanied by a paper copy.

Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal.

The comments will be available for public inspection at the Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available via the Office Internet Web site (address: *http://www.uspto.gov*). Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

**FOR FURTHER INFORMATION CONTACT:** Robert W. Bahr, Senior Patent Attorney, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at (571) 272–8800, by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313–1450, or by facsimile to (571) 273–7735, marked to the attention of Robert W. Bahr.

**SUPPLEMENTARY INFORMATION:** Among other changes, the Consolidated Appropriations Act (section 801 of Division B) provides that 35 U.S.C. 41(a), (b), and (d) shall be administered in a manner that revises patent application fees (35 U.S.C. 41(a)) and patent maintenance fees (35 U.S.C. 41(b)), and provides for a separate filing fee (35 U.S.C. 41(a)), search fee (35 U.S.C. 41(d)(1)), and examination fee (35 U.S.C. 41(a)(3)) during fiscal years 2005 and 2006. The Consolidated Appropriations Act also provides that the Office may, by regulation, provide for a refund of: (1) Any part of the excess claim fee specified in 35 U.S.C. 41(a)(2) for any claim that is canceled before an examination on the merits has been made of the application under 35 U.S.C. 131; (2) any part of the search fee for any applicant who files a written declaration of express abandonment as prescribed by the Office before an examination has been made of the application under 35 U.S.C. 131; and (3) any part of the search fee for any applicant who provides a search report that meets the conditions prescribed by the Office. The Office is proposing to revise the rules of practice to implement the provisions for a refund of the search fee for any applicant who files a written declaration of express abandonment as prescribed by the Office before an examination has been made of the application under 35 U.S.C. 131.

**Discussion of Specific Rules**

Title 37 of the Code of Federal Regulations, Part 1, is proposed to be amended as follows:

*Section 1.138:* Section 1.138(c) is amended to change ''section'' (*i.e.*, § 1.138) to ''paragraph'' (*i.e.*, § 1.138(c)) to clarify that a petition to expressly abandon an application to avoid publication of an application is filed under § 1.138(c) (rather than § 1.138).

Section 1.138 is also amended to include a new paragraph (d), which implements the provision in 35 U.S.C. 41(d)(1)(D) that the Office may provide for a refund of any part of the search fee ''for any applicant who files a written declaration of express abandonment as prescribed by the Director before an examination has been made of the application under [35 U.S.C.] 131.'' Section 1.138(d) specifically provides that an applicant seeking to abandon an application filed under 35 U.S.C. 111(a) and § 1.53(b) on or after December 8, 2004, to obtain a refund of any search fee paid in the application must submit a petition and declaration of express abandonment in sufficient time to permit the appropriate officials to recognize the abandonment before the application has been taken up for examination.

The Office will consider an application to be ''taken up for examination'' for purposes of 35 U.S.C. 41(d)(1)(D) and § 1.138(d) when the application is placed on the examiner's docket for action. Since the patent fee provisions of the Consolidated Appropriations Act expire (in the absence of subsequent legislation) on September 30, 2006 (at the end of fiscal year 2006), the patent fee structure provided for in the Consolidated Appropriations Act will be in effect for less than two years (in the absence of subsequent legislation). Thus, the information technology investment necessary to permit an application to be considered ''taken up for examination'' at some later point in time (*e.g.*, based upon the anticipated time to first action in the class/subclass to which the application is assigned) for purposes of 35 U.S.C. 41(d)(1)(D) and § 1.138(d) is not warranted in the absence of the enactment of legislation which makes the patent fee structure provided for in the Consolidated Appropriations Act permanent.

A petition under § 1.138(d) will be granted when it is recognized in sufficient time to process the abandonment before the application has been taken up for examination and will

be denied when it is not recognized in sufficient time to process the abandonment before the application has been taken up for examination. This will avert the situation in which an applicant files a declaration of express abandonment to obtain a refund of the search fee, the request for a refund of the search fee is not granted because the declaration of express abandonment is not processed before the application has been taken up for examination, the applicant then wishes to rescind the declaration of express abandonment upon learning that the declaration of express abandonment was not processed before the application was taken up for examination, and the Office cannot revive the application (once the declaration of express abandonment is recognized) because the application was expressly and intentionally abandoned by the applicant.

The Patent Application Locating and Monitoring (PALM) system maintains computerized contents records of all patent applications and reexaminations. An application has been placed on the examiner's docket for action (*i.e.*, ''taken up for examination'' for purposes of § 1.138(d)) once the status of the application is ''Case Docketed to Examiner in GAU'' (has a status code of 030 or higher) as shown in PALM.

The Patent Application Information Retrieval (PAIR) system is a system that provides public access to PALM for patents and applications that have been published. The PAIR system does not provide public access to information concerning applications that are maintained in confidence under 35 U.S.C. 122(a). The private side of PAIR, however, can be used by an applicant to access confidential information about his or her pending application. To access the private side of PAIR, a customer number must be associated with the correspondence address for the application, and the user of the system must have a digital certificate. For further information, contact the Customer Support Center of the Electronic Business Center at (703) 305–3028 or toll free at (866) 217–9197.

Section 1.138(d) also provides that if a request for refund of any search fee paid in the application is not filed with the declaration of express abandonment under § 1.138(d) or within two months (not extendable) from the date on which the declaration of express abandonment under § 1.138(d) was filed, the Office may retain the entire search fee paid in the application. Finally, § 1.138(d) provides that if a declaration of express abandonment under § 1.138(d) is not filed in sufficient time to process the abandonment before the application has been taken up for examination, the Office will not refund any part of the search fee paid in the application except as provided in § 1.26.

*Rule Making Considerations*

*Regulatory Flexibility Act:* For the reasons set forth herein, the Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that changes proposed in this notice will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b). This notice proposes changes to the rules of practice to implement the provisions for a refund of the search fee for any applicant who files a written declaration of express abandonment as prescribed by the Office before an examination has been made of the application under 35 U.S.C. 131. The changes proposed in this notice would not impose any additional fees or requirements on any patent applicant. Rather, the changes proposed in this notice would only provide for a refund of search fees for patent applicants (small or non-small entity) in certain situations.

*Executive Order 13132:* This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

*Executive Order 12866:* This rule making has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

*Paperwork Reduction Act:* This notice involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The changes proposed in this notice concern the procedures for refunding the search fee for any applicant who files a written declaration of express abandonment before an examination has been made of the application under 35 U.S.C. 131. The collections of information involved in this notice have been reviewed and previously approved by OMB under the following OMB control numbers: 0651–0031 and 0651–0032. The United States Patent and Trademark Office is resubmitting the information collections package to OMB for its review and approval because the changes in this notice do affect the information collection requirements associated with the information collection under these OMB control numbers.

The title, description and respondent description of the information collections under OMB control numbers 0651–0031 and 0651–0032 are shown below with estimates of the annual reporting burdens. Included in the estimates is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*OMB Number:* 0651–0031.

*Title:* Patent Processing (Updating).

*Form Numbers:* PTO/SB/08A, PTO/SB/08B, PTO/SB/17i, PTO/SB/17p, PTO/SB/21–27, PTO/SB/30–37, PTO/SB/42–43, PTO/SB/61–64, PTO/SB/64a, PTO/SB/67–68, PTO/SB/91–92, PTO/SB/96–97, PTO–2053-A/B, PTO–2054–A/B, PTO–2055–A/B, PTOL–413A.

*Type of Review:* Approved through July of 2006.

*Affected Public:* Individuals or households, business or other for-profit institutions, not-for-profit Institutions, farms, Federal government and State, local and tribal governments.

*Estimated Number of Respondents:* 2,284,439.

*Estimated Time Per Response:* 1 minute and 48 seconds to 8 hours.

*Estimated Total Annual Burden Hours:* 2,732,441 hours.

*Needs and Uses:* During the processing of an application for a patent, the applicant/agent may be required or desire to submit additional information to the United States Patent and Trademark Office concerning the examination of a specific application. The specific information required or which may be submitted includes: Information Disclosures and citation, requests for extensions of time, the establishment of small entity status, abandonment and revival of abandoned applications, disclaimers, appeals, expedited examination of design applications, transmittal forms, requests to inspect, copy and access patent applications, publication requests, and certificates of mailing, transmittals, and submission of priority documents and amendments.

*OMB Number:* 0651–0032.

*Title:* Initial Patent Application.

*Form Number:* PTO/SB/01–07, PTO/SB/13PCT, PTO/SB/16–19, PTO/SB/29 and 29A, PTO/SB/101–110, Electronic New Utility and Provisional Application Forms.

*Type of Review:* Approved through July of 2006.

*Affected Public:* Individuals or households, Business or Other For-Profit Institutions, Not-for-Profit Institutions, Farms, Federal government, and state, local, or tribal governments.

*Estimated Number of Respondents:* 454,287.

*Estimated Time Per Response:* 22 minutes to 10 hours and 45 minutes.

*Estimated Total Annual Burden Hours:* 4,171,568 hours.

*Needs and Uses:* The purpose of this information collection is to permit the Office to determine whether an application meets the criteria set forth in the patent statute and regulations. The standard Fee Transmittal form, New Utility Patent Application Transmittal form, New Design Patent Application Transmittal form, New Plant Patent Application Transmittal form, Declaration, Provisional Application Cover Sheet, and Plant Patent Application Declaration will assist applicants in complying with the requirements of the patent statute and regulations, and will further assist the Office in processing and examination of the application.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, or to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Patent and Trademark Office.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

**List of Subjects in 37 CFR Part 1**

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and record keeping requirements, Small Businesses.

For the reasons set forth in the preamble, 37 CFR Part 1 is proposed to be amended as follows:

## PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

**Authority:** 35 U.S.C. 2(b)(2).

2. Section 1.138 is amended by revising paragraph (c) and adding paragraph (d) to read as follows:

**§ 1.138 Express abandonment.**

* * * * *

(c) An applicant seeking to abandon an application to avoid publication of the application (see § 1.211(a)(1)) must submit a declaration of express abandonment by way of a petition under this paragraph including the fee set forth in § 1.17(h) in sufficient time to permit the appropriate officials to recognize the abandonment and remove the application from the publication process. Applicants should expect that the petition will not be granted and the application will be published in regular course unless such declaration of express abandonment and petition are received by the appropriate officials more than four weeks prior to the projected date of publication.

(d) An applicant seeking to abandon an application filed under 35 U.S.C. 111(a) and § 1.53(b) on or after December 8, 2004, to obtain a refund of any search fee paid in the application must submit a declaration of express abandonment by way of a petition under this paragraph in sufficient time to permit the appropriate officials to recognize the abandonment before the application has been taken up for examination. If a request for refund of any search fee paid in the application is not filed with the declaration of express abandonment under this paragraph or within two months from the date on which the declaration of express abandonment under this paragraph was filed, the Office may retain the entire search fee paid in the application. This two-month period is not extendable. If a petition and declaration of express abandonment under this paragraph are not filed and granted before the application has been taken up for examination, the Office will not refund any part of the search fee paid in the application except as provided in § 1.26.

Dated: June 15, 2005.

**Jon W. Dudas,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 05–12198 Filed 6–20–05; 8:45 am]

BILLING CODE 3510–16–P

## DEPARTMENT OF COMMERCE

## Patent and Trademark Office

## 37 CFR Part 1

**[Docket No.: 2005–P–062]**

**RIN 0651–AB91**

## Acceptance, Processing, Use and Dissemination of Chemical and Three-Dimensional Biological Structural Data in Electronic Format

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Advance notice of proposed rule making.

**SUMMARY:** This advance notice of proposed rule making is to inform the public that the United States Patent and Trademark Office (USPTO) is considering amending its rules of practice to require submission of chemical and three-dimensional (3–D) biological structural data in electronic format. The USPTO anticipates that requiring submission of chemical and 3–D biological structural data in electronic format in patent applications will improve the processing and examination of patent applications that include such data, as well as the dissemination of such data to searchable public databases. The purpose of this notice is to encourage comments on this topic, in the form of responses to the questions posed in this notice, from industry, academia, the patent bars, and members of the public.

*Comment Deadline Date:* To be ensured of consideration, written comments must be received on or before August 22, 2005. No public hearing will be held.

**ADDRESSES:** Comments should be sent by electronic mail message over the Internet addressed to *AB91.Comments@uspto.gov*. Comments may also be submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313–1450, or by facsimile to (571) 273–3373, marked to the attention of Lisa J. Hobbs, Ph.D., Search Systems Project Manager, Search and Information Resources Administration, Office of the Deputy Commissioner for Patent Resources and Planning. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet. If comments are submitted by mail, the Office prefers that the comments be submitted on a DOS formatted 3½ inch disk accompanied by a paper copy.

Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal.

The comments will be available for public inspection at the Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available through anonymous file transfer protocol (ftp) via the Internet (*http://www.uspto.gov*). Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

**FOR FURTHER INFORMATION CONTACT:** Lisa J. Hobbs, Ph.D., Search Systems Project Manager, Search and Information Resources Administration, Office of the Deputy Commissioner for Patent Resources and Planning, by telephone at (571) 272–3373, respectively, by mail addressed to: Box Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, or by facsimile to (571) 273–3373, marked to the attention of Lisa J. Hobbs.

**SUPPLEMENTARY INFORMATION:**

1. *General Background Information:* It is becoming increasingly apparent that the USPTO needs to begin investigation of procedures for the submission, screening, processing, storing, searching, analysis and dissemination of chemical and 3–D biological structural data in appropriate electronic formats. The rate at which these data are being generated is poised to increase by several orders of magnitude in the coming years as significant advances are being made in the ability to readily determine structural information. Initiatives to fund research in these areas are being supported by both numerous governmental agencies and private industry entities. With the advancement of capabilities allowed by automation, the number of public and private databases hosting these types of data for information exchange is growing daily.

It has yet to be determined whether or not the USPTO will receive an increasing number of applications comprising 3–D crystal data and/or chemical structure data. However, the USPTO currently receives a significant amount of chemical structure data, and has begun to receive some very large submissions of 3–D protein crystal data. Consequently, the USPTO has decided to begin the planning and coordination of how best to provide the capability to manage, process, search, and disseminate this information as appropriate.

Similar to the process involved in the promulgation of the sequence rules (37 CFR 1.821–1.825 and WIPO ST.25), the USPTO intends to work with other international intellectual property offices in developing any new standards for the submission of chemical or 3–D structural data in electronic format.

In an effort to facilitate public comment to the questions set forth below, the following additional background information is provided:

2. *Background Specific to 3–D Biological Structural Data:* X-ray crystallographic studies and nuclear magnetic resonance (NMR) spectroscopy studies of biological macromolecules provide mechanisms for obtaining detailed 3–D structural information. The current scientific priorities, and concomitant intellectual property priorities, of many laboratories include using 3–D protein crystal data to assist in unraveling the complex relationship between sequence, structure, and function.

Knowledge of the 3–D structures of biological macromolecules is an essential element for guiding studies and developing an understanding of biological processes. Three dimensional structural coordinate data provide essential information that can be exploited for protein engineering, rational drug design, and other biotechnology efforts (Gilliland, *et al.* 1996 J. Res. Natl. Inst. Stand. Technol. 101: 309–320).

Bioinformatics, the collection and use of scientific database entries to predict the structure or behavior or evolutionary relatedness of particular biological macromolecules based on sequence similarity or structural similarity to known macromolecules, is one of the fastest growing scientific disciplines. The ability of the scientific community to ''data mine'' known scientific information is directly dependent on the public availability of all prior art data.

The worldwide Protein Data Bank (wwPDB; *http://www.wwpdb.org/index.html*) is a collection of all publicly available 3–D structure data of large molecules of proteins and nucleic acids, experimentally determined by X-ray crystallography and NMR, which is freely and publicly available to the global community. The PDB, which is under the oversight of the Research Collaboratory for Structural Bioinformatics (RCSB, USA), the Macromolecular Structure Database (MSD) at the European Bioinformatics Institute (EBI) and the Protein Data Bank Japan (PDBj) at the Institute for Protein Research, has grown from 7 structures in 1971 to a database containing over 30,900 structures as of May 2005. The PDB's growth has been accompanied by increases in both data content and the structural complexity of individual entries. A further acceleration in growth is anticipated as the result of developments in high-throughput structural determination methodologies and worldwide structural genomics efforts (Westbrook, *et al.* 2003 Nucl. Acids Res. 31(1): 489–491).

There are also many secondary sources of 3–D protein crystal data and associated information. One of these is the Molecular Modeling Database (MMDB), maintained as part of the Entrez search system by the National Center for Biotechnology Information (NCBI; *http://www.ncbi.nlm.nih.gov/*), which is a compilation of all of the PDB 3–D structures of biomolecules and additionally integrates value-added chemical, sequence and structural information in order to facilitate structure-based homology modeling and protein structure prediction. The goal of Entrez's 3–D-structure database is to make protein crystal structure information, and the functional annotation MMDB adds, easily accessible to molecular biologists (Wang, *et al.* 2002 Nucl. Acids Res. 30(1): 249–252).

All of the major 3–D protein crystal databases use a variant of the Crystallographic Information File (CIF) format as the means for obtaining data entries with proper annotation. Ratified in 1990 by the International Union of Crystallography (ICUr), CIF is a format that enables the characterization of small crystal structures. In 1997, the CIF format was modified to include information specific to macromolecules, resulting in version 1.0 of the macromolecular Crystallographic Information File (mmCIF) dictionary (Bourne, *et al.* 1997 Meth. Enzymol. 227: 571–590). The PDB database initially accepted files in a proprietary pdb format in 1971, but has now moved to accepting all files, and converting the backfile, into mmCIF. Some databases, especially those involved in secondary, value-added information, have further modified the mmCIF format to include more data fields and annotations. MMDB uses the format, ASN.1, which is specific to the NCBI and addresses structural and functional linkages. The ASN.1 format also allows for a 3–D viewer to be used to visualize the protein crystal.

In addition to databases containing information on the crystal structures of

biomolecules, there are major repositories for other types of crystal structures. The Cambridge Structural Database (CSD), maintained by the Cambridge Crystallographic Data Centre (CDCC; *http://www.ccdc.cam.ac.uk/*), is a worldwide repository of small molecule crystal structures and has over 300,000 organic and metallo-organic compound records. The CSD database accepts entries in the CIF data format in plain ASCII text. Repositories for other types of crystal structures include: the Nucleic Acids Data Bank (ndb; *http://ndbserver.rutgers.edu/*), which stores oligonucleotides; the Inorganic Crystal Structure Database (ICSD; *http://www.fiz-informationsdienste.de/en/DB/icsd/*); and, CRYSTMET ® (*http://www.tothcanada.com/*), which stores metals and alloys.

3. *Background Specific to Chemical Structural Data:* While the use of drawings to denote specific molecular relationships and chemical bonds is a very old art, the embodiments and uses of these drawings are evolving rapidly as supporting technology evolves. Two main methods for handling chemical data are: chemical drawing systems that depend on annotations added to unique substance records, in specific electronic file-types, and text files that are a compilation of unique data determining a canonical representation.

Electronic files containing drawings created by chemical drawing software would provide the most accessible data set for processing, use in searching, and public dissemination. However, there is currently no single, publicly available, software that has been accepted as the standard for this type of drawings. Some publicly available chemical data depiction systems are: (1) SMILES (*http://www.daylight.com/dayhtml/smiles/*); (2) SMARTS/SMIRKS (*http://www.daylight.com/dayhtml/doc/theory/theory.rxn.html#RTFrxn18*); (3) ACD ChemSketch (*http://www.acdlabs.com/download/*); and (4) MDL ISIS/Draw (*http://www.mdli.com/downloads/downloadable/index.jsp*). Some proprietary chemical data depiction systems are: (1) ChemDraw (*http://www.cambridgesoft.com/products/family.cfm?FID=2*); (2) ACD/Name (*http://www.acdlabs.com/products/name_lab/*); (3) Chemistry 4–D Draw (*http://www.cheminnovation.com/products/chem4d.asp*); and (4) ChemWindow (*http://www.bio-rad.com/*).

One of the difficulties facing the USPTO in moving toward acceptance of chemical drawings in electronic format is the preponderance of proprietary software and file-types. Prior to filing a patent application, many applicants have already created drawings of chemical structures of interest for publication or presentation purposes; however, these drawings could be in one of many publicly available file-types, or in a file-type specific to a particular software product. It is not possible to require applicants to purchase proprietary drawing software, nor is it possible to accept and handle all possible file-types.

One alternative to requiring a non-standard publicly available format, requiring a proprietary format, or accepting a multiplicity of drawing file-types would be the use of a standardized text format to describe a chemical structure. Two possibilities for this type of file are: Chemical Markup Language (CML; *http://www.xml-cml.org/*), or a joint effort currently under way between the International Union of Pure and Applied Chemistry and the National Institute of Standards and Technology, the IUPAC-NIST Chemical Identifier (INChI; *http://www.iupac.org/projects/2000/2000–025–1–800.html*). A description of INChI states that it would enable an automatic conversion to a graphical representation of a chemical substance that could be performed anywhere in the world, and could be built into desktop chemical structure drawing packages and on-line chemical structure drawing applets (A.J. McNaught 2001 *http://www.iupac.org/nomenclature/chem_id_project.html*).

**Rule Making Considerations**

*Executive Order 13132:* This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

*Executive Order 12866:* This rule making has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

*Paperwork Reduction Act:* This notice involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information involved in this notice have been reviewed and previously approved by OMB under OMB control numbers: 0651–0022, 0651–0024, 0651–0031, and 0651–0032. The principal impact of the changes under consideration in this advance rule would be to revise the rules of practice to require or provide for the submission of chemical and three-dimensional (3–D) biological structural data in electronic form. The Office is not resubmitting any information collection package to OMB for its review and approval because the this advance notice does not propose any changes that would affect the information collection requirements associated with the information collection under these OMB control numbers. If the Office proceeds with proposing changes to the rules of practice relating to the submission of chemical and three-dimensional (3–D) biological structural data in electronic form, the Office will resubmit an information collection package to OMB for its review and approval for any collections of information whose requirements will be revised as a result of the proposed rule changes.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, or to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, N.W., Washington, D.C. 20503, Attention: Desk Officer for the Patent and Trademark Office.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

4. *Comments on the following Questions and Any Other Related Matters Are Solicited:*

*A. Questions Pertaining to the Creation of 3–D Structural Data Files*

1. What benefits do you foresee for the applicant if electronic filing is adopted? What disadvantages do you foresee?

2. What types of 3–D data would be best submitted electronically? Examples:

- Small organic crystals.
- Macromolecular peptide/protein crystals.
- Inorganic crystals.
- Metallic crystals.
- Other.

3. Should electronic submission of 3–D data be mandatory, optional, or mandatory for some types (e.g., protein crystals) and optional for others (e.g., small organic crystals)?

4. If electronic submission is mandatory, should the USPTO require all 3–D information cited in application to be submitted in electronic format, including prior art, or only new data?

5. Have tables of 3–D data generally been created for other purposes before preparation of a patent application, *e.g.*, for publication in a scientific journal or submission to a database? If so,

- What format(s) are used (e.g., mmCIF, pdb, CIF, other)?
- What authoring tool is used to create the files, e.g., ADIT *http://pdb.rutgers.edu/mmcif/ADIT/index.html*?
- What software, if any, is used to validate files of 3–D data, e.g., ADIT Validation Tool or enCIFer (*http://www.ccdc.cam.ac.uk/free_services/encifer/*)?

6. Have most of the 3–D tables been submitted to a database before inclusion in a patent application? If so, which one? Examples:

- *http://www.ccdc.cam.ac.uk/products/csd/*
- *http://www.rcsb.org/pdb/*
- *http://www.fiz-informationsdienste.de/en/DB/icsd/*
- *http://www.tothcanada.com/*

7. Have most of the 3–D tables been published before inclusion in a patent application?

8. Database providers require certain annotation data. Would any of the annotation data currently required by 3–D database providers be unknown or proprietary at the time of filing a patent application (*e.g.*, method used for crystal creation)?

9. Database providers often establish a controlled vocabulary for annotation or feature description information. Would there be any problems created during patent application prosecution if the electronic file relied on dynamic controlled dictionaries or vocabularies, controlled and maintained by database providers, not the USPTO, for the description of features, etc. What would be the pros and cons if the USPTO were to incorporate by reference a public database controlled vocabulary into any adopted standard? Examples:

- *http://pdb.rutgers.edu/cc_dict_tut.html*
- *http://ndbserver.rutgers.edu/mmcif/dictionaries/index.html*

10. Is there annotation data specific to a patent application that does not appear in public database files but that would be desirable to provide for an electronic submission in a patent application (e.g., continuing application data, attorney's docket number)?

11. Do many/most file wrapper submissions with 3–D data contain multiple 3–D tables?

*B. Questions Pertaining to the USPTO Receipt of 3–D Files*

1. In general, 3–D structure data tables submitted as part of a patent application are quite lengthy. Should the USPTO require that all 3–D files greater than a certain size be submitted in electronic media only?

2. Should the USPTO require submission in electronic format at the time of filing, or, if a paper copy is filed, permit the electronic submission to be filed later (with a statement indicating that the electronic version is the same as the version originally filed)?

3. Should any statement that comes with an electronic file outline the authoring tool and certify the use of a validation tool?

4. Should the rules be revised to specify that 3–D biological structural data, if a paper copy is provided, is to appear in a special section, e.g., between the specification and the Sequence Listing?

*C. Questions Pertaining to the Use of 3–D Electronic Files by the USPTO Examiners/STIC Personnel*

1. If enough patent applications are filed directed to 3–D structures to go forward with pursuing search capability (a 3–D file search, not the standard sequence search and text search already performed) of some sort, what databases should be investigated?

2. What software viewer would be recommended for visual interpretation of the text tables? Examples:

- *http://www.ncbi.nlm.nih.gov/Structure/CN3–D/cn3–D.shtml*
- *http://products.cambridgesoft.com/ProdInfo.cfm?pid=285*
- *http://www.proteinscope.com/*
- *http://www.candomultimedia.com/medical/*

*D. Questions Pertaining to 3–D File Export to a Public Database Partner*

1. If the USPTO receives 3–D structural data in electronic form, the USPTO would likely be able to export the data to a searchable public database upon publication of the application or patent grant. What databases should be investigated for a USPTO export arrangement?

2. Would public databases be willing to work with the USPTO in developing acceptable formats and annotations, if that would be the best submission practice for applicants?

*E. Questions Pertaining to the USPTO Publication of 3–D Files*

1. Should all 3–D files be posted on the USPTO's Publication Site for Issued and Published Sequences (PSIPS; *http://seqdata.uspto.gov/*)?

2. Should the files be part of the text or image of the patent application publication or patent grant aside from electronic posting on PSIPS?

*F. Question Pertaining to 3–D File Export to the USPTO Customers*

The USPTO would be exporting in a new file-type; would this have an adverse or beneficial impact on the USPTO customers?

*G. Questions Pertaining to the Creation of Chemistry Structural Data Files*

1. What benefits do you foresee for the applicant if electronic filing is adopted? What disadvantages do you foresee?

2. Has a structural chemistry data file or drawing generally been created for other purposes before preparation of a patent application, *e.g.*, for publication in a scientific journal or submission to a database? If so, in what format: .mol, .cdx, CML, INChI, other?

3. If drawing tools are used by applicants, which tools are generally used to create the files, *e.g.*, ChemDraw, ISIS/Draw, ACD/Name?

- *http://www.cambridgesoft.com/products/family.cfm?FID=2*
- *http://www.mdli.com/products/framework/isis_draw/index.jsp*
- *http://www.acdlabs.com/products/name_lab/name/*

4. Is there annotation data that should be added to the drawings? What annotations? How would applicants prefer to add additional data?

5. Possibly applicants want to cite inventors, attorneys, continuing application data, attorney's docket number, etc.?

6. Should the USPTO require all structures cited in a patent application be submitted in electronic format? Only new data (not prior art)? Only a representative drawing? Only the ''actual invention'' after restriction of the claims and election of an invention?

7. Would a single representation be deemed a limitation to applicant's disclosure?

8. Do many/most file wrapper submissions with chemical structures contain multiple chemical structure drawings?

9. Have any chemical drawings generally been submitted to a public entity (*e.g.*, a database or journal) before the filing of a patent application?

10. Have most of the drawings been published before the filing of a patent application?

11. Would it be a hardship for applicants if the USPTO required drawings in a proprietary software format?

12. Would it be a hardship for applicants if the USPTO required drawings in a text format that is not yet supported by the major drawing software tools?

- How well known is the CML format?

■ *http://www.xml-cml.org/*

• How well known is the INChI format?

■ *http://www.iupac.org/publications/ci/2001/may/project_2000–025–1–050.html*

■ *http://www.iupac.org/projects/2000/2000–025–1–800.html#clip*

13. What is the state of the art for chemical drawings?

■ *http://www.iupac.org/publications/ci/2002/2404/XML.html*

*H. Questions Pertaining to the USPTO Receipt of Chemistry Structure Files*

1. Chemical structure data received by the USPTO varies widely in size. Should the USPTO require that all chemical structure files greater than a certain size be submitted in electronic media only?

2. Should the USPTO require submission in electronic format at the time of filing, or, if a paper copy is filed, permit the electronic submission to be filed later (with a statement indicating that the electronic version is the same as the version originally filed)?

3. Should the rules be revised to specify that chemical structure data, if a paper copy is supplied, is to appear in a special section, *e.g.*, between the specification and the Sequence Listing, or as part of the drawings?

4. Chemical structures are often presented in the specification and claims in Markush format wherein a basic structure is defined, but portions thereof are variable. Are there drawing tools available that accurately render these types of structures? If not, what approach should the USPTO take to ensure that the data submitted appropriately reflects the invention described or claimed in the patent application. For example, the USPTO could require: An ''exemplary'' drawing at the time of filing; a drawing at the time of a restriction election, *e.g.*, a single embodiment of a Markush claim; or, possibly multiple drawings.

5. The USPTO needs to have certain data associated with files. Since there is no annotation data in chemical drawing files, should the USPTO require a ''read me'' text file to accompany the drawing file? Should the title of the file be the name of the drawing?

*I. Question Pertaining to the Use of Chemistry Structure Files by the USPTO Examiners/STIC Personnel*

If a chemical structure drawing were required at the time of filing, how often might it have so many variables (that may be subject to a restriction/election requirement) that it cannot be effectively searched? If this is likely to be problematic, how can the USPTO effectively require submission of a representative drawing to be searched and, possibly, published?

*J. Questions Pertaining to Chemistry Structure File Export to a Public Database Partner*

1. Should the USPTO send chemical structure data files to a public database partner? If so, which one(s)?

2. Should the USPTO export data to CAS for inclusion in the Registry file? What about other private providers?

• *http://www.cas.org/EO/regsys.html*

*K. Question Pertaining to the USPTO Publication of Chemistry Structure Files*

1. Should all chemistry structure files be posted on the USPTO's Publication Site for Issued and Published Sequences (PSIPS; *http://seqdata.uspto.gov/*), or should the chemistry drawing be published with the TIFF images of the patent application publication or patent grant?

*L. Question Pertaining to Chemistry Structure File Export to the USPTO Customers*

1. Should we change the drawing files that are sent to the USPTO customers?

• Currently, .cdx, .mol, and TIFF versions are present (**Note:** common to Patent and Trademark Applications)

Dated: June 15, 2005.

**Jon W. Dudas,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 05–12199 Filed 6–20–05; 8:45 am]

**BILLING CODE 3510–16–P**

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 67

**[Docket No. FEMA–D–7622]**

## Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

**SUPPLEMENTARY INFORMATION:** FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood elevations and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

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

*Regulatory Flexibility Act.* The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required

to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

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

*Executive Order 12612, Federalism.* This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

*Executive Order 12778, Civil Justice Reform.* This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR Part 67**

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

## PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

**§ 67.4 [Amended]**

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

| Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD) | | Communities affected |
|---|---|---|---|---|
| | | Existing | Modified | |
| | **NORTH CAROLINA Dare County** | | | |
| Atlantic Ocean | Approximately 1,500 feet south of the intersection of Lighthouse Road and Cape Point Campground Road. | •6 | •5 | Dare County (Unincorporated Areas), and Towns of Duck, Kill Devil Hills, Kitty Hawk, Manteo, Nags Head, and Southern Shores. |
| | Approximately 1,600 feet northeast of the intersection of State Route 12 and Baum Trail. | •17 | •15 | |
| Roanoke Sound | At the intersection of Cedar Drive and Captains Lane .. | •8 | •9 | Dare County (Unincorporated Areas), Towns of Kill Devil Hills, and Nags Head. |
| | Approximately 500 feet east of the intersection of Sailfish Drive and Sailfish Court. | •9 | •12 | |
| Pamlico Sound | Along Oregon Inlet Channel, west of State Route 12 ... | •8 | •9 | Dare County (Unincorporated Areas). |
| | Approximately 1,750 feet north of the intersection of Mail Landing Lane State Route 12. | •7 | •12 | |
| Croatan Sound | Southeast corner of U.S. Route 264 and Old Ferry Dock Road. | •6 | •5 | Dare County (Unincorporated Areas). |
| | Approximately 0.7 mile northeast of the intersections of Hassell Road and Shipyard Road. | •7 | •8 | |
| Currituck Sound | Approximately 500 feet west of the intersection of North Dune Loop and Sound View Trail. | •6 | •7 | Dare County (Unincorporated Areas), Towns of Duck and Southern Shores. |
| | Approximately 0.9 mile west of the intersection of Baum Trail and State Route 12. | •6 | •9 | |

*Dare County (Unincorporated Areas)*
Maps available for inspection at the Dare County Justice Center, Tax Mapping Department, 211 Budleigh Street, Manteo, North Carolina.
Send comments to Mr. Terry Wheeler, Dare County Manager, P.O. Box 1000, Manteo, North Carolina 27954.
*Town of Duck*
Maps available for inspection at the Town of Duck Planning and Zoning Department, 1240 Duck Road, Duck, North Carolina.
Send comments to Mr. Chris Layton, Duck Town Manager, P.O. Box 8369, Duck, North Carolina 27949.
*Town of Kill Devil Hills*
Maps available for inspection at the Town of Kill Devil Hills Planning and Building Directors Office, 102 Town Hall Drive, Kill Devil Hills, North Carolina.
Send comments to The Honorable Sherry Rollinson, Mayor of the Town of Kill Devil Hills, P.O. Box 1719, Kill Devil Hills, North Carolina 27948.
*Town of Kitty Hawk*
Maps available for inspection at the Kitty Hawk Town Hall, 101 Veterans Memorial Drive, Kitty Hawk, North Carolina.
Send comments to Mr. Gary McGee, Kitty Hawk Town Manager, P.O. Box 549, Kitty Hawk, North Carolina 27949.
*Town of Manteo*
Maps available for inspection at the Manteo Town Hall, 407 Budleigh Street, Manteo, North Carolina.
Send comments to Mr. Kermit Skinner, Jr., Manteo Town Manager, P.O. Box 246, Manteo, North Carolina 27954.
*Town of Nags Head*
Maps available for inspection at the Town of Nags Head Planning Department, 5401 South Croatan Highway, Nags Head, North Carolina.
Send comments to Mr. J. Webb Fuller, Nags Head Town Manager, P.O. Box 99, Nags Head, North Carolina 27959.
*Town of Southern Shores*
Maps available for inspection at the Town of Southern Shores Building Inspections Department, 6 Skyline Road, Southern Shores, North Carolina.

| Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD) | | Communities affected |
|---|---|---|---|---|
| | | Existing | Modified | |
| Send comments to Mr. Carl Classen, Southern Shores Town Manager, 6 Skyline Road, Southern Shores, North Carolina 27949. | | | | |
| **NORTH CAROLINA** | | | | |
| **Durham County** | | | | |
| New Hope River | At downstream county boundary | None | •238 | Durham County (Unincorporated Areas). |
| | At the confluence of Little Creek and New Hope Creek | None | •238 | |
| Little Creek | At the confluence with New Hope River | None | •238 | Durham County (Unincorporated Areas), City of Durham. |
| | At upstream county boundary | None | •246 | |
| New Hope Creek | At the confluence with New Hope River | None | •238 | Durham County (Unincorporated Areas), City of Durham. |
| | Approximately 0.3 mile downstream of Old Chapel Hill Road. | None | •247 | |
| Crooked Creek (Cape Fear) | At the downstream Chatham/Durham County boundary | None | •239 | Durham County (Unincorporated Areas), City of Durham. |
| | Approximately 750 feet upstream of Ebon Road | None | •350 | |
| Northeast Creek | Approximately 1,300 feet east from the intersection of railroad along the Durham/Chatham County boundary. | None | •239 | Durham County (Unincorporated Areas), City of Durham. |
| | Approximately 125 feet upstream of So-hi Drive | None | •304 | |
| Northeast Creek Tributary 2 | At the confluence with Northeast Creek | •287 | •286 | Durham County (Unincorporated Areas). |
| | Approximately 300 feet downstream of Moore Drive | None | •312 | |
| Third Fork Creek | Approximately 800 feet downstream of Highway 751 | •241 | •238 | City of Durham. |
| | Approximately 800 feet upstream of East Forest Hill Plaza. | •308 | •312 | |
| Gum Creek | At the confluence with new Hope Creek | None | •238 | Durham County (Unincorporated Areas), City of Durham. |
| | Approximately 900 feet downstream of Abron Drive | None | •254 | |
| Burdens Creek | At the confluence with Northeast Creek | •251 | •249 | Durham County (Unincorporated Areas), City of Durham. |
| | Approximately 0.6 mile upstream of East Cornwallis Road. | None | •336 | |
| Northeast Creek North Prong. | At the confluence with Northeast Creek | •270 | •267 | City of Durham. |
| | Approximately 0.2 mile upstream of NC Highway 55 | •330 | •332 | |
| Burdens Creek Tributary 4 | At the confluence with Burdens Creek | None | •278 | Durham County (Unincorporated Areas), City of Durham. |
| | Approximately 850 feet upstream of East Cornwallis Road. | None | •346 | |
| Rocky Creek | At the confluence with Third Fork Creek | •283 | •286 | City of Durham. |
| | At downstream side of South Briggs | •329 | •326 | |
| Morgan Creek | Approximately 1,000 feet downstream of Old Farrington Point Road. | None | •238 | Durham County (Unincorporated Areas), City of Durham. |
| | At the Durham/Orange County boundary | None | •250 | |
| Stirrup Iron Creek Tributary C–2. | At the confluence with Stirrup Iron Creek Tributary C | None | •368 | Durham County (Unincorporated Areas). |
| | Approximately 750 feet upstream of the confluence with Stirrup Iron Creek Tributary C. | None | •375 | |
| Buffalo Creek Tributary 1 | At the confluence with Buffalo Creek (into North Fork Little River). | None | •494 | Durham County (Unincorporated Areas). |
| | Approximately 0.3 mile upstream of the confluence with Buffalo Creek (into North Fork Little River). | None | •538 | |
| Buffalo Creek Tributary 2 | At the confluence with Buffalo Creek (into North Fork Little River). | None | •524 | Durham County (Unincorporated Areas). |
| | At the Durham/Orange County | None | •528 | |
| Camp Creek Tributary 4 | At the confluence with Camp Creek | None | •494 | Durham County (Unincorporated Areas). |
| | At the Durham/Person County boundary | None | •504 | |
| Crooked Creek Tributary 1 | At the confluence with Crooked Creek | None | •256 | Durham County (Unincorporated Areas). |

| Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD) | | Communities affected |
|---|---|---|---|---|
| | | Existing | Modified | |
| | Approximately 0.5 mile upstream of the confluence with Crooked Creek. | None | •282 | |
| Crooked Creek (into Eno River) Tributary 1. | At the confluence with Crooked Creek | •395 | •393 | Durham County (Unincorporated Areas), City of Durham. |
| | Approximately 375 feet upstream of Milton Road | None | •482 | |
| Crooked Creek Tributary 1A. | At the confluence with Crooked Creek Tributary 1 | None | •428 | Durham County (Unincorporated Areas). |
| | Approximately 0.4 mile upstream of the confluence with Crooked Creek. | None | •466 | |
| Ellerbe Creek Tributary 4 | At the confluence with Ellerbe Creek | None | •263 | Durham County (Unincorporated Areas). |
| | Approximately 1.2 miles upstream of the confluence with Ellerbe Creek. | None | •329 | |
| Eno River Tributary 7 | At the confluence with Eno River Tributary | None | •280 | Durham County (Unincorporated Areas). |
| | Approximately 0.3 mile upstream of the confluence with Eno River. | None | •297 | |
| Eno River Tributary 8 | At the confluence with Eno River Tributary | None | •285 | Durham County (Unincorporated Areas). |
| | Approximately 700 feet upstream of railroad | None | •305 | |
| Eno River Tributary 9 | At the confluence with Eno River | •328 | •327 | Durham County (Unincorporated Areas), City of Durham. |
| | Approximately 375 feet upstream of Umstead Road | None | •434 | |
| Flat River Tributary 6 | At the confluence with Flat River | None | •347 | Durham County (Unincorporated Areas). |
| | Approximately 500 feet upstream of Patrick Road | None | •499 | |
| Flat River Tributary 7 | At the confluence with Flat River | None | •392 | Durham County (Unincorporated Areas). |
| | Approximately 950 feet upstream of State Forest Road | None | •521 | |
| Flat River Tributary 8 | At the confluence with Flat River | None | •410 | Durham County (Unincorporated Areas). |
| | Approximately 0.9 mile upstream of the confluence with Flat River. | None | •452 | |
| Knap of Reeds Creek Tributary 2. | At the confluence with Knap of Reeds Creek Tributary | None | •343 | Town of Butner. |
| | Approximately 0.6 mile upstream of the confluence with Knap of Reeds Creek Tributary. | None | •399 | |
| Little Brier Creek Tributary 1. | At the confluence with Little Brier Creek (Basin 18, Stream 15). | None | •355 | Durham County (Unincorporated Areas). |
| | Approximately 0.6 mile upstream of confluence with Little Brier Creek (Basin 18 Stream 15). | None | •384 | |
| Little Brier Creek Tributary 2. | At the confluence with Little Brier Creek (Basin 18, Stream 15). | None | •372 | Durham County (Unincorporated Areas). |
| | Approximately 1,514 feet upstream of the confluence with Little Brier Creek (Basin 18, Stream 15). | None | •402 | |
| Little Lick Creek Tributary 3A. | At the confluence with Little Lick Creek Tributary 3 | None | •286 | Durham County (Unincorporated Areas). |
| | Approximately 250 feet upstream of Rocky Creek Road. | None | •306 | |
| Little River Tributary | At the confluence with Little River Tributary 4 | None | •432 | Durham County (Unincorporated Areas). |
| | Approximately 425 feet upstream of Milton Road | None | •481 | |
| Little River Tributary 5 | At the confluence with Little River Tributary 1 | None | •485 | Durham County (Unincorporated Areas). |
| | Approximately 0.2 mile upstream of Redpine Road | None | •536 | |
| Little River Tributary 6 | At the confluence with Little River Tributary 1 | None | •487 | Durham County (Unincorporated Areas). |
| | Approximately 0.7 mile upstream of Dunnegan Road | None | •543 | |
| Little River Tributary 7 | At the confluence with Little River Tributary 2 | None | •385 | Durham County (Unincorporated Areas). |
| | Approximately 0.5 mile upstream of the confluence with Little River Tributary 2. | None | •424 | |
| Mountain Creek Tributary 1 | At the confluence with Mountain Creek | None | •409 | Durham County (Unincorporated Areas). |
| | Approximately 0.7 mile upstream of the confluence with Mountain Creek. | None | | |

| Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD) | | Communities affected |
|---|---|---|---|---|
| | | Existing | Modified | |
| Mountain Creek Tributary 2 | At the confluence with Mountain Creek | None | •440 | Durham County (Unincorporated Areas). |
| | Approximately 0.5 mile upstream of the confluence with Mountain Creek. | None | •499 | |
| Mountain Creek Tributary 2A. | At the confluence with Mountain Creek Tributary 2 | None | •450 | Durham County (Unincorporated Areas). |
| | Approximately 0.3 mile upstream of the confluence with Mountain Creek Tributary 2. | None | •488 | |
| Mountain Creek Tributary 3 | At the confluence with Mountain Creek | None | •444 | Durham County (Unincorporated Areas). |
| | Approximately 0.5 mile upstream of the confluence with Mountain Creek. | None | •517 | |
| Mountain Creek Tributary 4 | At the confluence with Mountain Creek | None | •457 | Durham County (Unincorporated Areas). |
| | Approximately 0.8 mile upstream of the confluence with Mountain Creek. | None | •509 | |
| Mountain Creek Tributary 4A. | At the confluence with Mountain Creek Tributary 4 | None | •466 | Durham County (Unincorporated Areas). |
| | Approximately 0.6 mile upstream of the confluence with Mountain Creek Tributary 4. | None | •505 | |
| Mountain Creek Tributary 5 | At the confluence with Mountain Creek | None | •457 | Durham County (Unincorporated Areas). |
| | Approximately 500 feet upstream of Hopkins Road | None | •513 | |
| North Fork Little River Tributary 2. | At the confluence with North Fork Little River | None | •474 | Durham County (Unincorporated Areas). |
| | Approximately 0.5 mile upstream of the confluence with North Fork Little River at the Durham/Orange County boundary. | None | •505 | |
| Panther Creek Tributary 1 .. | At the confluence with Panther Creek | None | •316 | Durham County (Unincorporated Areas). |
| | Approximately 0.6 mile upstream of the confluence with Panther Creek. | None | •368 | |
| Panther Creek Tributary 2 .. | At the confluence with Panther Creek Tributary 1 | None | •316 | Durham County (Unincorporated Areas). |
| | Approximately 0.4 mile upstream of the confluence with Panther Creek Tributary 1. | None | •361 | |
| Rocky Creek Tributary 1 .... | At the confluence with Rock Creek | None | •402 | Durham County (Unincorporated Areas), Town of Butner. |
| | Approximately 500 feet upstream of Range Road | None | •454 | |
| Rocky Creek Tributary 2 .... | At the confluence with Rocky Creek | None | •408 | Town of Butner. |
| | Approximately 0.3 mile upstream of the confluence with Rocky Creek. | None | •445 | |
| Rocky Branch Tributary 1 .. | At the confluence with Rocky Branch | None | •298 | Durham County (Unincorporated Areas). |
| | Approximately 0.3 mile upstream of the confluence with Rocky Branch. | None | •322 | |
| Sevenmile Creek Tributary 1. | At the confluence with Sevenmile Creek | •461 | •462 | Durham County (Unincorporated Areas). |
| | Approximately 1.5 miles upstream of the confluence with Sevenmile Creek. | None | •596 | |
| Stirrup Iron Creek Tributary A–1. | At the confluence with Stirrup Iron Creek Tributary A | None | •356 | City of Durham. |
| | Approximately 175 feet upstream of Cherry Blossom Drive. | None | •393 | |
| Stirrup Iron Creek Tributary B–1. | At the confluence with Stirrup Iron Creek Tributary B | None | •359 | Durham County (Unincorporated Areas). |
| | Approximately 0.4 miles upstream of the confluence with Stirrup Iron Creek Tributary B. | None | •381 | |
| Stirrup Iron Creek Tributary C–1. | At the confluence with Stirrup Iron Creek Tributary C | None | •356 | Durham County (Unincorporated Areas), City of Durham. |
| | Approximately 0.3 mile upstream of the confluence with Stirrup Iron Creek Tributary C. | None | •376 | |
| Flat River Tributary 4 ..... | Approximately 1,500 feet upstream of Quail Roost Road. | None | •481 | Durham County (Unincorporated Areas). |
| | Approximately 0.7 mile upstream of Quail Roost Road | None | •513 | |

| Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD) | | Communities affected |
|---|---|---|---|---|
| | | Existing | Modified | |
| Stirrup Iron Creek Tributary C. | Approximately 0.6 mile upstream of Evans Road ..... | None | •375 | Durham County (Unincorporated Areas), City of Durham. |
| | Approximately 0.5 mile upstream of Roche Drive ..... | None | •377 | |

*Town of Butner*

Maps available for inspection at the Butner Town Hall, 205C West E Street, North Carolina.

Send comments to Mr. Tom McGee, Butner Town Manager, 205 C West E Street, Butner, North Carolina 27509.

*City of Durham*

Maps available for inspection at the City of Durham Public Works Department, Stormwater Services Division, 101 City Hall Plaza, Durham, North Carolina.

Send comments to The Honorable William Bell, Mayor of the City of Durham, 101 City Hall Plaza, Durham, North Carolina 27701.

*Durham County (Unincorporated Areas)*

Maps available for inspection at the City of Durham Public Works Department, Stormwater Services Division, 101 City of Hall Plaza, Durham, North Carolina.

Send comments to Mr. Michael Ruffin, Durham County Manager, 200 East Main Street, 2nd Floor, Old Courthouse, Durham, North Carolina 27701.

**NORTH CAROLINA**
**New Hanover County**

| | | | | |
|---|---|---|---|---|
| Burnt Mill Creek ..... | Approximately 500 feet upstream of railroad ..... | •8 | •8 | City of Wilmington. |
| | Approximately 1,425 feet upstream of Varsity Drive ..... | None | •37 | |
| Mott Creek ..... | Just upstream of South College Road ..... | None | •22 | New Hanover County (Unincorporated Areas). |
| | Approximately 0.2 mile upstream of Long Eagle Court | None | •27 | |
| Mott Creek Tributary 1 ..... | At the confluence with Mott Creek ..... | •11 | •13 | New Hanover County (Unincorporated Areas). |
| | Approximately 300 feet downstream of Carolina Beach Road. | •11 | •15 | |
| Smith Creek ..... | Approximately 1,225 feet downstream of the confluence of Kings Grant Tributary. | •8 | •9 | New Hanover County (Unincorporated Areas). |
| | Approximately 300 feet upstream of Dove Field Road .. | None | •38 | |
| Spring Branch ..... | Approximately 0.3 mile upstream of North Kerr Avenue | •9 | •8 | New Hanover County (Unincorporated Areas), City of Wilmington. |
| | Approximately 0.4 mile upstream of Martin Luther King Jr. Parkway. | None | •31 | |
| Bradley Creek Tributary 1 .. | Approximately 60 feet upstream of Eastwood Road ..... | None | •18 | City of Wilmington. |
| | Approximately 0.2 mile upstream of Eastwood Road .... | None | •18 | |
| Island Creek ..... | Just downstream of Sidbury Road ..... | None | •19 | New Hanover County (Unincorporated Areas). |
| | Approximately 1.2 miles upstream of Sidbury Road ..... | None | •24 | |
| Prince George Creek Tributary 3. | Approximately 500 feet upstream of the confluence with Prince George Creek. | •20 | •21 | New Hanover County (Unincorporated Areas). |
| | Approximately 0.6 mile upstream of Sidbury Road ..... | None | •34 | |
| Murrayville Tributary ..... | Approximately 0.2 mile upstream of Murrayville Road .. | None | •26 | New Hanover County (Unincorporated Areas). |
| | Approximately 1.0 mile upstream of North College Road. | None | •36 | |
| Ness Creek ..... | Approximately 2.0 miles upstream of the confluence with Northeast Cape Fear River. | •9 | •8 | New Hanover County (Unincorporated Areas). |
| | Approximately 1,900 feet upstream of Todd Avenue .... | None | •32 | |
| Ness Creek Tributary 2 ..... | At the confluence with Ness Creek ..... | •17 | •26 | New Hanover County (Unincorporated Areas). |
| | Just upstream of the Caladan Road ..... | •17 | •31 | |
| Prince George Creek ..... | Just upstream of Castle Hayne Road ..... | •11 | •10 | New Hanover County (Unincorporated Areas). |
| | Just downstream of Sidbury Road ..... | •27 | •28 | |
| Pumkin Creek ..... | Approximately 500 feet upstream of the confluence with Prince George Creek. | •15 | •14 | New Hanover County (Unincorporated Areas). |
| | Approximately 500 feet upstream of Juvenile Center Road. | None | •31 | |
| Wildcat ..... | Approximately 0.5 mile upstream of the confluence with Northeast Cape Fear River Tributary 2. | •8 | •9 | New Hanover County (Unincorporated Areas). |
| | Just upstream of Blue Clay Road ..... | None | •27 | |

| Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD) | | Communities affected |
|---|---|---|---|---|
| | | Existing | Modified | |
| Atlantic Ocean/Intracoastal Waterway. | Approximately 750 feet northeast of the intersection of U.S Route 421 North Lake Park Boulevard and Spencer Farlow Drive. | •9 | •10 | New Hanover County (Unincorporated Areas), Town of Carolina Beach, Town of Kure Beach, City of Wilmington, Town of Wrightsville Beach. |
| | Approximately 1,000 feet south of the intersection of Jack Parker Boulevard and South Lumina Avenue. | •16 | •19 | |
| Cape Fear River | Approximately 0.6 mile upstream of the New Hanover/Pender/Brunswick County boundary. | •7 | •8 | New Hanover County (Unincorporated Areas). |
| | At the New Hanover/Pender/Brunswick County boundary. | •7 | •9 | |

*Town of Carolina Beach*
Maps available for inspection at the Carolina Beach Town Hall, Planning Department, 1121 North Lake Park Boulevard, Carolina Beach, North Carolina.
Send comments to the Honorable Dennis Barbour, Mayor of the Town of Carolina Beach, 1121 North Lake Park Boulevard, Carolina Beach, North Carolina 28428.
*Town of Kure Beach*
Maps available for inspection at the Kure Beach Town Hall, 117 Settlers Lane, Kure Beach, North Carolina.
Send comments to the Honorable Betty Medlin, Mayor of the Town of Kure Beach, 117 Settlers Lane, Kure Beach, North Carolina 28449.
*New Hanover County (Unincorporated Areas)*
Maps available for inspection at the New Hanover County Inspections Department, Market Place Mall, 230 Market Place Drive, Suite 110, Wilmington, North Carolina.
Send comments to Mr. Allen O'Neal, New Hanover County Manager, 320 Chestnut Street, Room 502, Wilmington, North Carolina 28401–4093.
*City of Wilmington*
Maps available for inspection at the Wilmington City Hall, Zoning Department, 102 North 3rd Street, Wilmington, North Carolina.
Send comments to the Honorable Spence H. Broadhurst, Mayor of the City of Wilmington, 102 North 3rd Street, Wilmington, North Carolina 28402.
*Town of Wrightsville Beach:*
Maps available for inspection at the Wrightsville Beach Town Hall, Planning Department, 321 Causeway Drive, Wrightsville Beach, North Carolina.
Send comments to Ms. Andrea Surratt, Wrightsville Beach Town Manager, 321 Causeway Drive, Wrightsville Beach, North Carolina 28480.

**NORTH CAROLINA**
**Orange County**

| | | | | |
|---|---|---|---|---|
| Toms Creek (Apple Pond) | At the confluence with Cane Creek | None | •501 | Orange County (Unincorporated Areas). |
| | Approximately 1,800 feet upstream of Nicks Creek | None | •558 | |
| Turkey Hill Creek | At the confluence with Cane Creek | None | •512 | Orange County (Unincorporated Areas). |
| | Approximately 3.1 miles upstream of Bradshaw Quarry Road. | None | •610 | |
| Cane Creek | Approximately 1,000 feet upstream of the confluence with Haw River. | None | •418 | Orange County (Unincorporated Areas). |
| | Approximately 125 feet upstream of Borland Road | None | •606 | |
| Cane Creek Tributary No. 5 | At the confluence with Cane Creek | None | •543 | Orange County (Unincorporated Areas). |
| | Approximately 1,200 feet upstream of Orange Grove Road. | None | •575 | |
| Watery Fork | At the confluence with Cane Creek | None | •501 | Orange County (Unincorporated Areas). |
| | Approxiamtely 250 feet upstream of Dairyland Road | None | •553 | |
| Collins Creek | At the Orange County/Chatham County boundary | None | •451 | Orange County (Unincorporated Areas). |
| | Approximately 0.1 mile upstream of Big Still Road | None | •536 | |
| Wildcat Branch | At the confluence with Collins Creek | None | •475 | Orange County (Unincorporated Areas). |
| | Approximately 1,250 feet upstream of Wildcat Creek Road. | None | •506 | |
| Collins Creek Tributary 1 | At the confluence with Collins Creek | None | •487 | Orange County (Unincorporated Areas). |
| | Approximately 650 feet upstream of Gait Way | None | •580 | |
| Mill Creek | At the confluence with Lake Michael Tributary | None | •580 | Orange County (Unincorporated Areas). |
| | Approximately 1.3 miles upstream of Mill Creek Road | None | •658 | |
| Mill Creek Tributary | At the confluence with Mill Creek | None | •613 | Orange County (Unincorporated Areas). |
| | Approximately 0.5 miles upstream of Lee Street | None | •656 | |

| Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD) | | Communities affected |
|---|---|---|---|---|
| | | Existing | Modified | |
| Mountain Creek | At the confluence with New Hope Creek | •474 | •473 | Orange County (Unincorporated Areas). |
| | Approximately 1.8 miles upstream of the confluence with New Hope Creek. | None | •506 | |
| Booker Creek | At the confluence with Little Creek and Bolin Creek | •254 | •255 | Town of Chapel Hill. |
| | Approximately 600 feet upstream of Airport Road | •471 | •479 | |
| Cedar Fork | Approximately 150 feet upstream of Brookview Drive | •334 | •328 | Town of Chapel Hill. |
| | Approximately 600 feet upstream of Kingston Drive | None | •554 | |
| Terrells Creek | At the Orange County/Chatham County boundary | None | •421 | Orange County (Unincorporated Areas). |
| | Approximately 2.2 miles upstream of the County boundary. | None | •498 | |
| University Lake (Price Creek). | At the University Lake Dam | None | •330 | Orange County (Unincorporated Areas), Town of Carrboro. |
| | At the Damascus Church Road | None | •358 | |
| South Hyco Creek | At the Caswell County/Orange County boundary | None | •589 | Orange County (Unincorporated Areas). |
| | Approximately 0.95 mile upstream of Bama Road | None | •643 | |
| Back Creek | At the Alamance County/Orange County boundary | None | •559 | Orange County (Unincorporated Areas). |
| | Approximately 150 feet downstream of Carr Store Road. | None | •648 | |
| South Hyco Creek Tributary 8. | At the Person County/Orange County boundary | None | •604 | Orange County (Unincorporated Areas). |
| | Approximately 1,250 feet upstream of Jones Road | None | •620 | |
| Stagg Creek | At the Alamance County boundary | None | •606 | Orange County (Unincorporated Areas). |
| | Approximately 1,300 feet downstream of Atkins Road | None | •639 | |
| Back Creek Tributary 3 | At the confluence with Back Creek | None | •575 | Orange County (Unincorporated Areas). |
| | Approximately 300 feet downstream of Harmony Church Road. | None | •646 | |
| Haw Creek | At the Orange County/Alamance County boundary | None | •611 | Orange County (Unincorporated Areas). |
| | Approximately 500 feet upstream of the Orange County/Alamance County boundary. | None | •614 | |
| Lake Michael Tributary | At the confluence with Mill Creek | None | •580 | Orange County (Unincorporated Areas). |
| | Approximately 1,500 feet upstream of Lancaster Road | None | •693 | |
| Lake Michael Tributary 2 | At the confluence with Lake Michael Tributary | None | •637 | Orange County (Unincorporated Areas). |
| | Approximately 400 feet north of U.S. 70 | None | •695 | |
| Lib Creek | Approximately 250 feet downstream of the Orange County/Chatham County boundary. | None | •257 | Orange County (Unincorporated Areas). |
| | Approximately 200 feet upstream of the Orange County/Chatham County boundary. | None | •265 | |
| Crow Branch | At the confluence with Booker Creek | None | •398 | Town of Chapel Hill. |
| | Approximately 0.5 mile upstream of dam | None | •500 | |
| Chapel Creek | At the confluence with Morgan Creek | None | •261 | Town of Chapel Hill. |
| | Approximately 350 feet upstream of South Road | None | •419 | |
| Little Creek | At the Orange County/Durham County boundary | •250 | •245 | Town of Chapel Hill. |
| | At the confluence with Booker Creek | •254 | •255 | |
| Little Creek Tributary 3 | At the confluence with Little Creek | •253 | •252 | Town of Chapel Hill. |
| | At Elderberry Drive | None | •310 | |
| Bolin Creek | At the confluence with Little Creek and Booker Creek | •254 | •255 | Orange County (Unincorporated Areas), Town of Carrboro, Town of Chapel Hill. |
| | Approximately 1,250 feet upstream of Talbryn Way | None | •578 | |
| Buckhorn Branch | At the confluence with Jones Creek | None | •483 | Orange County (Unincorporated Areas), Town of Carrboro. |
| | Approximately 300 feet upstream of dam | None | •509 | |
| Meeting of the Waters Creek. | At the confluence of Morgan Creek | •261 | •262 | Town of Chapel Hill. |
| | Approximately 0.6 mile upstream of Woodbine Drive | None | •341 | |

| Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD) | | Communities affected |
|---|---|---|---|---|
| | | Existing | Modified | |
| Morgan Creek | Approximately 2.7 miles downstream of the Orange County/Chatham County boundary. | None | •238 | Orange County (Unincorporated Areas), Town of Carrboro, Town of Chapel Hill. |
| | Approximately 100 feet upstream of Dairyland Road | •568 | •567 | |
| New Hope Creek Tributary 1. | Approximately 400 feet downstream of the Orange County/Durham County boundary. | None | •264 | Orange County (Unincorporated Areas), Town of Chapel Hill. |
| | Approximately 1,800 feet upstream of confluence with Dry Branch. | None | •297 | |

*Town of Carrboro*
Maps available for inspection at the Carrboro Town Hall, Planning Department, 301 West Main Street, Carrboro, North Carolina.
Send comments to Mr. Steve Stewart, Carrboro Town Manager, 301 West Main Street, Carrboro, North Carolina 27510.
*Town of Chapel Hill*
Maps available for inspection at the Chapel Hill Town Hall, 306 North Columbia Street, Chapel Hill, North Carolina.
Send comments to The Honorable Kevin C. Foy, Mayor of the Town of Chapel Hill, Chapel Hill Town Hall, 306 North Columbia Street, 2nd Floor, Chapel Hill, North Carolina 27516.
*Orange County (Unincorporated Areas)*
Maps available for inspection at the Orange County Planning and Inspections Department, 306F Revere Road, Hillsborough, North Carolina.
Send comments to Mr. John M. Link, Jr., Orange County Manager, 200 SouthCameron Street, Hillsborough, North Carolina 27278.

**NORTH CAROLINA**
**Wake County**

| | | | | |
|---|---|---|---|---|
| Adams Branch | At Corwin Road | None | •276 | Town of Garner. |
| | Approximately 800 feet upstream of Corwin Road | None | •280 | |
| Armory Tributary | Approximately 0.5 mile upstream of confluence with Richland Creek (Basin 18, Stream 13). | None | •366 | City of Raleigh. |
| | Approximately 0.7 mile upstream of confluence with Richland Creek (Basin 18, Stream 13). | None | •377 | |
| Basal Creek | At the confluence with Richland Creek (Basin 5, Stream 1). | •272 | •273 | Wake County (Unincorporated Areas), Town of Wake Forest. |
| | Approximately 250 feet upstream of St. Catherines Drive. | None | •309 | |
| Basin 10, Stream 2 | At the confluence with Little River (Basin 10, Stream 1) | •220 | •219 | Wake County (Unincorporated Areas). |
| | At Morphus Bridge Road | •220 | •219 | |
| Basin 10, Stream 5 | At Lizard Lick Road | None | •286 | Wake County (Unincorporated Areas). |
| | Approximately 0.6 mile upstream of Lizard Lick Road | None | •291 | |
| Basin 10, Stream 5 | At the confluence with Little River (Basin 10, Stream 1) | •245 | •243 | Wake County (Unincorporated Areas). |
| | Approximately 200 feet downstream of U.S. Highway 64. | •245 | •244 | |
| Basin 10, Stream 6 | At Lizard Lick Road | None | •252 | Wake County (Unincorporated Areas). |
| | Approximately 280 feet upstream of Edgemont Road | None | •339 | |
| Basin 10, Stream 9 | At the confluence with Little River (Basin 10, Stream 1) | •256 | •254 | Wake County (Unincorporated Areas). |
| | At State Highway 96 | •288 | •289 | |
| Basin 10, Stream 10 | At the confluence with Little River (Basin 10, Stream 1) | •259 | •257 | Wake County (Unincorporated Areas). |
| | Approximately 250 feet upstream of Fowler Road | •259 | •258 | |
| Basin 10, Stream 13 | At the confluence with Basin 10, Stream 14 | None | •277 | Wake County (Unincorporated Areas). |
| | Approximately 1.7 miles upstream of the confluence with Basin 10, Stream 14. | None | •344 | |
| Basin 10, Stream 14 | Approximately 0.4 mile upstream of the confluence with Little River (Basin 10, Stream 1). | None | •267 | Wake County (Unincorporated Areas). |
| | At Franklin/Wake County boundary | None | •308 | |
| Basin 11, Stream 4 | At U.S. Highway 64 | None | •240 | Wake County (Unincorporated Areas). |
| | Approximately 700 feet upstream of Ferrell Road | None | •341 | |
| Basin 11, Stream 7 | At Wake/Johnston County boundary | None | •278 | Wake County (Unincorporated Areas). |
| | Approximately 0.4 mile upstream of the Wake/Johnston County boundary. | None | •308 | |

| Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD) | | Communities affected |
|---|---|---|---|---|
| | | Existing | Modified | |
| Basin 12, Stream 3 ..... | At Old Crews Road ..... | None | •244 | Town of Knightdale, Wake County (Unincorporated Areas). |
| | Approximately 0.4 mile upstream of Horton Road ..... | None | •293 | |
| Basin 14, Stream 2 ..... | Confluence with Marks Creek (Basin 14, Stream 1) ..... | None | •183 | Wake County (Unincorporated Areas). |
| | Approximately 0.4 mile upstream of Lake Myra Road .. | None | •225 | |
| Basin 14, Stream 3 ..... | At the confluence with Marks Creek (Basin 14, Stream 1). | None | •202 | Wake County (Unincorporated Areas). |
| | Approximately 0.4 mile upstream of Presentation Street. | None | •244 | |
| Basin 18, Stream 13 ..... | Upstream side of Sorrell Grove Church Road ..... | None | •290 | Town of Morrisville, Wake County (Unincorporated Areas). |
| | At the Wake/Durham County boundary ..... | None | •320 | |
| Basin 18, Stream 13 ..... | At the confluence with Basin 18, Stream 13 ..... | None | •318 | Wake County (Unincorporated Areas), Town of Morrisville. |
| | Approximately 0.5 mile upstream of the confluence with Basin 18, Stream 13. | None | •318 | |
| Basin 18, Stream 4 ..... | Approximately 150 feet upstream of Grove Barton Road. | None | •318 | City of Raleigh. |
| | Approximately 0.2 mile upstream of Country Trail ..... | None | •400 | |
| Basin 18, Stream 7 ..... | At confluence with Sycamore Creek (Basin 18, Stream 6). | None | •324 | City of Raleigh. |
| | Approximately 0.5 mile upstream of the confluence with Sycamore Creek (Basin 18, Stream 6). | None | •343 | |
| Basin 20, Stream 5 ..... | Approximately 0.5 mile upstream of confluence with Swift Creek. | None | •202 | Wake County (Unincorporated Areas). |
| | Approximately 1.7 miles upstream of confluence with Swift Creek. | None | •257 | |
| Basin 23, Stream 2 ..... | At the confluence with Black Creek (Basin 23, Stream 1). | None | •234 | Wake County (Unincorporated Areas). |
| | Approximately 1.0 mile upstream of John Adams Road | None | •320 | |
| Basin 23, Stream 2 Tributary. | At confluence with Basin 23, Stream 2 ..... | None | •239 | Wake County (Unincorporated Areas). |
| | Approximately 175 feet upstream of John Adams Road | None | •248 | |
| Basin 23, Stream 3 ..... | At confluence with Black Creek ..... | None | •283 | Wake County (Unincorporated Areas), Town of Fuquay-Varina. |
| | Approximately 0.9 mile upstream of Maude Stewart Road. | None | •360 | |
| Basin 23, Stream 4 ..... | At confluence with Basin 23, Stream 3 ..... | None | •292 | Wake County (Unincorporated Areas). |
| | Approximately 1,775 feet upstream of Eddie Howard Road. | None | •352 | |
| Basin 23, Stream 5 ..... | At confluence with Black Creek ..... | None | •301 | Wake County (Unincorporated Areas). |
| | Approximately 0.9 mile upstream of confluence with Black Creek. | None | •331 | |
| Beaverdam Creek (Basin 11, Stream 3). | Approximately 0.7 mile upstream of Pearces Road ..... | None | •319 | Wake County (Unincorporated Areas). |
| | Approximately 320 feet upstream of Pippin Road ..... | None | •330 | |
| Beaverdam Creek (Basin 12, Stream 1). | At Old Crews Road ..... | None | •231 | Wake County (Unincorporated Areas). |
| | Approximately 0.2 mile upstream of Lucas Road ..... | None | •296 | |
| Beaverdam Creek (Basin 18, Stream 28). | Approximately 650 feet upstream of Scotland Street .... | •220 | •221 | City of Raleigh. |
| | At the upstream side of Glenwood Avenue ..... | •246 | •247 | |
| Beaverdam Creek East (Basin 15, Stream 21). | At Kyle Drive ..... | None | •235 | City of Raleigh. |
| | Approximately 450 feet upstream of U.S. Highway 401 | None | •244 | |
| Beddingfield Creek ..... | Approximately 250 feet upstream of Shotwell Road ..... | None | •164 | Wake County (Unincorporated Areas). |
| | Approximately 625 feet upstream of Shotwell Road ..... | None | •166 | |
| Big Branch (Basin 10, Stream 8). | At confluence with Little River ..... | •256 | •254 | Wake County (Unincorporated Areas). |
| | Approximately 0.3 mile upstream of Zebulon Road ..... | None | •288 | |

| Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD) | | Communities affected |
|---|---|---|---|---|
| | | Existing | Modified | |
| Big Branch (Basin 18, Stream 21). | Approximately 250 feet upstream of Chaswick Drive .... | •214 | •215 | City of Raleigh. |
| | Approximately 0.3 mile upstream of East Millbrook Road. | None | •315 | |
| Big Branch (Basin 30, Stream 2). | At the confluence with Walnut Creek (Basin 30, Stream 1). | •183 | •180 | City of Raleigh, Wake County (Unincorporated Areas), Town of Garner. |
| | Approximately 0.4 mile downstream of Auburn Church Road. | •241 | •242 | |
| Big Branch Tributary No. 1 (Basin 30, Stream 6). | Approximately 950 feet upstream of the confluence with Big Branch Southeast (Basin 30, Stream 2). | None | •185 | City of Raleigh, Wake County (Unincorporated Areas). |
| | Approximately 0.5 mile upstream of Interstate 40 ..... | None | •217 | |
| Big Branch Tributary No. 3 | At the confluence with Big Branch Tributary No. 1 (Basin 30, Stream 6). | None | •197 | City of Raleigh, Wake County (Unincorporated Areas). |
| | Approximately 0.3 mile upstream of Interstate 40 ..... | None | •222 | |
| Black Creek (Basin 23, Stream 1). | At Johnston County boundary ..... | None | •213 | Wake County (Unincorporated Areas), Town of Fuquay-Varina. |
| | Approximately 1.0 mile upstream of confluence of Basin 23, Stream 5. | None | •325 | |
| Bridges Branch ..... | Approximately 0.2 mile upstream of Barksdale Drive .... | •204 | •205 | City of Raleigh. |
| | Approximately 0.3 mile upstream of Barksdale Drive .... | None | •208 | |
| Brier Creek (Basin 18, Stream 14). | Approximately 0.6 mile upstream of confluence with Stirrup Iron Creek (Basin 18, Stream 12). | •283 | •284 | Town of Cary, Wake County (Unincorporated Areas). |
| | Approximately 0.7 mile upstream of Nelson Road ..... | None | •329 | |
| Buffalo Creek (Basin 9, Stream 1). | At Robertson Pond Dam ..... | None | •291 | Wake County (Unincorporated Areas). |
| | Approximately 0.8 mile upstream of Fowler Road ..... | None | •399 | |
| Cedar Fork (Basin 10, Stream 15). | At the confluence with Little River (Basin 10, Stream 1) | •284 | •289 | Wake County (Unincorporated Areas), Town of Rolesville. |
| | Approximately 3.4 miles upstream of the confluence with Little River (Basin 10, Stream 1). | None | •360 | |
| Coles Branch (Basin 18, Stream 24). | Approximately 0.2 mile upstream of Cary Parkway ..... | •334 | •335 | Town of Cary, Wake County (Unincorporated Areas). |
| | Approximately 850 feet upstream of Maynard Road ..... | •366 | •369 | |
| Crabtree Creek (Basin 18, Stream 9). | At Ebenezer Church Road ..... | None | •253 | City of Raleigh. |
| | Approximately 1.5 miles upstream of Reedy Creek Road. | None | •258 | |
| Crabtree Creek Tributary No. 6 (Basin 18, Stream 20). | Approximately 0.3 mile downstream of Cary Parkway .. | None | •311 | Town of Cary, Wake County (Unincorporated Areas). |
| | Approximately 500 feet upstream of Cary Parkway ..... | None | •337 | |
| Dutchmans Branch (Basin 20, Stream 17). | At the confluence with Swift Creek (Basin 20, Stream 1) (Lake Wheeler). | •291 | •289 | Wake County (Unincorporated Areas). |
| | At the downstream side of Blaney Franks Road ..... | •291 | •289 | |
| Fowlers Mill Creek (Basin 10, Stream 12). | Approximately 0.2 mile upstream of the confluence with Little River (Basin 10, Stream 1). | None | •266 | Wake County (Unincorporated Areas). |
| | Approximately 1.4 miles upstream of Pullytown Road .. | None | •313 | |
| Guffy Branch (Basin 21, Stream 4). | At the confluence with Little Creek (Basin 21, Stream 1). | None | •231 | Wake County (Unincorporated Areas). |
| | Approximately 4.3 miles above confluence with Little Creek (Basin 21, Stream 1). | None | •355 | |
| Hatchet Grove Tributary (Basin 18, Stream 25). | Approximately 350 feet downstream of Hatchet Grove Dam Tributary. | None | •314 | Town of Cary, Wake County (Unincorporated Areas). |
| | Approximately 0.7 mile upstream of Hatchet Grove Dam Tributary. | None | •338 | |
| Hodges Creek (Basin 8, Stream 1). | Approximately 0.2 mile upstream of Old Crews Road .. | None | •222 | Wake County (Unincorporated Areas). |
| | Approximately 1.4 miles upstream of R.C. Watson Road. | None | •337 | |
| Hominy Creek (Basin 10, Stream 7). | At Lizard Lick Road ..... | None | •253 | Wake County (Unincorporated Areas). |

| Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD) | | Communities affected |
|---|---|---|---|---|
| | | Existing | Modified | |
| | Approximately 0.3 mile upstream of Hodge Road | None | •337 | |
| Horse Creek (Basin 4, Stream 1). | Approximately 0.3 mile downstream of Wake/Franklin County boundary. | None | •337 | Wake County (Unincorporated Areas). |
| | At the Wake/Franklin County boundary | None | •342 | |
| Juniper Branch (Basin 21, Stream 2). | At the confluence with Little Creek (Basin 21, Stream 1). | None | •261 | Wake County (Unincorporated Areas). |
| | Approximately 0.8 mile upstream of Pagan Road | None | •327 | |
| Lakemount Tributary (Basin 18, Stream 22). | At the confluence with Big Branch (Basin 18, Stream 21). | •253 | •254 | City of Raleigh. |
| | Approximately 250 feet downstream of Pinecroft Drive | None | •313 | |
| Ledge Creek | At the confluence with Falls Lake | None | •262 | Wake County (Unincorporated Areas). |
| | At the Wake/Granville County boundary | None | •262 | |
| Lens Branch (Basin 20, Stream 22). | At the confluence with Swift Creek (Basin 20, Stream 1). | •308 | •312 | Town of Cary, Wake County (Unincorporated Areas). |
| | Approximately 500 feet downstream of Lochmere Drive | •314 | •313 | |
| Little Beaverdam Lake | Entire shoreline | None | •262 | Wake County (Unincorporated Areas). |
| Little Beaverdam Creek (Basin 2, Stream 2). | Just upstream of the confluence with Little Beaverdam Lake. | None | •262 | Wake County (Unincorporated Areas). |
| | Approximately 0.7 mile downstream of the Wake/Granville County boundary. | None | •297 | |
| Little Black Creek (Basin 23, Stream 8). | At Johnston County boundary | None | •228 | Wake County (Unincorporated Areas). |
| | Approximately 0.6 mile upstream of Walter Myatt Road | None | •300 | |
| Little Brier Creek (Basin 18, Stream 15). | At the confluence with Brier Creek (Basin 18, Stream 14). | •317 | •322 | City of Raleigh, Wake County (Unincorporated Areas). |
| | At the Wake County/City of Raleigh boundary | •317 | •322 | |
| Little Brier Creek (Basin 18, Stream 15). | At the confluence with Brier Creek (Basin 18, Stream 14). | •318 | •322 | City of Raleigh. |
| | At the downstream side of Lumley Road | •321 | •322 | |
| Little Brier Creek East (Basin 18, Stream 16). | Just downstream of Interstate 70 | None | •347 | City of Raleigh, Wake County (Unincorporated Areas). |
| | Approximately 300 feet upstream of the Wake County/Durham County boundary. | None | •388 | |
| Little Creek (Basin 11, Stream 2). | At Cemetery Road | None | •278 | Town of Zebulon, Wake County (Unincorporated Areas). |
| | Approximately 0.3 mile upstream of U.S. 64 | None | •312 | |
| Little Creek (Basin 21, Stream 1). | At the Wake County/Johnston County boundary | None | •220 | Wake County (Unincorporated Areas). |
| | Approximately 2.3 miles upstream of confluence of Juniper Branch. | None | •335 | |
| Little River (Basin 10, Stream 1). | At Johnston/Wake County boundary | •218 | •216 | Wake County (Unincorporated Areas), Town of Wendell, Town of Zebulon. |
| | At Franklin/Wake County boundary | None | •325 | |
| Lizard Lick Creek (Basin 10, Stream 23). | At the confluence with Little River (Basin 10, Stream 1) | •225 | •222 | Town of Wendell, Wake County (Unincorporated Areas). |
| | At Wendell Boulevard | •225 | •226 | |
| Marks Creek (Basin 14, Stream 1). | Approximately 325 feet downstream of Wake/Johnston County boundary. | None | •176 | Wake County (Unincorporated Areas). |
| | Approximately 0.8 mile downstream of Knightdale Eaglerock road. | None | •208 | |
| Marsh Creek (Basin 18, Stream 17). | At Skycrest Drive | •202 | •203 | City of Raleigh, Wake County (Unincorporated Areas). |
| | Approximately 650 feet downstream of Falls Church Road. | None | •315 | |
| Millbrook Tributary to Marsh Creek (Basin 18, Stream 19). | Approximately 50 feet upstream of confluence with Marsh Creek (Basin 18, Stream 17). | •236 | •237 | City of Raleigh, Wake County (Unincorporated Areas). |
| | At Brockton Drive | •241 | •240 | |

| Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD) | | Communities affected |
|---|---|---|---|---|
| | | Existing | Modified | |
| Mills Branch (Basin 22, Stream 5). | Approximately 50 feet upstream of railroad | None | •274 | Wake County (Unincorporated Areas). |
| | Approximately 0.7 mile upstream of railroad | None | •301 | |
| Mingo Creek (Basin 12, Stream 2). | At the confluence with Beaverdam Southwest Creek | •204 | •206 | Town of Knightdale, Wake County (Unincorporated Areas). |
| | At Smithfield Road | •270 | •272 | |
| Moccasin Creek (Basin 11, Stream 1). | Approximately 380 feet downstream of U.S. 264 | •212 | •214 | Wake County (Unincorporated Areas). |
| | Approximately 0.7 mile upstream of Henry Baker Road | None | •307 | |
| New Hope Tributary to Marsh Creek (Basin 18, Stream 18). | Approximately 1,150 feet upstream of the confluence with Marsh Creek. | •216 | •215 | City of Raleigh. |
| | Approximately 150 feet upstream of Calvary Drive | None | •293 | |
| Newlight Creek (Basin 3, Stream 1). | Approximately 450 feet upstream of confluence of Basin 3, Stream 8. | None | •280 | Wake County (Unincorporated Areas). |
| | At the Wake County/Granville County boundary | None | •283 | |
| Northeast Tributary to Turkey Creek (Basin 18, Stream 4). | Approximately 100 feet upstream of Grove Barton Road. | None | •318 | City of Raleigh, Wake County (Unincorporated Areas). |
| | Approximately 0.3 mile upstream of County Trail | None | •400 | |
| Perry Creek (Basin 10, Stream 19). | At the confluence with Little River (Basin 10, Stream 1) | None | •318 | Wake County (Unincorporated Areas). |
| | Approximately 325 feet downstream of Old Pearce Road. | None | •381 | |
| Perry Creek (Basin 15, Stream 26). | Approximately 225 feet downstream of the confluence with Perry Creek East Branch. | •196 | •197 | City of Raleigh, Wake County (Unincorporated Areas). |
| | Approximately 0.8 mile upstream of Rainwater Drive | None | •355 | |
| Perry Creek East Branch (Basin 15, Stream 27). | At the confluence with Perry Creek (Basin 15, Stream 26). | •196 | •197 | City of Raleigh, Wake County (Unincorporated Areas). |
| | Approximately 650 feet upstream of the confluence with Perry Creek (Basin 15, Stream 26). | •196 | •197 | |
| Richland Creek (Basin 5, Stream 1). | Approximately 1,050 feet downstream of New Falls of the Neuse Road. | •206 | •205 | City of Raleigh, Wake County (Unincorporated Areas), Town of Wake Forest. |
| | At the Wake/Franklin County boundary | None | •301 | |
| Richland Creek Tributary | At the confluence with Richland Creek (Basin 5, Stream 1). | •227 | •228 | Town of Wake Forest, Wake County (Unincorporated Areas). |
| | Approximately 1.2 miles upstream of the confluence with Richland Creek (Basin 5, Stream 1). | None | •311 | |
| Rocky Branch (Basin 30, Stream 5). | At the confluence with Walnut Creek (Basin 30, Stream 1). | •233 | •236 | City of Raleigh. |
| | Approximately 200 feet downstream of Western Boulevard. | •296 | •297 | |
| Snipes Creek | Approximately 100 feet upstream of confluence of Basin 11, Stream 7. | None | •278 | Wake County (Unincorporated Areas) Town of Zebulon. |
| | Approximately 0.6 mile upstream of Highway 96 | None | •330 | |
| Swift Creek (Basin 20, Stream 1). | At Old Stage Road | •245 | •246 | Town of Cary, Wake County (Unincorporated Areas). |
| | Approximately 700 feet upstream of U.S. Highway 64 | None | •359 | |
| Swift Creek Tributary No. 7 (Basin 20, Stream 24). | At the confluence with Swift Creek (Basin 20, Stream 1). | •325 | •332 | Town of Cary, Wake County (Unincorporated Areas). |
| | Approximately 0.3 mile upstream of the confluence with Swift Creek (Basin 20, Stream 1). | •331 | •332 | |
| Sycamore Creek (Basin 18, Stream 6). | At the confluence with Crabtree Creek (Basin 18, Stream 9). | None | •254 | City of Raleigh, Wake County (Unincorporated Areas). |
| | Approximately 1 mile upstream of Leesville Road | None | •450 | |
| Sycamore Creek (Basin 18, Stream 6). | Approximately 0.5 mile upstream of ACC Boulevard | None | •395 | City of Raleigh, Wake County (Unincorporated Areas). |
| | Approximately 1 mile upstream of Leesville Road | None | •450 | |

| Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD) | | Communities affected |
|---|---|---|---|---|
| | | Existing | Modified | |
| Turkey Creek (Basin 18, Stream 15). | At the confluence with Sycamore Creek | None | •254 | City of Raleigh, Wake County (Unincorporated Areas). |
| | Approximately 1.3 miles upstream of Ebenezer Church Road. | None | •279 | |
| Unnamed Tributary (#1) to Swift Creek. | Approximately 425 feet downstream of Wake/Johnston County boundary. | None | •216 | Wake County (Unincorporated Areas). |
| | Approximately 125 feet downstream of Wake/Johnston County boundary. | None | •216 | |
| Walnut Creek (Basin 30, Stream 1). | Approximately 0.8 mile upstream of the confluence with Neuse River (Basin 15, Stream 1). | •174 | •173 | Town of Cary, Wake County (Unincorporated Areas), City of Raleigh. |
| | Approximately 0.3 mile upstream of Maynard Road | None | •452 | |
| Buckhorn Creek | Approximately 500 feet downstream of Cass Holt Road | None | •232 | Wake County (Unincorporated Areas). |
| | Approximately 0.45 mile upstream of Honeycutt Road | None | •444 | |
| Jim Branch | At the confluence with Harris Reservoir | None | •232 | Wake County (Unincorporated Areas). |
| | Approximately 1.0 mile upstream of the confluence with Harris Reservoir. | None | •252 | |
| Cary Branch | At the confluence with Harris Reservoir | None | •232 | Wake County (Unincorporated Areas). |
| | Approximately 2.3 mile upstream of the confluence with Norris Branch. | None | •326 | |
| Harris Reservoir | Entire shoreline with Wake County | None | •232 | Wake County (Unincorporated Areas). |
| Norris Branch | At the confluence with Cary Creek | None | •239 | Wake County (Unincorporated Areas), Town of Holly Springs. |
| | Approximately 1.5 miles upstream of Avent Ferry Road | None | •328 | |
| Utley Creek | At the confluence with White Oak Creek | None | •232 | Wake County (Unincorporated Areas), Town of Holly Springs. |
| | Approximately 3.3 miles upstream of the confluence with White Oak Creek. | None | •329 | |
| White Oak Creek (Basin 26, Stream 1). | At the confluence of Harris Reservoir | None | •232 | Wake County (Unincorporated Areas), Town of Holly Springs. |
| | Approximately 1,600 feet upstream of Highway 1 | None | •311 | |
| Big Branch (Basin 26, Stream 5). | At the confluence with White Oak Creek | None | •248 | Wake County (Unincorporated Areas), Town of Holly Springs. |
| | Approximately 0.4 mile upstream of Highway 1 | None | •307 | |
| Little Branch (Basin 26, Stream 3). | At the confluence with Big Branch (Basin 26, Stream 5). | None | •250 | Wake County (Unincorporated Areas), Town of Holly Springs. |
| | Apprixmately 1.7 miles upstream of New Hill Road | None | •310 | |
| Little Branch Tributary (Basin 26, Stream 4). | At the confluence with Little Branch (Basin 26, Stream 3). | None | •265 | Wake County (Unincorporated Areas). |
| | Approximately 1.0 mile upstream of the confluence with Little Branch. | None | •282 | |
| Little White Oak Creek (Basin 26, Stream 9). | At the confluence with Harris Reservoir | None | •232 | Wake County (Unincorporated Areas). |
| | Approximately 0.8 mile upstream of Highway 1 | None | •288 | |
| Little White Oak Creek Tributary 2. | At the confluence with Little White Oak Creek (Basin 26, Stream 9). | None | •247 | Wake County (Unincorporated Areas). |
| | Approximately 900 feet upstream of the confluence with Little White Oak Creek (Basin 26, Stream 9). | None | •261 | |
| Thomas Creek | At the confluence with Harris Reservoir | None | •232 | Wake County (Unincorporated Areas). |
| | Approximately 100 feet downstream of Highway 1 | None | •245 | |
| Big Branch | At the confluence with Harris Reservoir | None | •232 | Wake County (Unincorporated Areas). |
| | Approximately 0.9 mile upstream of Highway 1 | None | •298 | |
| Little Beaver Creek (Basin 27, Stream 1). | Approximately 0.7 mile upstream of the Chatham/Wake County boundary. | •238 | •239 | Wake County (Unincorporated Areas). |
| | Approximately 1.2 miles upstream of New Hill Olive Chapel Road. | None | •284 | |

| Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD) | | Communities affected |
|---|---|---|---|---|
| | | Existing | Modified | |
| Morris Branch | At Chatham/Wake County boundary | •250 | •264 | Wake County (Unincorporated Areas), Town of Cary. |
| | Approximately 750 feet upstream of Howard Road | None | •336 | |
| Kenneth Branch (Basin 24, Stream 6). | At railroad | None | •394 | Wake County (Unincorporated Areas), Town of Fuquay-Varina. |
| | Approximately 1,750 feet upstream of railroad | None | •394 | |
| Angier Creek (Basin 24, Stream 4). | Just upstream of railroad | None | •368 | Wake County (Unincorporated Areas), Town of Fuquay-Varina. |
| | Approximately 0.4 mile upstream of railroad | None | •378 | |
| Neills Creek | At Harnett/Wake County boundary | None | •263 | Wake County (Unincorporated Areas). |
| | Approximately 1.3 miles upstream of Harnett/Wake County boundary. | None | •300 | |
| Beaver Creek (Basin 27, Stream 2). | At the confluence with Jordan Lake | None | •238 | Wake County (Unincorporated Areas), Town of Apex. |
| | Approximately 1,100 feet up stream of Castlebury Drive. | None | •370 | |
| Jacks Branch (Basin 28, Stream 4). | At the confluence with White Oak Creek (Basin 28, Stream 1). | None | •273 | Wake County (Unincorporated Areas). |
| | Approximately 1.5 miles upstream of the confluence with White Oak Creek. | None | •332 | |
| White Oak Creek (Basin 28, Stream 1). | At the Wake/Chatham County boundary | None | •238 | Wake County (Unincorporated Areas), Town of Cary. |
| | Approximately 0.6 mile upstream of Park Village Drive | None | •369 | |
| Clark Branch (Basin 28, Stream 3). | At the confluence with White Oak Creek | None | •256 | Wake County (Unincorporated Areas). |
| | Approximately 0.5 mile upstream of Green Level Church Road. | None | •302 | |
| Basin 28, Stream 8 | At the confluence with White Oak Creek | None | •262 | Wake County (Unincorporated Areas), Town of Cary. |
| | Approximately 0.3 mile upstream of Hendricks Road | None | •303 | |
| Basin 28, Stream 7 | At the confluence with Basin 28, Stream 8 | None | •275 | Town of Cary. |
| | Approximately 0.4 mile upstream of the confluence with Basin 28, Stream 8. | None | •290 | |
| Batchelor Branch (Basin 28, Stream 6). | At the confluence with White Oak Creek | None | •268 | Wake County (Unincorporated Areas), Town of Cary. |
| | Approximately 1,000 feet upstream of Highfield Avenue | None | •356 | |
| Reedy Branch (Basin 27, Stream 5). | At the confluence with Beaver Creek (Basin 27, Stream 2). | •238 | •239 | Wake County (Unincorporated Areas). |
| | Approximately 0.4 mile upstream of the confluence with Reedy Branch Tributary (basin 27, Stream 6). | None | •274 | |
| Reedy Branch Tributary (basin 27, Stream 6). | Approximately 200 feet upstream of the confluence with Rudy Branch (Basin 27, Stream 5). | •265 | •266 | Wake County (Unincorporated Areas), Town of Apex. |
| | Approximately 800 feet upstream of Kelly Road | None | •310 | |
| Kenneth Creek (Basin 24, Stream 2). | At the Harnett/Wake County boundary | None | •257 | Town of Fuquay-Varina. |
| | Approximately 0.4 mile upstream of the Harnett/Wake County boundary. | None | •262 | |
| Basin 18, Stream 13 Tributary. | At the confluence with Basin 18, Stream 13 | None | •318 | Town of Morrisville. |
| | Approximately 0.6 mile upstream of the confluence with Basin 18, Stream 13. | None | •318 | |
| Basin 20, Stream 20 | At the confluence with Swift Creek | •293 | •292 | Wake County (Unincorporated Areas). |
| | Approximately 475 feet upstream of the confluence with Swift Creek. | •293 | •292 | |
| Kit Creek (Basin 29, Stream 7). | Just upstream of Louis Stevens Road | •258 | •259 | Wake County (Unincorporated Areas), Town of Morrisville. |
| | Approximately 0.2 mile upstream of Davis Drive | None | •292 | |

| Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD) | | Communities affected |
|---|---|---|---|---|
| | | Existing | Modified | |
| Kit Creek Tributary 1 (Basin 29, Stream 11). | At the confluence with Kit Creek (Basin 29, Stream 7) | •259 | •261 | Wake County (Unincorporated Areas). |
| | Approximately 0.3 mile upstream of Davis Drive | •279 | •284 | |
| Lens Branch (Basin 20, Stream 22). | At the confluence with Swift Creek | •308 | •312 | Wake County (Unincorporated Areas), Town of Cary. |
| | Approximately 500 feet downstream of Lochmere Drive | •314 | •313 | |

*Town of Apex*
Maps available for inspection at the Apex Town Hall, 73 Hunter Street, Apex, North Carolina.
Send comments to The Honorable Keith Weatherly, Mayor of the Town of Apex, P.O. Box 250, Apex, North Carolina 27502.
*Town of Cary*
Maps available for inspection at the Cary Town Hall, Storm Water Services Division, 318 North Academy Street, Cary, North Carolina.
Send comments to The Honorable Ernest McAlister, Mayor of the Town of Cary, 318 North Academy Street, North Carolina 27511.
*Town of Fuquay-Varina*
Maps available for inspection at the Fuquay-Varina Town Hall, Planning Department, 401 Old Honeycutt Road, Fuquay-Varina, North Carolina.
Send comments to Mr. Andy Hedrick, Fuquay-Varina Town Manager, 401 Old Honeycutt Road, Fuquay-Varina, North Carolina 27526.
*Town of Garner*
Maps available for inspection at the Town of Garner Engineering Department, 900 7th Avenue, Building B, Garner, North Carolina.
Send comments to Ms. Mary Lou Todd, Garner Town Manager, P.O. Box 446, Garner, North Carolina 27529.
*Town of Holly Springs*
Maps available for inspection at the Holly Springs Town Hall, Engineering Department, 125 South Main Street, Holly Springs, North Carolina.
Send comments to The Honorable Richard Sears, Mayor of the Town of Holly Springs, 4716 Salem Ridge Road, Holly Springs, North Carolina 27540.
*Town of Knightdale*
Maps available for inspection at the Town of Knightdale Planning Department, 950 Steeple Square Court, Knightdale, North Carolina.
Send comments to Mr. Gary McConkey, Knightdale Town Manager, P.O. Box 640, Knightdale, North Carolina 27545.
*Town of Morrisville*
Maps available for inspection at the Morrisville Town Hall, Planning Department, 100 Town Hall Drive, Morrisville, North Carolina.
Send comments to The Honorable Gordon Cromwell, Mayor of the Town of Morrisville, 100 Town Hall Drive, Morrisville, North Carolina 27560–8443.
*City of Raleigh*
Maps available for inspection at the City of Raleigh Planning Department, 222 West Hargett Street, 4th Floor, Raleigh, North Carolina.
Send comments to the Honorable Charles Meeker, Mayor of the City of Raleigh, P.O. Box 590, Raleigh, North Carolina 27602.
*Town of Rolesville*
Maps available for inspection at the Rolesville Town Hall, 200 East Young Street, Rolesville, North Carolina.
Send comments to The Honorable Nancy Kelly, Mayor of the Town of Rolesville, P.O. Box 250, Rolesville, North Carolina 27571.
*Wake County (Unincorporated Areas)*
Maps available for inspection at the Wake County Office Building, Environmental Services, 1st Floor, 336 Fayetteville Street Mall, North Carolina.
Send comments to Mr. David Cooke, Wake County Manager, 337 South Salisbury Street, Suite 1100, Raleigh, North Carolina 27602.
*Town of Wake Forest*
Maps available for inspection at the Town of Wake Forest Planning Department, 401 Elm Avenue, Wake Forest, North Carolina.
Send comments to the Honorable Vivian Jones, Mayor of the Town of Wake Forest, 401 Elm Avenue, Wake Forest, North Carolina 27587.
*Town of Wendell*
Maps available for inspection at the Town of Wendell Planning Department, 15 East Fourth Street, Wendell, North Carolina.
Send comments to Mr. Timothy Burgess, Wendell Town Manager, P.O. Box 828, Wendell, North Carolina 27591.
*Town of Zebulon*
Maps available for inspection at the Town of Zebulon Planning Department, 100 North Arendell Avenue, Zebulon, North Carolina.
Send comments to The Honorable Robert Matheny, Mayor of the Town of Zebulon, 100 North Arendell Avenue, Zebulon, North Carolina 27597.

**TENNESSEE**
**Knox County**

| | | | | |
|---|---|---|---|---|
| Beaver Creek | Approximately 1.6 miles upstream of confluence with Clinch River. | •797 | •796 | Knox County (Unincorporated Areas), City of Knoxville. |
| | Approximately 600 feet upstream of Tazewell Pike | None | •1,081 | |
| Berry Branch | At confluence with Lyon Creek | None | •881 | Knox County (Unincorporated Areas). |
| | Approximately 3,346 feet upstream of confluence with Lyon Creek. | None | •889 | |
| Brice Branch | At confluence with Flat Creek | None | •946 | Knox County (Unincorporated Areas). |
| | Approximately 1,320 feet upstream of confluence with Flat Creek. | None | •948 | |
| Burnett Creek | At confluence with French Broad River | None | •827 | Knox County (Unincorporated Areas). |

| Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD) | | Communities affected |
|---|---|---|---|---|
| | | Existing | Modified | |
| | Approximately 763 feet upstream of John Sevier Highway. | None | •865 | |
| Cliff Creek | At confluence with Lyon Creek | None | •849 | Knox County (Unincorporated Areas). |
| | Approximately 2.1 miles upstream of Randles Road | None | •985 | |
| Conner Creek | Just upstream of Rippling Drive | None | •796 | Knox County (Unincorporated Areas). |
| | Approximately 307 feet upstream of Conner Creek Circle. | None | •960 | |
| Cox Creek | At confluence with Beaver Creek | None | •1,036 | Knox County (Unincorporated Areas). |
| | Approximately 701 feet upstream of Tazewell Road | None | •1,092 | |
| Tributary to Cox Creek | At confluence with Cox Creek | None | •1,044 | Knox County (Unincorporated Areas). |
| | Approximately 149 feet upstream of Cedarbreeze Road. | None | •1,073 | |
| Echo Valley Tributary | At confluence with Ten Mile Creek | •875 | •876 | Knox County (Unincorporated Areas). |
| | Approximately 157 feet upstream of Echo Valley Road | None | •880 | |
| First Creek | At confluence with Tennessee River | •821 | •882 | City of Knoxville. |
| | Approximately 379 feet upstream of Knox Road | None | •967 | |
| First Creek Tributary No. 1 | At confluence with First Creek | None | •962 | City of Knoxville. |
| | Approximately 1,341 feet upstream of Rockcrest Road | None | •994 | |
| First Creek Tributary No. 2 | At confluence with First Creek | None | •962 | City of Knoxville. |
| | Approximately 1,011 feet upstream of Meadow Road | None | •985 | |
| Flat Creek | At confluence with Helston River | None | •848 | Knox County (Unincorporated Areas). |
| | Approximately 937 feet upstream of Longmire Road | None | •992 | |
| Fourth Creek | At confluence with Tennessee River | •818 | •819 | City of Knoxville. |
| | Approximately 227 feet upstream of Middlebrook Pike | •920 | •925 | |
| Tributary No. 1 to Fourth Creek. | At confluence with Fourth Creek | •836 | •835 | City of Knoxville. |
| | Approximately 365 feet upstream of Lawford Road | None | •922 | |
| Tributary No. 3 to Fourth Creek. | At confluence with Fourth Creek | None | •915 | City of Knoxville. |
| | Approximately 586 feet upstream of Picadilly Road | None | •947 | |
| French Broad | At confluence with French Broad | •826 | •825 | Knox County (Unincorporated Areas), City of Knoxville. |
| | At Knox County boundary | None | •860 | |
| Grassy Creek | At confluence with Beaver Creek | •974 | •973 | Knox County (Unincorporated Areas), City of Knoxville. |
| | Approximately 0.55 mile upstream of Grassy Creek Way. | None | •1,024 | |
| Grassy Creek Tributary | At confluence with Grassy Creek | None | •993 | Knox County (Unincorporated Areas). |
| | Approximately 1.0 mile upstream of Johnson Road | None | •1,016 | |
| Hickory Creek | Approximately 500 feet upstream of Campbell Street | None | •926 | Knox County (Unincorporated Areas). |
| | Approximately 4,281 feet upstream of Cooper Lane | None | •1,025 | |
| Hines Branch | At confluence with Beaver Creek | None | •1,014 | Knox County (Unincorporated Areas), City of Knoxville. |
| | Approximately 1,835 feet upstream of Mynatt Drive | None | •1,078 | |
| Hines Creek | At confluence with French Broad River | None | •832 | Knox County (Unincorporated Areas). |
| | Approximately 0.44 mile upstream of Old Sevierville Pike. | None | •921 | |
| Tributary to Hines Creek | At confluence with Hines Creek | None | •902 | Knox County (Unincorporated Areas). |
| | Approximately 0.47 mile upstream of confluence with Hines Creek. | None | •919 | |
| Kerns Branch | At confluence with Beaver Creek | None | •1,058 | Knox County (Unincorporated Areas). |
| | Approximately 842 feet upstream of Majors Road | None | •1,130 | |
| Knob Creek | At confluence with Tennessee River | None | •818 | Knox County (Unincorporated Areas), City of Knoxville. |

| Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD) | | Communities affected |
|---|---|---|---|---|
| | | Existing | Modified | |
| | Approximately 0.6 mile upstream of Martin Mill Pike .... | None | •903 | |
| Knob Fork ..... | At confluence with Beaver Creek ..... | •995 | •994 | Knox County (Unincorporated Areas). |
| | Approximately 183 feet upstream of Fountain City Road. | None | •1,080 | |
| Limestone Creek ..... | At confluence with Tuckahoe Creek ..... | None | •872 | Knox County (Unincorporated Areas). |
| | Approximately 1,736 feet upstream of Smith School Road. | None | •889 | |
| Little Flat Creek ..... | At confluence with Flat Creek ..... | None | •965 | Knox County (Unincorporated Areas). |
| | Approximately 0.8 mile upstream of Clement Road ..... | None | •1,042 | |
| Little Turkey Creek ..... | At confluence with Turkey Creek ..... | •815 | •816 | Knox County (Unincorporated Areas), Town of Farragut. |
| | Approximately 900 feet upstream of Brochardt Boulevard. | None | •916 | |
| Little Turkey Creek Tributary. | At confluence with Little Turkey creek ..... | None | •908 | Town of Farragut. |
| | Approximately 131 feet upstream of Hickory Woods Road. | None | •947 | |
| Love Creek Tributary ..... | At confluence with Love Creek ..... | None | •836 | City of Knoxville. |
| | Approximately 1,086 feet upstream of Chilhavee Cant | None | •867 | |
| Lyon Creek ..... | At confluence with Holsten River ..... | None | •849 | Knox County (Unincorporated Areas). |
| | Approximately 461 feet upstream of Carter Mill Drive ... | None | •987 | |
| Mill Branch ..... | At confluence with Willow Fork ..... | •1,024 | •1,027 | Knox County (Unincorporated Areas), City of Knoxville. |
| | Approximately 440 feet upstream of Maynardville Pike | None | •1,142 | |
| Murphy Creek ..... | Approximately 4,700 feet downstream of Southern Railway. | •975 | •974 | Knox County (Unincorporated Areas). |
| | Approximately 1,350 feet upstream of Link Road ..... | None | •1,087 | |
| North Fork Beaver Creek ... | At confluence with Beaver Creek ..... | •1,015 | •1,018 | Knox County (Unincorporated Areas). |
| | Approximately 128 feet upstream of McCloud Road ..... | None | •1,096 | |
| North Fork Turkey ..... | Approximately 2,444 feet downstream of Kingston Pike | •853 | •852 | Town of Farragut. |
| | Approximately 1,375 feet upstream of Grigsby Chapel Road. | None | •944 | |
| Plumb Creek ..... | Approximately 560 feet downstream of Hardin Valley Road. | •940 | •941 | Knox County (Unincorporated Areas). |
| | Approximately 146 feet upstream of Hickey Road ..... | None | •977 | |
| Roseberry Creek ..... | Approximately 1,200 feet upstream of confluence with Holsten River. | •846 | •845 | Knox County (Unincorporated Areas), City of Knoxville. |
| | Approximately 1,352 feet upstream of Maloneyville Road. | None | •1,030 | |
| Sinking Creek ..... | At confluence with Tennessee River ..... | None | •817 | Knox County (Unincorporated Areas). |
| | Approximately 1,200 feet upstream of Wallace Road ... | None | •913 | |
| Sinking Creek Tributary to Ten Mile Creek. | At confluence with Ten Mile Creek ..... | •894 | •900 | Knox County (Unincorporated Areas). |
| | Approximately 396 feet upstream of Middlebrook Pike | None | •997 | |
| Sixmile Branch ..... | At end of Burnett Creek ..... | None | •865 | Knox County (Unincorporated Areas). |
| | Approximately 636 feet upstream of East Maine Drive | None | •908 | |
| South Fork Beaver Creek .. | At confluence with Beaver Creek ..... | None | •1,074 | Knox County (Unincorporated Areas). |
| | Approximately 392 feet upstream of Maloneyville Road | None | •1,107 | |
| Stock Creek ..... | Approximately 1.23 miles downstream of Martin Mill Pike. | •820 | •819 | Knox County (Unincorporated Areas). |
| | Approximately 58 feet upstream of McCammon Road .. | None | •892 | |
| Swanpond Creek ..... | At a point just downstream of Huckleberry Springs Road. | •933 | •932 | Knox County (Unincorporated Areas). |
| | Approximately 3,200 feet upstream of Wooddale Church Road. | None | •996 | |
| Ten Mile Creek ..... | At confluence with Ebenizers Sinkhole ..... | •878 | •876 | Knox County (Unincorporated Areas), City of Knoxville |

| Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD) | | Communities affected |
|---|---|---|---|---|
| | | Existing | Modified | |
| | Approximately 0.5 mile upstream of Robinson Road .... | None | •967 | |
| Thompson School Tributary | At confluence with Beaver Creek ..... | None | •1,067 | Knox County (Unincorporated Areas). |
| | Approximately 545 feet upstream of East Emory Road | None | •1,086 | |
| Tuckahoe Creek ..... | At confluence with French Broad River ..... | None | •850 | Knox County (Unincorporated Areas). |
| | Approximately 3,396 feet upstream of Dave Smith Road. | None | •906 | |
| Turkey Creek ..... | At confluence with Tennessee River ..... | •815 | •816 | Knox County (Unincorporated Areas), Town of Farragut. |
| | Approximately 1,606 feet upstream of Dutchtown Road | None | •960 | |
| West Hills Tributary ..... | At confluence with Ten Mile Creek ..... | •899 | •902 | Knox County (Unincorporated Areas), City of Knoxville. |
| | Approximately 295 feet upstream of Corteland Drive .... | None | •931 | |
| Whites Creek ..... | At confluence with First Creek ..... | •955 | •957 | Knox County (Unincorporated Areas), City of Knoxville. |
| | Approximately 0.6 mile upstream of Clearbrook Road .. | None | •989 | |
| Williams Creek ..... | At confluence with Tennessee River ..... | •822 | •823 | City of Knoxville. |
| | Approximately 451 feet upstream of Wilson Avenue ..... | None | •898 | |
| Willow Fork ..... | At confluence with Beaver Creek ..... | •1,022 | •1,027 | Knox County (Unincorporated Areas). |
| | Approximately 628 feet upstream of Brackett Road ..... | None | •1,093 | |
| Little River ..... | At confluence with Tennessee River ..... | •817 | •818 | Knox County (Unincorporated Areas), City of Knoxville. |
| | Approximately 0.77 mile upstream of Alro Highway ..... | None | •819 | |
| Tennessee River ..... | Approximately 28.0 miles downstream of Pellissippi Parkway. | •815 | •816 | Knox County (Unincorporated Areas), City of Knoxville. |
| | Just upstream of confluence of Williams Creek ..... | •822 | •823 | |

*Town of Farragut*
Maps available for inspection at the Farragut Town Hall, EngineeringDepartment, 11408 Municipal Center Drive, Farragut, Tennessee.
Send comments to Mr. Dave Olson, Farragut Town Administrator, Farragut Town Hall, Administration Department, 11408 Municipal Center Drive,Farragut, Tennessee 37922.
*Knox County (Unincorporated Areas)*
Maps available for inspection at Knox County Engineering and PublicWorks, 205 West Baxter Avenue, Knoxville, Tennessee.
Send comments to The Honorable Michael R. Ragsdale, Mayor of Knox County,Office of County Mayor, 400 West Main Street, Suite 615, Knoxville,Tennessee 37902.
*City of Knoxville*
Maps available for inspection at the City of Knoxville EngineeringDivision, City County Building, 400 Main Street, Room 480, Knoxville,Tennessee.
Send comments to the Honorable Bill Haslam, Mayor of the City ofKnoxville, P.O. Box 1631, Knoxville, Tennessee 37901.

**WEST VIRGINIA**
**Wyoming County**

| | | | | |
|---|---|---|---|---|
| Barkers Creek ..... | At the confluence with Guyandotte River ..... | •1,394 | •1,395 | Wyoming County (Unincorporated Areas). |
| | Approximately 2.5 miles upstream of Milam Fork ..... | None | •2,410 | |
| Clear Fork ..... | At the upstream Town of Oceana corporate limits ..... | None | •1,291 | Wyoming County (Unincorporated Areas). |
| | Approximately 0.5 mile upstream of Koppers City Bottom Road 2. | None | •1,376 | |
| Gooney Otter Creek ..... | At the confluence with Barkers Creek ..... | None | •1,652 | Wyoming County (Unincorporated Areas). |
| | Approximately 1.1 miles upstream of Noseman Branch | None | •1,929 | |
| Huff Creek ..... | At the Wyoming County boundary ..... | None | •973 | Wyoming County (Unincorporated Areas). |
| | Approximately 10.5 miles upstream of county boundary | None | •1,530 | |
| Indian Creek ..... | At the confluence with the Guyandotte River ..... | None | •1,137 | Wyoming County (Unincorporated Areas). |
| | Approximately 9.3 miles upstream of confluence with the Guyandotte River. | •1,293 | •1,292 | |
| Laurel Fork ..... | Approximately 30 feet downstream of State Route 10 .. | •1,362 | •1,363 | Wyoming County (Unincorporated Areas). |
| | Approximately 0.5 mile upstream of Access Road ..... | None | •1,846 | |

| Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD) | | Communities affected |
|---|---|---|---|---|
| | | Existing | Modified | |
| Muzzle Creek | At the confluence of Little Huff Creek | None | •1,079 | Wyoming County (Unincorporated Areas). |
| | Approximately 1.5 miles upstream of the confluence of Little Huff Creek. | None | •1,177 | |
| Slab Fork | Approximately 900 feet downstream of Caloric Road | None | •1,052 | Wyoming County (Unincorporated Areas). |
| | Approximately 2.1 miles upstream of Jesus Way Church Bridge. | None | •1,651 | |

*Wyoming County (Unincorporated Areas)*
Maps available for inspection at the Wyoming County Courthouse, Main Street, Pineville, West Virginia.
Send comments to Mr. H.R. Davis, Wyoming County Commission President, P.O. Box 309, Pineville, West Virginia 24874.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: June 14, 2005.

**David I. Maurstad,**

*Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.*

[FR Doc. 05–12167 Filed 6–20–05; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 67

**[Docket No. FEMA–P–7691]**

## Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

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

*Regulatory Flexibility Act.* The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

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

*Executive Order 12612, Federalism.* This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

*Executive Order 12778, Civil Justice Reform.* This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

### List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

## PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

**§ 67.4 [Amended]**

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

| Source of flooding and location of referenced elevation | ♦ Elevation in feet (NAVD) | | Communities affected |
|---|---|---|---|
| | Existing/ | Modified | |
| Carter Branch: | | | |
| Approximately 120 feet downstream of State Highway 96. | 945 | 946 | City of Carthage. |
| Just upstream of East Central Avenue and Burlington Northern & Santa Fe Railway. | 955 | 956 | |
| Maps are available for inspection at the Engineer's Office, 623 East 7th Street, Carthage, Missouri. Send comments to The Honorable Kenneth Johnson, Mayor, City of Carthage, 326 Grant Street, Carthage, Missouri 64836. | | | |
| Alexander Creek: | | | |
| Approximately 8,025 feet upstream of Ward Road ... | None | 942 | Cass County (Unincorporated Areas) City of Raymore. |
| Approximately 5,600 feet upstream of Prairie Road | None | 1,004 | |
| East Branch South Grand River: | | | |
| Approximately 9,900 feet upstream of confluence of Wolf Creek. | None | 886 | Cass County (Unincorporated Areas) City of Peculiar. |
| Approximately 510 feet upstream of Kendall Road .. | None | 954 | |
| East Branch of West Fork East Creek: | | | |
| At confluence with West Fork East Creek ..... | None | 974 | Cass County (Unincorporated Areas) City of Belton. |
| Approximately 3,050 feet upstream of confluence with West Fork East Creek. | None | 990 | |
| East Creek Tributary: | | | |
| Approximately 990 feet downstream of Pickering Road. | None | 918 | Cass County (Unincorporated Areas) City of Raymore. |
| Approximately 10,000 feet upstream of confluence of North Fork East Creek Tributary. | None | 1,000 | |
| East Fork of East Tributary of East Branch South Grand River | | | |
| At confluence with East Tributary of East Branch South Grand River. | None | 937 | Cass County (Unincorporated Areas). |
| Approximately 3,250 feet upstream of 200th Street | None | 1,007 | |
| East Tributary of East Branch South Grand River: | | | |
| At confluence with East Branch South Grand River | None | 889 | Cass County (Unincorporated Areas) |
| Approximately 2,920 feet upstream of Prairie Road | None | 993 | |
| East Tributary of Lumpkins Fork: | | | |
| Approximately 4,770 feet downstream of North Madison Street. | None | 954 | City of Raymore. |
| Approximately 40 feet upstream of 155th Street ..... | None | 999 | |
| East Tributary of Massey Creek: | | | |
| Approximately 3,225 feet downstream of Missouri Highway D. | None | 944 | Cass County (Unincorporated Areas). |
| Approximately 85 feet upstream of Cedar Road ..... | None | 997 | |
| Lower East Fork of East Creek Tributary: | | | |
| At confluence with East Creek Tributary ..... | None | 931 | Cass County (Unincorporated Areas) City of Raymore. |
| Approximately 12,800 feet upstream of U.S. Highway 71. | None | 987 | |
| Lower East Tributary of Mill Creek: | | | |
| At confluence with Mill Creek ..... | None | 885 | Cass County (Unincorporated Areas) Village of Loch Lloyd. |
| Approximately 8,120 feet upstream of confluence with Mill Creek. | None | 937 | |
| Lumpkins Fork: | | | |
| At 155th Street ..... | None | 945 | Cass County (Unincorporated Areas). |
| Approximately 70 feet upstream of North Madison Street. | None | 979 | |
| Massey Creek: | | | |
| Approximately 5,070 feet downstream of 223rd Street. | None | 904 | Cass County (Unincorporated Areas). |
| At State Line Road ..... | None | 969 | |
| Middle East Tributary of Mill Creek: | | | |
| Approximately 3,950 feet upstream of confluence with Mill Creek. | None | 912 | Cass County (Unincorporated Areas) Village of Loch Lloyd. |
| Approximately 6,320 feet upstream of confluence with Mill Creek. | None | 940 | |
| Mill Creek: | | | |
| At County Boundary ..... | None | 871 | Cass County (Unincorporated Areas) Village of Loch Lloyd |
| Approximately 95 feet downstream of 187th Street .. | None | 1,045 | |

| Source of flooding and location of referenced elevation | ♦ Elevation in feet (NAVD) | | Communities affected |
|---|---|---|---|
| | Existing/ | Modified | |
| North Branch of Upper East Fork of East Creek Tributary: | | | |
| Approximately 1,700 feet downstream of Hubach Hill Road. | None | 976 | Cass County (Unincorporated Areas). |
| Approximately 25 feet upstream of Hubach Hill Road. | None | 986 | |
| North Fork of East Creek Tributary: | | | |
| At confluence with East Creek Tributary | None | 953 | Cass County (Unincorporated Areas). |
| Approximately 11,000 feet upstream of confluence with East Creek Tributary. | None | 990 | |
| North Tributary of Wolf Creek: | | | |
| Approximately 410 feet downstream of East 233rd Street. | None | 927 | Cass County (Unincorporated Areas) City of Peculiar. |
| Approximately 40 feet upstream of East 227th Street. | None | 954 | |
| Poney Creek: | | | |
| Approximately 4,925 feet downstream of Bennett Road. | None | 831 | Cass County (Unincorporated Areas) City of Freeman. |
| Approximately 7,550 feet upstream of Poney Creek Road. | None | 849 | |
| Ailver Lake | None | 1,029 | City of Raymore. |
| South Grand River: | | | |
| Approximately 5,160 feet downstream of State Highway 2. | None | 829 | Cass County (Unincorporated Areas). |
| Approximately 765 feet upstream of Lake Annette Road. | None | 850 | |
| Tributary of Alexander Creek: | | | |
| Approximately 1,500 feet downstream of State Highway 58. | None | 988 | Cass County (Unincorporated Areas) City of Raymore. |
| Approximately 85 feet upstream of State Highway 58. | None | 996 | |
| Upper East Fork of East Creek Tributary: | | | |
| Approximately 2,685 feet downstream of Good Ranch Road. | None | 947 | Cass County (Unincorporated Areas) City of Raymore. |
| Approximately 50 feet upstream of Hubach Hill Road. | None | 993 | |
| Upper East Tributary of Mill Creek: | | | |
| At Highland Ridge Drive | None | 933 | Cass County (Unincorporated Areas) Village of Loch Lloyd. |
| Approximately 5,800 feet upstream of Highland Ridge Drive. | None | 988 | |
| West Tributary of East Branch South Grand River: | | | |
| Approximately 2,095 feet downstream of East 223rd Street. | None | 896 | Cass County (Unincorporated Areas). |
| Approximately 75 feet upstream of East 223rd Street. | None | 915 | |
| West Tributary of Lumpkins Fork: | | | |
| At 155th Street | None | 946 | Cass County (Unincorporated Areas). |
| Approximately 1,065 feet upstream of 155th Street | None | 998 | |
| Wolf Creek: | | | |
| Approximately 7,100 feet upstream of confluence with East Branch South Grand River. | None | 889 | Cass County (Unincorporated Areas) City of Peculiar. |
| Approximately 1,170 feet upstream of 233rd Street | None | 946 | |

**Unincorporated Areas of Cass County, Missouri**
Maps are available for inspection at 223 Main Street, Belton, Missouri.

Send comments to The Honorable Gene Molendorp, Cass County Commissioner, 223 Main Street, Belton, Missouri 64012.

**City of Belton, Cass County, Missouri**
Maps are available for inspection at City Hall, 506 Main Street, Belton, Missouri.

Send comments to The Honorable Billie Pinkenpank, Mayor, City of Belton, 506 Main Street, Belton, Missouri 64012.

**City of Freeman, Cass County, Missouri**
Maps are available for inspection at City Hall, 105 East Main Street, Freeman, Missouri.

Send comments to The Honorable Thomas Bray, Mayor, City of Freeman, 105 East Main Street, Freeman, MO 64725.

**Village of Loch Lloyd, Cass County, Missouri**
Maps are available for inspection at 16750 Country Club Drive, Loch Lloyd, Missouri.

Send comments to Mr. Wayne Little, Trustee, Village of Loch Lloyd, 16750 Country Club Drive, Loch Lloyd, Missouri 64012.

**City of Peculiar, Cass County, Missouri**
Maps are available for inspection at City Hall, 600 Schug Avenue, Peculiar, Missouri.

Send comments to The Honorable George Lewis, Mayor, City of Peculiar, 812 South Peculiar Drive, Peculiar, Missouri 64078.

**City of Raymore, Cass County, Missouri**
Maps are available for inspection at City Hall, 100 Municipal Circle, Raymore, Missouri.

| Source of flooding and location of referenced elevation | ♦ Elevation in feet (NAVD) | | Communities affected |
|---|---|---|---|
| | Existing/ | Modified | |
| Send comments to The Honorable Juan Alonzo, Mayor, City of Raymore, 109 North Darrowby, Raymore, Missouri 64083. | | | |
| East Branch Knob Creek: | | | |
| At the confluence with Knob Creek | None | 943 | City of Pilot Knob Iron County (Unincorporated Areas). |
| Approximately 4,170 feet upstream of Union Pacific Railroad. | None | 989 | |
| Knob Creek: | | | |
| At the confluence with Stouts Creek | 882 | 886 | City of Ironton City of Pilot Knob Iron County (Unincorporated Areas). |
| Approximately 2,410 feet upstream of Mulberry Street. | None | 1,012 | |
| Railroad Creek: | | | |
| At the confluence with Stouts Creek | None | 895 | City of Arcadia Iron County (Unincorporated Areas). |
| Approximately 300 feet upstream of State Route 21 | None | 990 | |
| Shepherd Mountain Lake Creek: | | | |
| At the confluence with Stouts Creek | None | 950 | Iron County (Unincorporated Areas). |
| Approximately 3,380 feet upstream of Guhse Lane | None | 1,051 | |
| Stouts Creek: | | | |
| Approximately 4,000 feet upstream of State Route 72. | None | 862 | City of Arcadia City of Ironton Iron County (Unincorporated Areas). |
| Approximately 5,860 feet upstream of the confluence of Shepherd Mountain Lake Creek. | None | 990 | |
| West Branch Knob Creek: | | | |
| At the confluence with Knob Creek | 934 | 933 | Iron County (Unincorporated Areas). |
| Approximately 2,140 feet upstream of Spitzmiller Drive. | None | 1,020 | |

**City of Arcadia, Iron County, Missouri**
Maps are available for inspection at 150 West Orchard, Arcadia, Missouri.

Send comments to The Honorable Roy Carr, Mayor, City of Arcadia, 150 West Orchard, Arcadia, Missouri 63621.

**Unincorporated Areas of Iron County, Missouri**
Maps are available for inspection at 250 South Main Street, Ironton, Missouri.

Send comments to The Honorable Terry W. Nichols, Presiding Commissioner, Iron County, 250 South Main Street, Ironton, Missouri 63650.

**City of Ironton, Iron County, Missouri**
Maps are available for inspection at 123 North Main, Ironton, Missouri.

Send comments to The Honorable Tom Hamilton, Mayor, City of Ironton, 123 North Main, Ironton, Missouri 63650.

**City of Pilot Knob, Iron County, Missouri**
Maps are available for inspection at 112 South McCune Street, Pilot Knob, Missouri.

Send comments to The Honorable Maxine Dettmer, Mayor, City of Pilot Knob, 112 South McCune Street, Pilot Knob, Missouri 63663.

| | | | |
|---|---|---|---|
| Big Indian Creek: | | | |
| Approximately 2,800 feet upstream of State Highway 756. | 505 | 506 | Clermont County (Unincorporated Areas). |
| Approximately 50 feet upstream of State Highway 743. | None | 627 | |
| O'Bannon Creek: | | | |
| Approximately 2,300 feet downstream of O'Bannonville Road. | 603 | 606 | Clermont County (Unincorporated Areas). |
| Approximately 50 feet upstream of State Highway 132. | 790 | 791 | |
| Ohio River: | | | |
| Approximately 0.8 mile downstream of the confluence of Pond Run. | 503 | 504 | Clermont County (Unincorporated Areas) Village of Chilo, Village of Moscow, Village of Neville, Village of New Richmond. |
| Approximately 0.2 mile upstream of the confluence of Bullskin Creek. | 508 | 509 | |

**Village of Chilo, Clermont County, Ohio**
Maps are available for inspection at Permit Central, 2275 Bauer Road, Batavia, Ohio.

Send comments to The Honorable Thomas O'Brien, Mayor, Village of Chilo, 308 Washington Street, Chilo, Ohio 45112.

**Unincorporated Areas of Clermont County, Ohio**
Maps are available for inspection at Permit Central, 2275 Bauer Road, Batavia, Ohio.

Send comments to The Honorable Bob Proud, Clermont County, Board of Commissioners, 101 East Main Street, Batavia, Ohio 45103.

**Village of Moscow, Clermont County, Ohio**
Maps are available for inspection at Permit Central, 2275 Bauer Road, Batavia, Ohio.

Send comments to The Honorable Timothy D. Suter, Mayor, Village of Moscow, 79 Elizabeth Street, Moscow, Ohio 45153.

**Village of Neville, Clermont County, Ohio**
Maps are available for inspection at Permit Central, 2275 Bauer Road, Batavia, Ohio.

Send comments to The Honorable Ted Bowling, Mayor, Village of Neville, 608 Main Street, Neville, Ohio 45156.

**Village of New Richmond, Clermont County, Ohio**
Maps are available for inspection at Permit Central, 2275 Bauer Road, Batavia, Ohio.

| Source of flooding and location of referenced elevation | ♦ Elevation in feet (NAVD) | | Communities affected |
|---|---|---|---|
| | Existing/ | Modified | |
| Send comments to the Honorable Terry Durette, Mayor, Village of New Richmond, 102 Willow Street, New Richmond, Ohio 45157. | | | |
| Ohio River: | | | |
| Approximately 0.9 mile downstream of the confluence of Norman Run. | 544 | 543 | Village of Athalia, Village of Chesapeake, Village of Coal Grove, Village of Hanging Rock, City of Ironton, Village of Proctorville, Village of South Point, Lawrence County, (Unincorporated Areas). |
| Approximately 1.0 mile downstream of the confluence of Federal Creek. | 558 | 557 | |
| Symmes Creek: | | | |
| At the confluence with the Ohio River | 552 | 553 | Village of Chesapeake Lawrence County (Unincorporated Areas). |
| Approximately 2,400 feet downstream of the confluence of McKinney Creek. | 552 | 553 | |
| Indian Guyan Creek: | | | |
| Approximately 0.6 mile upstream of County Route 65. | None | 565 | Lawrence County (Unincorporated Areas). |
| Approximately 300 feet upstream of Township Road 126. | None | 576 | |

**Village of Athalia, Lawrence County, Ohio**
Maps are available for inspection at the Community Map Repository, Village of Athalia, 14346 State Road 7, Proctorville, Ohio.
Send comments to The Honorable Ron McLintock, Mayor, Village of Athalia, 14346 State Road 7, Proctorville, Ohio 45669.
**Village of Chesapeake, Lawrence County, Ohio**
Maps are available for inspection at the Community Map Repository, Village of Chesapeake, Town Hall, 211 Third Avenue, Chesapeake, Ohio.
Send comments to The Honorable James Justice, Mayor, Village of Chesapeake, Town Hall, 211 3rd Avenue, Chesapeake, Ohio 45619.
**Village of Coal Grove, Lawrence County, Ohio**
Maps are available for inspection at the Community Map Repository, Village of Coal Grove, 513 Carlton Davidson Lane, Coal Grove, Ohio.
Send comments to Ms. Juanita Markel, Clerk-Treasurer, Village of Coal Grove, 513 Carlton Davidson Lane, Coal Grove, Ohio 45638.
**Village of Hanging Rock, Lawrence County, Ohio**
Maps are available for inspection at the Community Map Repository, Village of Hanging Rock, 100 Scioto Avenue, Hanging Rock, Ohio.
Send comments to The Honorable Wayne Pennington, Mayor, Village of Hanging Rock,100 Scioto Avenue, Hanging Rock, Ohio 45638.
**City of Ironton, Lawrence County, Ohio**
Maps are available for inspection at the Community Map Repository, City of Ironton, 301 South 3rd Street, Ironton, Ohio.
Send comments to The Honorable Bob Cleary, Mayor, City of Ironton, 301 South 3rd Street, Ironton, Ohio 45638–0704.
**Unincorporated Areas of Lawrence County, Ohio**
Maps are available for inspection at the Community Map Repository, Lawrence County Floodplain Management Program, 305 North Fifth Street, Ironton, Ohio.
Send comments to Mr. George Patterson, President, Lawrence County Commissioners, 111 4th Street, Ironton, Ohio 45638.
**Village of Proctorville, Lawrence County, Ohio**
Maps are available for inspection at the Community Map Repository, Village of Proctorville, Village Hall, 301 State Street, Proctorville, Ohio.
Send comments to The Honorable Jim Buchanan, Mayor, Village of Proctorville, 301 State Street, Proctorville, Ohio 45669.
**Village of South Point, Lawrence County, Ohio**
Maps are available for inspection at the Community Map Repository, Village of South Point, 408 Second Street West, South Point, Ohio.
Send comments to The Honorable William Gaskin, Mayor, Village of South Point, 408 Second Street West, South Point, Ohio 45680.

| | | | |
|---|---|---|---|
| Baughman Slough: | | | |
| Approximately 415 feet upstream of the confluence with Peach Creek. | None | 91 | City of Wharton Wharton County (Unincorporated Areas). |
| Approximately 70 feet upstream of FM 640 | None | 113 | |
| Caney Creek: | | | |
| Just upstream of Dam 1 | None | 101 | City of Wharton Wharton County ((Unincorporated Areas). |
| Approximately 3,630 feet upstream of U.S. Highway 59. | 109 | 107 | |
| Colorado River: | | | |
| Approximately 2.21 miles downstream of the confluence of Jones Creek. | None | 67 | City of Wharton Wharton County (Unincorporated Areas). |
| Approximately 14.20 miles upstream of FM 960 | None | 138 | |
| Peach Creek: | | | |
| Approximately 1,915 feet downstream of County Road 129 (Montgomery Road). | None | 91 | Wharton County (Unincorporated Areas). |
| Approximately 4.32 miles downstream of County Road 247. | None | 125 | |

**City of Wharton, Wharton County, Texas**
Maps are available for inspection at City Hall, 120 East Caney, Wharton, Texas.
Send comments to Mr. Andres Garza, Jr., City Manager, City of Wharton, 120 East Caney, Wharton, Texas 77488.
**Unincorporated Areas of Wharton County, Texas**
Maps are available for inspection at the Frank Shannon Building, 1017 North Alabama Road, Wharton, Texas.
Send comments to The Honorable John Murrile, Wharton County Judge, 309 East Milam, Suite 600, Wharton, Texas 77488.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: June 14, 2005.

**David I. Maurstad,**

*Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.*

[FR Doc. 05–12171 Filed 6–20–05; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Part 42

**[FAR Case 2004–012]**

**RIN: 9000–AK20**

## Federal Acquisition Regulation; Past Performance Evaluation of Orders

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to require past performance evaluation of certain orders, and to ensure that subcontracting management is addressed during evaluation of a contractor's past performance.

**DATES:** Interested parties should submit comments in writing on or before August 22, 2005 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAR case 2004–012 by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm*. Click on the FAR case number to submit comments.
- E-mail: *farcase.2004–012@gsa.gov*. Include FAR case 2004–012 in the subject line of the message.
- 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 FAR case 2004–012 in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm,* including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Jeritta Parnell, Procurement Analyst, at (202) 501–4082. Please cite FAR case 2004–012.

**SUPPLEMENTARY INFORMATION:**

### A. Background

Currently, there is no FAR Part 42 requirement to evaluate a contractor's subcontract management efforts in performing under Government contracts. This proposed amendment will ensure that the acquisition community considers a prime contractor's management of subcontracts, including management of small business subcontracting plan goals, as part of the overall assessment of performance on contracts and orders. The effect of this amendment is that subcontract management efforts will be recorded for use in past performance evaluations during source selection.

This proposed amendment will add a requirement for contracting officers to evaluate a contractor's management of subcontracts, including meeting the goals in its small business subcontracting plans, and evaluate past performance on—

- Orders exceeding $100,000 placed against a Federal Supply Schedule contract or a task-order contract or delivery-order contract awarded by another agency (*i.e.,* Governmentwide acquisition contract or multi-agency contract);
- Single agency task-order and delivery-order contracts over $100,000 when such evaluations would produce more useful past performance information for source selection than in the overall contract evaluation.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely enhances clarity of current agency business practices. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part 42 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2004–012), in correspondence.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq*.

### List of Subjects in 48 CFR Part 42

Government procurement.

Dated: June 15, 2005.

**Julia B. Wise,**

*Director, Contract Policy Division.*

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 42 as set forth below:

## PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

1. The authority citation for 48 CFR part 42 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

#### 42.1501 [Amended]

2. Amend section 42.1501, in the second sentence, by adding after the word ''satisfaction;'' the phrase ''the contractor's management of subcontracts, including meeting the goals in its subcontracting plans;''.

3. Revise section 42.1502 to read as follows:

#### 42.1502 Policy.

(a) Except as provided in paragraph (d) of this section, agencies shall prepare an evaluation of contractor performance at the time the work under the contract or order is completed—

(1) For each contract in excess of $100,000;

(2) For each order in excess of $100,000 placed against a Federal Supply Schedule contract or a task-order contract or delivery-order contract awarded by another agency (*i.e.,* Governmentwide acquisition contract or multi-agency contract); and

(3) For single agency task order and delivery order contracts, the contracting officer may require performance evaluations for each order in excess of $100,000 when such evaluations would

produce more useful past performance information for source selection officials than that contained in the overall contract evaluation (*e.g.*, when the scope of the basic contract is very broad and the nature of individual orders could be significantly different).

(b) Interim evaluations should be prepared as specified by the agencies to provide current information for source selection purposes, for contracts or orders with a period of performance, including options, exceeding one year.

(c) The evaluation of contractor performance is generally for the entity, division, or unit that performed the contract or order. The content and format of performance evaluations shall be established in accordance with agency procedures and should be tailored to the size, content, and complexity of the contractual requirements. These procedures shall require an assessment of contractor performance against, and efforts to achieve, the goals identified in the small business subcontracting plan when the contract includes the clause at 52.219–9, Small Business Subcontracting Plan.

(d) Agencies shall not evaluate performance for contracts awarded under Subpart 8.7. Agencies shall evaluate construction contractor performance and architect/engineer contractor performance in accordance with 36.201 and 36.604, respectively.

4. Amend section 42.1503 by revising paragraph (a); and removing from paragraph (e) the word ''contract''. The revised text reads as follows:

**42.1503 Procedures.**

(a) Agency procedures for past performance evaluations will generally include input from the technical office, contracting office and, where appropriate, end users of the product or service.

* * * * *

[FR Doc. 05–12183 Filed 6–20–05; 8:45 am]

**BILLING CODE 6820–EP–S**

## DEPARTMENT OF DEFENSE

## 48 CFR Parts 211 and 252

**[DFARS Case 2003–D073]**

## Defense Federal Acquisition Regulation Supplement; Describing Agency Needs

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text on the use of specifications, standards, and data item descriptions in solicitations and contracts. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before August 22, 2005, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2003–D073, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web Site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil.* Include DFARS Case 2003–D073 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Robin Schulze, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Robin Schulze, (703) 602–0326.

**SUPPLEMENTARY INFORMATION:**

### A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dfars/transf.htm.*

This proposed rule is a result of the DFARS Transformation initiative. The proposed changes—

- Update references to the DoD 5000 series publications and the DoD database for specifications, standards, and data item descriptions; and
- Delete procedures for use of specifications, standards, and data item descriptions and for use of Single Process Initiative processes instead of military or Federal specifications and standards. Text on these subjects will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information, available at *http://www.acq.osd.mil/dpap/dars/pgi.*

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule makes no significant change to DoD policy for the use of requirements documents in solicitations and contracts. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D073.

### C. Paperwork Reduction Act

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

### List of Subjects in 48 CFR Parts 211 and 252

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

Therefore, DoD proposes to amend 48 CFR Parts 211 and 252 as follows:

## PART 211—DESCRIBING AGENCY NEEDS

1. The authority citation for 48 CFR Parts 211 and 252 continues to read as follows:

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

2. Section 211.002 is revised to read as follows:

**211.002 Policy.**

All defense technology and acquisition programs in DoD are subject

to the policies and procedures in DoDD 5000.1, The Defense Acquisition System, and DoDI 5000.2, Operation of the Defense Acquisition System.

3. Sections 211.201 and 211.204 are revised to read as follows:

**211.201 Identification and availability of specifications.**

Follow the procedures at PGI 211.201 for use of specifications, standards, and data item descriptions.

**211.204 Solicitation provisions and contract clauses.**

(c) When contract performance requires use of specifications, standards, and data item descriptions that are not listed in the Acquisition Streamlining and Standardization Information System database, use provisions, as appropriate, substantially the same as those at—

(i) 252.211–7001, Availability of Specifications, Standards, and Data Item Descriptions Not Listed in the Acquisition Streamlining and Standardization Information System (ASSIST), and Plans, Drawings, and Other Pertinent Documents; and

(ii) 252.211–7002, Availability for Examination of Specifications, Standards, Plans, Drawings, Data Item Descriptions, and Other Pertinent Documents.

**211.273–2 [Amended]**

4. Section 211.273–2 is amended in paragraph (c) by removing ''(see 211.273–3(c))''.

5. Section 211.273–3 is revised to read as follows:

**211.273–3 Procedures.**

Follow the procedures at PGI 211.273–3 for encouraging the use of SPI processes instead of military or Federal specifications and standards.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 252.211–7001 is amended by revising the section heading, clause title, and clause date to read as follows:

**252.211–7001 Availability of Specifications, Standards, and Data Item Descriptions Not Listed in the Acquisition Streamlining and Standardization Information System (ASSIST), and Plans, Drawings, and Other Pertinent Documents.**

* * * * *

**Availability of Specifications, Standards, and Data Item Descriptions Not Listed in the Acquisition Streamlining and Standardization Information System (Assist), and Plans, Drawings, and Other Pertinent Documents (XXX 2005)**

* * * * *

[FR Doc. 05–12098 Filed 6–20–05; 8:45 am]

BILLING CODE 5001–08–P

## DEPARTMENT OF DEFENSE

## 48 CFR Parts 212, 225, and 252

**[DFARS Case 2004–D017]**

## Defense Federal Acquisition Regulation Supplement; Combating Trafficking in Persons

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement policy prohibiting activities on the part of DoD contractor employees that support or promote trafficking in persons.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before August 22, 2005, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2004–D017, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web Site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil.* Include DFARS Case 2004–D017 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD (AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, (703) 602–0328.

**SUPPLEMENTARY INFORMATION:**

### A. Background

A memorandum issued by the Deputy Secretary of Defense on January 30, 2004, states as an objective that, consistent with U.S. and host-nation law, provisions should be incorporated in overseas service contracts that prohibit any activities on the part of contractor employees that support or promote trafficking in persons and that impose suitable penalties on contractors who fail to monitor the conduct of their employees. The memorandum cites National Security Presidential Directive/NPSD–22, which decrees that all departments of the U.S. Government will take a ''zero tolerance'' approach to trafficking in persons. NSPD–22 utilizes the definitions in Public Law 106–386, Victims of Trafficking and Violence Protection Act of 2000, codified at 22 U.S.C. 7102. This proposed DFARS rule contains an implementing clause for use in contracts that require performance outside the United States. The proposed clause requires contractors to establish policy and procedures for combating trafficking in persons and to notify the contracting officer of any violations and the corrective action taken. The clause also requires the contractor to effectively manage its subcontractors and to take remedial action against any subcontractor that violates policy regarding trafficking in persons.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed clause applies only to contracts that require performance outside the United States. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2004–D017.

### C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) applies, because the proposed rule contains information collection requirements. These requirements will increase the burden hours currently approved by the Office of Management and Budget (OMB)

under Control Number 0704–0229; DFARS Part 225, Foreign Acquisition, and related clauses. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

*Needs and Uses:* DoD contracting officers will use this information to monitor contractor compliance with National Security Presidential Directive 22 and DoD policy that decrees ''zero tolerance'' for trafficking in persons.

*Affected Public:* Businesses or other for-profit and not-for-profit institutions.

*Annual Burden Hours:* 60.

*Number of Respondents:* 30.

*Responses Per Respondent:* 2.

*Annual Responses:* 60.

*Average Burden Per Response:* 1 hour.

*Frequency:* On occasion.

**Summary of Information Collection**

Paragraphs (g) through (i) of the proposed clause require the contractor to notify the contracting officer of any alleged violations of policy concerning trafficking in persons and the actions taken by the contractor in response to the violations. This information collection will increase, by 60 hours, the 352,380 burden hours currently approved under OMB Control Number 0704–0229 for use through May 31, 2007.

**List of Subjects in 48 CFR Parts 212, 225, and 252**

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

Therefore, DoD proposes to amend 48 CFR Parts 212, 225, and 252 as follows:

## PART 212—ACQUISITION OF COMMERCIAL ITEMS

1. The authority citation for 48 CFR Parts 212, 225, and 252 continues to read as follows:

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

2. Section 212.301 is amended by adding paragraph (f)(ix) to read as follows:

**212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

(f) * * *

(ix) Use the clause at 252.225–70XX, Combating Trafficking in Persons, as prescribed in 225.7404–3.

## PART 225—FOREIGN ACQUISITION

3. Sections 225.7404 through 225.7404–3 are added to read as follows:

**225.7404 Combating trafficking in persons.**

See related information at PGI 225.7404.

**225.7404–1 Policy.**

Contracts that require performance outside the United States shall—

(a) Prohibit any activities on the part of contractor employees that support or promote trafficking in persons, as defined in the clause at 252.225–70XX;

(b) Require contractors to develop procedures to combat trafficking in persons; and

(c) Impose suitable penalties on contractors that fail to monitor the conduct of their employees and subcontractors with regard to trafficking in persons.

**225.7404–2 Notification to combatant commander.**

If the contracting officer receives information in accordance with paragraph (g), (h), or (i) of the clause at 252.225–70XX, the contracting officer shall notify the combatant commander through the local commander or other designated representative.

**225.7404–3 Contract clause.**

Use the clause at 252.225–70XX, Combating Trafficking in Persons, in solicitations and contracts that require performance outside the United States.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.225–70XX is added to read as follows:

**252.225–70XX Combating Trafficking in Persons.**

As prescribed in 225.7404–3, use the following clause:

**Combating Trafficking in Persons (XXX 2005)**

(a) *Definitions.* As used in this clause—

*Combatant Commander* means the commander of a unified or specified combatant command established in accordance with 10 U.S.C. 161.

*Commercial sex act* means any sex act on account of which anything of value is given to or received by any person (22 U.S.C. 7102(3)).

*Debt bondage* means the status or condition of a debtor arising from a pledge by the debtor for his or her personal services, or of those of a person under his or her control, as security for a debt, if—

(1) The value of those services as reasonably assessed is not applied toward the liquidation of the debt; or

(2) The length and nature of those services are not respectively limited and defined (22 U.S.C. 7102(4)).

*Employee* means an employee of the Contractor that is working outside the United States in the performance of this contract.

*Involuntary servitude* includes a condition of servitude induced by means of—

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process (22 U.S.C. 7102(5)).

*Sex trafficking* means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act (22 U.S.C. 7102(9)).

*Trafficking in persons* means—

(1) The recruitment, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, debt bondage, or slavery; and

(2) Sex trafficking, including pimping, pandering, or maintaining brothels.

(b) As delineated in National Security Presidential Directive 22, the United States has adopted a zero tolerance policy regarding contractor employees who engage in or support trafficking in persons.

(c) During the performance of this contract, the Contractor shall ensure that its employees do not engage in or support trafficking in persons.

(d) The Contractor is responsible for obtaining copies of the policies, laws, regulations, and directives referenced in paragraph (f) of this clause, as well as for providing any necessary legal guidance and interpretations for its personnel regarding such policies, laws, regulations, and directives.

(e) The Contractor shall establish policy and procedures for combating trafficking in persons.

(f) The Contractor shall provide training to make its employees aware of the following:

(1) The United States Government zero-tolerance policy described in paragraph (b) of this clause.

(2) All host nation laws and regulations relating to trafficking in persons.

(3) All United States laws and regulations on trafficking in persons that may apply to its employees' conduct in the host nation, including those laws for which jurisdiction is established by the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3261–3267).

(4) Directives on trafficking in persons from the Combatant Commander, or the Combatant Commander's designated representative, that apply to contractor employees, such as general orders and

military listings of ''off-limits'' local establishments.

(g) The Contractor shall inform the Contracting Officer of any information it receives from any source (including host country law enforcement) that alleges a contractor employee or subcontractor has engaged in conduct that violates United States Government policy concerning trafficking in persons.

(h)(1) In accordance with its own operating procedures and applicable policies, laws, regulations, and directives, the Contractor shall take appropriate employment action, including removal from the host nation or dismissal, against any of its employees who engage in sex trafficking, or any other activity that may support trafficking in persons, or who otherwise violate a policy, law, regulation, or directive described in paragraph (f) of this clause.

(2) The Contractor shall inform the Contracting Officer of any such action.

(3) Upon direction of the Contracting Officer, the Contractor shall replace any such employee.

(i)(1) The Contractor shall ensure that its subcontractors comply with the mandates of this clause, as included in subcontracts pursuant to paragraph (k) of this clause. The Contractor shall take appropriate action, including termination of the subcontract, when the Contractor obtains sufficient evidence to determine that the subcontractor is in non-compliance with its contractual obligations regarding trafficking in persons.

(2) The Contractor shall inform the Contracting Officer of any such action.

(j) In addition to other remedies available to the Government, the Contractor's failure to comply with paragraph (g), (h), or (i) of this clause may render the Contractor subject to—

(1) Suspension of contract payments;

(2) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined that the Contractor is in non-compliance;

(3) Termination of the contract for default or cause; and

(4) Suspension or debarment.

(k) The Contractor shall include the substance of this clause, including this paragraph (k), in all subcontracts that require performance outside the United States.

(End of clause)

[FR Doc. 05–12099 Filed 6–20–05; 8:45 am]

BILLING CODE 5001–08–P

## DEPARTMENT OF DEFENSE

## 48 CFR Part 236

**[DFARS Case 2003–D034]**

## Defense Federal Acquisition Regulation Supplement; Construction Contracting

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update policy on contracting for construction services. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before August 22, 2005, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2003–D034, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web Site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil.* Include DFARS Case 2003–D034 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Mr. Euclides Barrera, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Euclides Barrera, (703) 602–0296.

**SUPPLEMENTARY INFORMATION:**

### A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dfars/transf.htm.*

This proposed rule is a result of the DFARS Transformation initiative. The proposed DFARS changes—

- Delete text defining and addressing use of network analysis systems, as this subject is addressed in the United Facilities Guide Specifications used by the military departments in specifying construction requirements.
- Delete text on distribution and use of contractor performance reports, handling of Government estimates of construction costs, use of bid schedules with additive or deductive items, and technical working agreements with foreign governments. Text on these subjects will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at *http://www.acq.osd.mil/dpap/dars/pgi.*

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed rule deletes and relocates DFARS text on construction contracting, but makes no significant change to DoD contracting policy. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D034.

### C. Paperwork Reduction Act

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

### List of Subjects in 48 CFR Part 236

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

Therefore, DoD proposes to amend 48 CFR Part 236 as follows:

## PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

1. The authority citation for 48 CFR Part 236 continues to read as follows:

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

### 236.102 [Amended]

2. Section 236.102 is amended by removing paragraph (4) and

redesignating paragraph (5) as paragraph (4).

3. Section 236.201 is amended by revising paragraph (c) to read as follows:

**236.201 Evaluation of contractor performance.**

* * * * *

(c) Follow the procedures at PGI 236.201(c) for distribution and use of performance reports.

4. Section 236.203 is revised to read as follows:

**236.203 Government estimate of construction costs.**

Follow the procedures at PGI 236.203 for handling the Government estimate of construction costs.

5. Section 236.213 is revised to read as follows:

**236.213 Special procedures for sealed bidding in construction contracting.**

If it appears that sufficient funds may not be available for all the desired construction features, consider using a bid schedule with additive or deductive items in accordance with PGI 236.213.

**236.213–70 and 236.273 [Removed]**

6. Sections 236.213–70 and 236.273 are removed.

**236.274 [Redesignated]**

7. Section 236.274 is redesignated as section 236.273.

8. Newly designated section 236.273 is amended by revising paragraph (b) to read as follows:

**236.273 Construction in foreign countries.**

* * * * *

(b) See PGI 236.273(b) for guidance on technical working agreements with foreign governments.

[FR Doc. 05–12096 Filed 6–20–05; 8:45 am]

**BILLING CODE 5001–08–P**

## DEPARTMENT OF DEFENSE

## 48 CFR Part 242

**[DFARS Case 2003–D050]**

## Defense Federal Acquisition Regulation Supplement; Contractor Insurance/Pension Reviews

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text on Government review of contractor insurance programs, pension plans, and other deferred compensation plans. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before August 22, 2005, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2003–D050, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web Site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil*. Include DFARS Case 2003–D050 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, (703) 602–0328.

**SUPPLEMENTARY INFORMATION:**

### A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dfars/transf.htm.*

This proposed rule is a result of the DFARS Transformation initiative. The proposed DFARS changes—

- Update and clarify requirements and responsibilities for Government review of a contractor's insurance programs, pension plans, and other deferred compensation plans; and
- Delete text addressing procedural matters relating to these reviews. This text will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at *http://www.acq.osd.mil/dpap/dars/pgi.*

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because contractor insurance/pension review requirements apply primarily to large business concerns. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D050.

### C. Paperwork Reduction Act

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

### List of Subjects in 48 CFR Part 242

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

Therefore, DoD proposes to amend 48 CFR Part 242 as follows:

## PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

1. The authority citation for 48 CFR Part 242 continues to read as follows:

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

**242.7300 [Removed]**

2. Section 242.7300 is removed.

3. Sections 242.7301 through 242.7303 are revised to read as follows:

**242.7301 General.**

(a) The administrative contracting officer (ACO) is responsible for determining the allowability of insurance/pension costs in Government contracts and for determining the need for a Contractor/Insurance Pension Review (CIPR). Defense Contract Management Agency (DCMA)

insurance/pension specialists and Defense Contract Audit Agency (DCAA) auditors assist ACOs in making these determinations, conduct CIPRs when needed, and perform other routine audits as authorized under FAR 42.705 and 52.215–2. A CIPR is a DCMA/DCAA joint review that—

(1) Provides an in-depth evaluation of a contractor's—

(i) Insurance programs;

(ii) Pension plans;

(iii) Other deferred compensation plans; and

(iv) Related policies, procedures, practices, and costs; or

(2) Concentrates on specific areas of the contractor's insurance programs, pension plans, or other deferred compensation plans.

(b) DCMA is the DoD Executive Agency for the performance of all CIPRs.

(c) DCAA is the DoD agency designated for the performance of contract audit responsibilities related to Cost Accounting Standards administration as described in FAR Subparts 30.2 and 30.6 as they relate to a contractor's insurance program, pension plans, and other deferred compensation plans.

**242.7302 Requirements.**

Follow the procedures at PGI 242.7302 to determine if a CIPR is needed.

**242.7303 Responsibilities.**

Follow the procedures at PGI 242.7303 when conducting a CIPR.

[FR Doc. 05–12097 Filed 6–20–05; 8:45 am]

BILLING CODE 5001–08–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

### Endangered and Threatened Wildlife and Plants: 90-Day Finding on a Petition To List the California Spotted Owl as Threatened or Endangered

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the California spotted owl (*Strix occidentalis occidentalis*) as threatened or endangered, under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). We find that the petition presents substantial scientific or commercial information indicating that listing the species may be warranted. Therefore, we are initiating a status review of the species to determine if listing the species is warranted. To ensure that the review is comprehensive, we are soliciting scientific and commercial information regarding this species.

**DATES:** The finding announced in this document was made on June 21, 2005. To be considered in the 12-month finding for this petition, comments and information must be submitted to the Service by August 22, 2005.

**ADDRESSES:** Submit new information, materials, comments, or questions concerning this species to Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2605, Sacramento, California 95825, or by facsimile to 916–414–6710. See also the ''Public Information Solicited'' section for more information on submitting comments. The complete file for this finding is available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Arnold Roessler at the Sacramento Fish and Wildlife Office (see **ADDRESSES** section above), or at (916) 414–6600.

**SUPPLEMENTARY INFORMATION:**

#### Public Information Solicited

When we make a finding that substantial information is presented to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. Based on results of the status review, we will make a 12-month finding as required by section 4(b)(3)(B) of the Act. To ensure that the status review is complete and based on the best available scientific and commercial data, we are soliciting information on the California spotted owl. We request any additional data, comments, and suggestions from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the status of the California spotted owl. Of particular interest is information pertaining to the factors the Service uses to determine if a species is threatened or endangered: (1) Present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; and (5) other natural or human-caused factors affecting its continued existence. In addition, we request data and information regarding the changes identified in the ''Summary of Threats Analysis'' section. Finally, if we determine that listing the owl is warranted, it is our intent to propose critical habitat to the maximum extent prudent and determinable at the time we would propose to list the species. Therefore, we request data and information on what may constitute physical or biological features essential to the conservation of the species, where these features are currently found and whether any of these areas are in need of special management, and whether there are areas not containing these features which might of themselves be essential to the conservation of the species. Please provide specific comments as to what, if any critical habitat should be proposed for designation, if the species is proposed for listing and why that proposed habitat meets the requirements of the Act.

If you wish to comment, you may submit your comments and materials concerning this finding to the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. We will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

#### Background

Section 4(b)(3)(A) of the Act requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. This finding is based on information contained in the petition, supporting information

submitted with the petition, and information otherwise available in our files at the time we make the finding. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly commence a review of the status of the species.

In making this finding, we relied on information provided by the petitioners and otherwise available in our files at the time of the petition review, and evaluated that information in accordance with 50 CFR 424.14(b). Our process of coming to a 90-day finding under section 4(b)(3)(A) of the Act and section 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the ''substantial scientific or commercial information'' threshold.

Our 90-day finding considers whether the petitioners have stated a reasonable case that listing may be warranted. Thus, our finding expresses no view as to the ultimate issue of whether the species should be listed. We reach a conclusion on that issue only after a thorough review of the taxon's status. In that review, which will take approximately 9 more months, we will perform a rigorous, critical analysis of the best available commercial and scientific information. We will ensure that the data used to make our determination as to the status of the species (*i.e.*, our 12-month finding) is consistent with the Act and Information Quality Act (44 U.S.C. 3504(d)(1) and 3516). Upon completion, our 12-month finding will be published promptly in the **Federal Register**.

On April 3, 2000, we received a petition to list the California spotted owl as a threatened or endangered species submitted by the Center for Biological Diversity and the Sierra Nevada Forest Protection Campaign (Center for Biological Diversity 2000), on the behalf of themselves and 14 other organizations. Along with listing, the petition also requested the concurrent designation of critical habitat, emergency listing, and emergency designation of critical habitat. On October 12, 2000, we published a 90-day finding on that petition in the **Federal Register** (65 FR 60605). In that notice, we found that the petition presented substantial scientific or commercial information to indicate that listing the California spotted owl may be warranted, and we initiated a status review of the taxon. On February 14, 2003, we published a 12-month finding on the petition in the **Federal Register** (68 FR 7580). In that notice, we found that the petitioned action was not warranted because the overall magnitude of threats to the species did not rise to the level requiring protection under the Act.

On May 11, 2004, the Center for Biological Diversity and five other groups filed a lawsuit in Federal District Court for the Northern District of California (*Center for Biological Diversity, et al.* v. *Norton et al.*, No. C–04–1861) alleging that our 12-month finding violated the Act and the Administrative Procedure Act (5 U.S.C. 706). On September 1, 2004, we received an updated petition dated September 2004 to list the California spotted owl as a threatened or endangered species and to designate critical habitat concurrent with listing based, in part, on information that was not available to us at the time we made our 12-month finding (Center for Biological Diversity 2004). The updated petition was submitted by the Center for Biological Diversity and the Sierra Nevada Forest Protection Campaign, acting on behalf of themselves and six other organizations. The submission clearly identified itself as a petition, and included the requisite identification information of the petitioners, as required in 50 CFR 424.14(a).

In view of the new petition, on March 8, 2005, the District Court in *Center for Biological Diversity* v. *Norton* issued an Order to Show Cause why it should not stay the litigation pending the Service's action on the new petition. In response to that Order, on March 14, 2005, we submitted a declaration to the Court stating that we could submit for publication in the **Federal Register** a 90-day finding on this petition by June 13, 2005, and, if we found that the information presented in the petition was substantial, submit for publication in the **Federal Register** a 12-month finding by March 14, 2006. On March 17, 2005, the Court stayed the case for 90 days, directed us to report to the Court and the parties concerning the status of our review of the petition by June 13, 2005, and continued the hearing on pending cross-motions for summary judgment to June 23, 2005. On March 25, 2005, the Court concurred with the parties' requests to continue the hearing date until June 30, 2005, and to allow the Plaintiffs and Intervenor-Defendants (American Forest and Paper Association, California Forestry Association, and Sierra Pacific Industries) until June 23, 2005, to file any responses to our June 13, 2005, filing. This notice constitutes the 90-day finding for the September 1, 2004, petition.

**Species Information**

*Description and Taxonomy*

Spotted owls (*Strix occidentalis*) are medium-sized, brown owls with brown eyes, round heads without ear tufts, white spots on the head, neck, back, and underparts, and white and light brown bars on the wings and tail. Individuals range from 41 to 48 centimeters (cm) (16 to 19 inches (in)) in length, and have wingspans of 107 to 114 cm (42 to 45 in) (Center for Biological Diversity 2000). Sexes cannot be distinguished by plumage, but can be readily identified by size and vocalization. Females are usually larger than males, with females weighing 535 to 775 grams (g) (19 to 27 ounces (oz)) and males weighing 470 to 685 g (17 to 24 oz) (Gutiérrez *et al.* 1995).

The California spotted owl is one of three recognized subspecies of spotted owls. The California spotted owl is intermediate in color between the darker northern spotted owl (*Strix occidentalis caurina*) and lighter Mexican spotted owl (*S. o. lucida*). The size of the spots of the California spotted owl is also intermediate between the larger spots of the Mexican subspecies and the smaller spots of the northern subspecies. The other subspecies are listed by the Service as threatened. The final rule to list the northern spotted owl was published in the **Federal Register** on June 26, 1990 (55 FR 26114) and the final rule to list the Mexican spotted owl was published in the **Federal Register** on March 16, 1993 (58 FR 14248).

*Range and Distribution*

The California spotted owl still occurs throughout its historic range in California, extending along the west side of the Sierra Nevada from Shasta County south to Tehachapi Pass, and in all major mountains of southern California, including the San Bernardino, San Gabriel, Tehachapi, north and south Santa Lucia, Santa Ana, Liebre/Sawmill, San Diego, San Jacinto, and Los Padres ranges (Beck and Gould 1992). In addition, a few sites have been found on the eastern side of the Sierra Nevada and in the central Coast Ranges at least as far north as Monterey County (Service 2002). For regulatory purposes,

we established the Pit River as the boundary between the northern spotted owl and the California spotted owl (55 FR 26114). The northern spotted owl ranges from southwestern British Columbia, Canada, through western Washington, western Oregon, and northern California south along the coast to San Francisco Bay (Service 1990). The range of the Mexican spotted owl is from southern Utah and Colorado south through Arizona and New Mexico, and is disjunct from the ranges of the other subspecies. The range is discontinuous through the Sierra Madre Occidental and Oriental of Mexico to the mountains at the southern end of the Mexican Plateau (Service 1993).

There are no reliable total population estimates for the California spotted owl. The number of California spotted owl territories has been used as an index to illustrate the range of the species and jurisdictions in which it occurs. This number is actually a cumulative total of all sites known to be historically or currently occupied by at least one spotted owl. This total increases over time as spotted owls move to new territories and as researchers survey new areas, even though many territories with sufficient suitable habitat are not occupied at the present and some territories no longer have sufficient suitable habitat to support spotted owls due to logging or fires. For example, in the Sequoia and Kings Canyon National Parks study area, only 34 of 44 territories (77 percent) with a history of spotted owl occupancy were occupied by either spotted owl pairs ($n$ = 32) or resident singles ($n$ = 2) in 2004 (Munton *in litt.* 2005). And in the Eldorado study area, only 26 of 49 territories (53 percent) were occupied by spotted owl pairs ($n$ = 25) or a single spotted owl ($n$ = 1) in 2004 (Seamans *in litt.* 2005a). Thus, the number of territories should not be viewed as a population estimate for the taxon.

The total number of California spotted owl territories known in the Sierra Nevada is 1,865 (Service 2002). Of these, 1,399 territories are in Lassen, Plumas, Tahoe, Eldorado, Stanislaus, Sierra, and Sequoia National Forests, and 129 territories are in Lassen, Kings Canyon, Sequoia, and Yosemite National Parks. Fourteen territories are on BLM land in the Sierra Nevada, 3 are on State parks, 1 is on California Department of Forestry and Fire Protection land, 4 are on California State Lands Commission Land, 1 is on Native American land, and 314 are on private lands (Service 2002).

In southern California, the spotted owl occupies ''islands'' of high-elevation forests isolated by lowlands covered by chaparral, desert scrub, and, increasingly, human development (Noon and McKelvey 1992, LaHaye *et al.* 1994). California spotted owls have been found on 440 territories in southern California, in 15 to 20 populations comprised of 3 to 270 individuals and separated from each other by 10 to 72 kilometers (km) (6 to 45 miles (mi)) (Verner *et al.* 1992a, Gutiérrez 1994, LaHaye *et al.* 1994, Service 2002). There are 329 territories in the Angeles, Cleveland, Los Padres, and San Bernardino National Forests, 2 on BLM land, 8 on State parks, 6 on Native American lands, and 95 on private lands. In addition, 1 territory is in Mexico (Service 2002).

*Life History*

Spotted owls usually reach reproductive maturity at 2 years of age, although there are rare accounts of nesting first-year birds (Verner *et al.* 1992b). Spotted owls are monogamous, and usually pair with the same mate from year to year (Verner *et al.* 1992b). Mate constancy, however, may be more of an attachment to a specific home range than to a specific mate (Forsman *et al.* 1984). The breeding season of California spotted owls extends from mid-February to mid-September or early October (Verner *et al.* 1992b).

Among the variety of taxa on which they prey, California spotted owls tend to select a few key species (Verner *et al.* 1992b). In the upper elevations of the Sierra Nevada (about 1,200 to 1,525 meters (m) (4,000 to 5,000 feet (ft)), the primary prey is the northern flying squirrel (*Glaucomys sabrinus*), which is most common in larger stands of mature forests (Verner *et al.* 1992b). In lower elevations of the Sierra Nevada and in southern California, the primary prey is the dusky-footed woodrat (*Neotoma fuscipes*) (Thrailkill and Bias 1989), which is most abundant in shrubby habitats and uncommon in pure conifer forests or forests with little shrub understory (Williams *et al.* 1992). Both flying squirrels and woodrats occur in the diets of owls in the central Sierra Nevada (Verner *et al.* 1992b). Other prey items include gophers (*Thomomys* spp.), mice (*Peromyscus* spp.), diurnal squirrels (*Tamiasciurus douglasii, Sciurus griseus*), ground squirrels, (*Spermophilus beecheyi*), and chipmunks (*Eutamias* spp.) and a variety of other rodents, shrews (*Sorex* spp.), moles (*Scapanus* spp.), bats (*Myotis* spp.), birds, frogs, lizards, and insects (Verner *et al.* 1992b, Gutiérrez *et al.* 1995, Tibstra 1999). Predators and closest competitors to spotted owls are great horned owls (*Bubo virginianus*) (Forsman *et al.* 1984) and barred owls (*Strix varia*) (Leskiw and Gutiérrez 1998, Hamer *et al.* 2001, Kelly *et al.* 2003).

The elevation of known nest sites of California spotted owls ranges from about 305 to 2,348 m (1,000 to 7,700 ft), with approximately 86 percent of sites occurring between 915 and 2,135 m (3,000 and 7,000 ft) (USFS 2001). In conifer forests, mean elevation of nest sites was 1,160 m (5,300 ft) in the northern Sierra Nevada and 1,830 m (6,000 ft) in southern California (Gutiérrez *et al.* 1992).

Spotted owls are mostly nonmigratory, remaining within their home ranges year round. However, in the Sierra Nevada, some individuals migrate downslope from early October to mid-December and return to their breeding territories in late February to late March, thereby establishing disjunct winter home ranges below the level of heavy, persistent snow (Verner *et al.* 1992b, Laymon 1989). These seasonal migrations range from 15 to 58 km (9 to 36 mi) with altitudinal changes from approximately 500 to 1,500 m (1,640 to 4,921 ft) (Verner *et al.* 1992b, Laymon 1989, Gutiérrez *et al.* 1995).

Spotted owls primarily disperse as juveniles (natal dispersal), but may also disperse as adults (breeding dispersal) if habitat within their home range has been degraded or if they have separated from a mate (Verner *et al.* 1992b). Natal dispersal occurs in September and October. Mean natal-dispersal distance of 26 owls in the Sierra National Forest and Sequoia National Park estimated using radio telemetry was 15.9 km (9.9 mi) (Tibstra 1999) and median distance of 42 owls on the Lassen National Forest estimated using recapture data was 25 km (16 mi) for females and 23 km (14 mi) for males (Blakesley *in litt.* 2002). Mean natal-dispersal distances of 129 owls in southern California estimated using recapture data were 10.1 km (6.3 mi) for males and 11.7 km (7.3 mi) for females (LaHaye *et al.* 2001).

*Habitat Use and Home Range*

California spotted owls, like the other two subspecies of spotted owls, use or select habitats for nesting, roosting, or foraging that have structural components of old forests, including large-diameter trees that are typically greater than 61 cm (24 in) diameter at breast height (dbh; breast height has been standardized at 137 cm (4.5 ft) above the ground) (Call 1990, Gutiérrez *et al.* 1992, Zabel *et al.* 1992, Moen and Gutiérrez 1997, USFS 2001), decadent trees (trees with cavities, broken tops, etc.); high tree density (Laymon 1988, Call 1990, Bias and Gutiérrez 1992, Gutiérrez *et al.* 1992, LaHaye *et al.* 1997,

Moen and Gutiérrez 1997); multi-layered canopy/complex structure (Call 1990, Gutiérrez *et al.* 1992, LaHaye *et al.* 1997, Moen and Gutiérrez 1997); high canopy cover (greater than 40 percent and mostly greater than 70 percent; Laymon 1988, Bias and Gutiérrez 1992, LaHaye *et al.* 1992, Gutiérrez *et al.* 1992, Zabel *et al.* 1992, Moen and Gutiérrez 1997, North *et al.* 2000); snags (Laymon 1988, Call 1990, Bias and Gutiérrez 1992, Gutiérrez *et al.* 1992, LaHaye *et al.* 1997); and downed logs (Call 1990). The mixed-conifer forest type (sugar pine (*Pinus lambertiana*), ponderosa pine (*Pinus ponderosa*), white fir (*Abies concolor*), Douglas-fir (*Pseudotsuga menziesii*), giant sequoia (*Sequoiadendron giganteum*), incense-cedar (*Calocedrus decurrens*), California black oak (*Quercus kelloggii*), and red fir (*Abies magnifica*)) is the predominant type used by spotted owls in the Sierra Nevada. About 80 percent of known sites are found in mixed-conifer forest, 10 percent are in red fir forest (red and white fir, lodgepole pine (*Pinus contorta*), quaking aspen (*Populus tremuloides*)), 7 percent are in ponderosa pine/hardwood forest (ponderosa pine, interior live oak (*Quercus wislizenii*), canyon live oak (*Quercus chrysolepis*), black oak, incense-cedar, white fir, tanoak (*Lithocarpus densiflorus*), Pacific madrone (*Arbutus menziesii*)), and the remaining 3 percent are in foothill riparian/hardwood forest (cottonwood (*Populus* spp.), California sycamore (*Platanus racemosa*), interior live oak, Oregon ash (*Fraxinus latifolia*), California buckeye (*Aesculus californica*), ponderosa pine, Jeffrey pine (*Pinus jeffreyi*)) (Verner *et al.* 1992a, USFS 2001).

Six major studies, summarized in Gutiérrez *et al.* (1992), described habitat relations of California spotted owls in four study areas (Lassen, Tahoe, Eldorado, and Sierra) spanning the length of the Sierra Nevada. These studies examined spotted owl habitat use at three scales: landscape; home range; and nest, roost, or foraging stand. Spotted owls preferentially use areas with at least 70 percent canopy cover, use habitats with 40 to 69 percent canopy cover in proportion to their availability, and spend less time in areas with less than 40 percent canopy cover than expected if habitat were selected randomly. California spotted owls in the Sierra Nevada prefer stands with significantly greater canopy cover, total live-tree basal area, basal area of hardwoods and conifers, and snag basal area for nesting and roosting. Stands suitable for nesting and roosting have: (1) Two or more canopy layers; (2) dominant and codominant trees in the canopy averaging at least 61 cm (24 in) in dbh; (3) at least 70 percent total canopy cover (including the hardwood component); (4) higher than average levels of very large, old trees; and (5) higher-than-average levels of snags and downed woody material (Gutiérrez *et al.* 1992, USFS 2001).

In the coast range, California spotted owls occupy redwood/California-laurel forests, which consist of a mix of coast redwood (*Sequoia sempervirens*), California laurel (*Umbellularia californica*), tanoak, Pacific madrone, red alder (*Alnus rubra*), white alder (*A. rhombifolia*), coast live oak, Santa Lucia fir (*Abies bracteata*), and bigleaf maple (*Acer macrophyllum*) (Verner *et al.* 1992a). Spotted owls can be found at elevations below 305 m (1,000 ft) along the Monterey coast to approximately 2,590 m (8,500 ft) in the inland mountains (Stephenson and Calcarone 1999). Lower-elevation (below 915 m (3,000 ft)) spotted owls can be found in pure oak stands and higher-elevation (above 1,981 m (6,500 ft)) spotted owls can be found in pure conifer stands.

In southern California, spotted owls also use riparian hardwood/hardwood forests (coast and canyon live oak, cottonwood, California sycamore, white alder, and California laurel), live oak/bigcone Douglas-fir forests (coast and canyon live oak, bigcone Douglas-fir (*Pseudotsuga macrocarpa*)), and mixed-conifer forests (Verner *et al.* 1992a). Spotted owl nests at 103 sites were in areas with higher canopy closure (mean = 79 percent) than were 296 random sites (mean = 52 percent), and they were in areas with more conifers at least 75 cm (29 in) dbh, more hardwoods at least 45 cm (18 in) dbh, more broken-topped trees, and more snags than were random sites (LaHaye *et al.* 1997).

Based on all of the above-cited studies, nesting habitat for California spotted owls throughout their range generally is described as stands with an average dominant and codominant trees greater than 61 cm (24 in) dbh and canopy cover of greater than 70 percent. Foraging habitat is generally described as stands of trees of 30 cm (12 in) in diameter or greater, with canopy cover of 40 percent or greater.

Spotted owl pairs have large home ranges that may overlap those of other spotted owls (Verner *et al.* 1992b). Estimates of California spotted owl home-range size are extremely variable. All available data indicate that they are smallest in habitats at relatively low elevations that are dominated by hardwoods, intermediate in size in conifer forests in the central Sierra Nevada, and largest in the true fir forests in the northern Sierra Nevada (Zabel *et al.* 1992, USFS 2001). Based on an analysis of data from radiotelemetry studies of California spotted owls, mean home-range sizes of breeding-season pairs were estimated as 3,642 hectares (ha) (9,000 acres (ac)) in true fir forests on the Lassen National Forest, 1,902 ha (4,700 ac) in mixed conifer forests on the Tahoe and Eldorado National Forests, and 1,012 ha (2,500 ac) in mixed conifer forests on the Sierra National Forest (USFS 2001). The home ranges of two pairs of radio-tagged California spotted owls in the San Bernardino Mountains of southern California were smaller than those reported for the Sierra Nevada and varied widely between pairs (325 to 816 ha (803 to 2,016 ac)) (Zimmerman et al. 2001).

*Changes to Habitat*

The habitat used by California spotted owls today is comprised of forests that have been shaped by numerous interacting natural impacts such as fires and precipitation, and human impacts including fire suppression, timber harvest, livestock grazing, and urbanization. Fire intervals are estimated to have been 5 to 30 years in the mixed-conifer forests of the Sierra before European arrival (Weatherspoon et al. 1992), and moderate-intensity fires (fires that were hot enough to scar but not kill most mature trees) historically occurred every 15 to 30 years in the forests of southern California (Stephenson and Calcarone 1999). Suppression of wildland fires, established in California as State and Federal policy by the early 20th century, virtually eliminated forest fires. For example, it is estimated that only 269 ha (664 acres) burn annually in the 237,146-ha (586,000-acre) Eldorado National Forest, whereas approximately 11,736 ha (29,000 acres) burned annually there before European arrival (Weatherspoon et al. 1992). Due to the lack of frequent fires, many forested areas have grown dense layers of understory trees and have accumulated large amounts of woody debris on the forest floor, thereby increasing the chances of high-intensity, stand-replacing crown fires in the Sierras and in the mountains of southern California (Kilgore and Taylor 1979, McKelvey and Weatherspoon 1992, Weatherspoon et al. 1992, Stephenson and Calcarone 1999). In addition, in areas throughout the range of the California spotted owl, trees that are dead or dying due to disease add to the already dense accumulations of woody debris. This abundance of fuels led to the recent

large-scale fires in spotted owl habitat in southern California. One of the challenges in assessing the effects of fire management of California spotted owl habitat is the need to weigh the long-term benefits of the reduction of risk of catastrophic fires against any potential short-term effects on the quality or quantity of spotted owl habitat.

Timber harvest is another obvious impact to California spotted owl habitat (Gutiérrez 1994, Verner *et al.* 1992a). In the Sierra Nevada, timber harvest steadily intensified from the railroad building and mining eras of the 1800s until the 1950s, then remained at relatively high levels through the 1980s (McKelvey and Johnston 1992). Since the late 1980s, the volume of timber harvested in the Sierra Nevada has declined substantially. Verner *et al.* (1992a) discussed five major factors of concern for California spotted owl habitat that have resulted from historical timber-harvest strategies: (1) Decline in the abundance of very large, old trees; (2) decline in snag density; (3) decline in large-diameter logs; (4) disturbance or removal of duff and topsoil layers; and (5) change in the composition of tree species. Of these concerns, they believed significant changes in diameter distributions of trees in the Sierra Nevada and rapid reductions in the distribution and abundance of large, old, and decadent trees posed the greatest threats to the California spotted owl. Thus, extensive commercial harvest in the past of large old trees in late-successional forests directly affected the key structural components of California spotted owl habitat. Changes in California's Forest Practices Act, as well as changes in the management of Federal forest lands have largely eliminated past practices. The difficulty is that it will take many decades for these forests to regain these late-successional components and, in the interim, forests must be managed without modifying remaining suitable habitat to the degree that we negatively affect spotted owl numbers or distribution.

**Threats Analysis**

Section 4 of the Act and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal list of endangered and threatened species. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this finding, we evaluated whether threats to the California spotted owl as presented in the petition and other information available to us may pose a concern with respect to the taxon's survival such that listing under the Act may be warranted. Our evaluation of these threats, based on information provided in the petition and available in our files, is presented below.

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

The petition states that more than 100 years of logging in the Sierra Nevada Mountains resulted in loss of spotted owl habitat, which negatively affects spotted owl numbers and distribution, and in fragmentation of habitat, which negatively affects spotted owl dispersal. The petition cites the 10 areas of concern (AOCs) in the Sierra Nevada described in Beck and Gould (1992), and then explicitly modifies them into nine AOCs. These AOCs, which comprise less than one-half of the taxon's range, are of concern because they are bottlenecks or gaps in spotted owl distributions, support locally isolated populations, contain highly fragmented habitat, or have low spotted owl density. The petition contends that logging as prescribed in the Sierra Nevada Forest Plan Amendment (SNFPA) (USFS 2004a), the Herger Feinstein Quincy Library Group Forest Recovery Act Pilot Project (HFQLG Pilot Project), and on private lands threatens to further degrade and destroy spotted owl habitat, resulting in continued declines in numbers of spotted owls.

The petition cites the recently published meta-analysis of population dynamics of California spotted owls (Franklin *et al.* 2004) as evidence that spotted owl populations are declining and that management of forests may be a cause of these declines. This meta-analysis analyzed demographic data of spotted owls on the Lassen (1990 to 2000), Eldorado (1986 to 2000), Sierra (1990 to 2000), and San Bernardino 1987 to 1998) National Forests and in Sequoia and Kings Canyon National Parks (1990 to 2000). The petition reports that the pooled estimate for adult apparent survival for the four National Forests (0.819) was lower than that from Sequoia and Kings Canyon National Parks (0.877) and that from 15 northern spotted owl studies (0.850). The petition states that estimates for $\lambda$ (lambda, the finite rate of population change, where $\lambda < 1.0$ indicates a declining population and $\lambda > 1.0$ an increasing population) for four of the five study areas (the exception was Eldorado) were less than 1.0, but that none of the estimates for $\lambda$ was different from $\lambda = 1.0$ given the 95-percent statistical confidence intervals. In addition to citing the meta-analysis, the petition references site-specific studies (e.g., Blakesley *et al.* 2001, Seamans *et al.* 2001) that indicate negative population trends. The petition claims that we did not adequately address these reported declines in our 12-month finding (68 FR 7580) due to our heavy reliance on $\lambda$, 95-percent confidence intervals, and scientific uncertainty.

The petition also notes that recent fires, as well as human activities including urban development, livestock grazing, mining, recreation, and road construction, have contributed to past and present loss and degradation of spotted owl habitat.

**Evaluation of Information in the Petition and Other Information in our Files**

As described above in ''Historic Habitat Loss,'' spotted owl habitat has been degraded or removed due to many human activities over approximately the past 150 years. Beck and Gould (1992), Verner *et al.* (1992a), USFS (2001), USFS (2004a), and the petitioners agree that the risk associated with management within the AOCs in the Sierra Nevada is higher than that in other areas. USFS (2004a) explicitly states that the revised SNFPA increases the risk of continued declines in spotted owl density within the AOCs. In our 2003 12-month finding (68 FR 7580), we analyzed the effects to spotted owl habitat from timber harvest on Federal, State, and private lands relative to the Federal and State regulations in effect at that time. After publication of our 12-month finding, the Forest Service issued a revised SNFPA (USFS 2004a) that allows for full implementation of the HFQLG Pilot Project, and for more flexibility in locating and implementing effective fire-fuels treatments than did the 2001 SNFPA (USFS 2001). We have not yet completed a detailed analysis of how these differences will affect the California spotted owl. Although not mentioned in the petition, we are aware that recent changes in the Fuel Hazard Reduction Emergency Rule and Variable Retention Rule of the California State Forest Practices Code will influence the management of California spotted owl habitat, but we have not yet analyzed exactly how they will do so. As noted above, issues raised by the petitioners regarding changes in the SNFPA from

2001 to 2004 and information in our files concerning changes to the California State Forest Practices Code justify further analysis in a status review and 12-month finding due to the certainties related to the relative risks associated with fire management or lack thereof and spotted owl habitat.

When we published our 2003 12-month finding (68 FR 7580), the meta-analysis (Franklin *et al.* 2004) was in draft form. At that time, the final, published version was not available. A detailed analysis of any changes made by the authors, including how such changes may alter our 2003 analysis, is appropriately conducted as part of a status review and 12-month finding process.

We agree with the petition that recent fires, urban development, livestock grazing, mining, recreation, and road construction have contributed to past and, to a lesser extent, present loss and degradation of California spotted owl habitat. Of these impacts, fire and its effects are of particular concern. For example, information in our files indicates that five spotted owl territories in the San Diego Ranges were completely burned in 2003, and nine territories in the San Gabriel Mountains were burned so heavily in 2002 and 2003 that it is doubtful that they can support spotted owls at this time (USFS 2004a, Loe in litt. 2005). The impacts of these recent fires and anticipated future fires in spotted owl habitat justify further analysis. Based on the information presented in the petition and information available in our files, we find that substantial information indicates that there is a threat of destruction, modification, or curtailment of the species' habitat or range due to fires.

To summarize Factor A, a number of changes have taken place during the past 2 years that may affect California spotted owl habitat and effect corresponding changes in California spotted owl populations. These include: revisions to the 2001 SNFPA (USFS 2001) in the 2004 SNFPA (USFS 2004a); revisions to the California State Forest Practices Code; impacts of recent fires and anticipated future fires in spotted owl habitat; and how these threats affect our interpretation and application of the results of the final report on the meta-analysis of the population dynamics of the California spotted owl (Franklin *et al.* 2004). We find that these changes constitute substantial information that the threatened destruction, modification, or curtailment of the species' habitat or range may be a factor that threatens the continued existence of the taxon, and thus that the petitioned action may be warranted.

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

The petition does not present any threats relative to factor B, nor is there any new information available in our files.

*C. Disease or Predation*

The petition states that West Nile Virus (WNV) presents a serious potential threat to California spotted owls, and recommends that its effects on spotted owls be monitored closely. As stated in the petition, WNV was first detected in the United States in 1999 in New York, and has quickly spread to the western United States. The petition states that WNV has not been detected thus far in a wild spotted owl, but that an infected, captive spotted owl suffered mortality.

The petition cites a personal communication (Peery *in litt.* 1999) in support of its claims that, because great horned owls and red-tailed hawks (*Buteo jamaicensis*) tend to forage in open areas and because great horned owls are known predators of spotted owls (Forsman et al. 1984), the reduction of canopy cover and creation of breaks in the canopy due to logging may increase predation of spotted owls.

**Evaluation of Information in the Petition and Other Information in our Files**

As stated in the petition, WNV has not yet been detected in a wild spotted owl. Although not mentioned in the petition, we are aware that, in 2004, researchers in California took blood samples and oral swabs from captured spotted owls to test for the presence of WNV and WNV antibodies. One team tested for WNV in California spotted owls in the Eldorado study area and in northern spotted owls of northern California in the Willow Creek, Green Diamond Resource Company, and Hoopa Tribal Lands study areas ($n$ = 119) (Franklin *in litt.* 2004, 2005, Gutiérrez *in litt.* 2005). Another team took blood samples from California spotted owls in Plumas and Lassen National Forests ($n$ = 68) (Keane 2005). None of the spotted owls tested positive for WNV exposure (Keane 2005, Franklin *in litt.* 2005, Gutiérrez *in litt.* 2005). In addition, none of the small mammals (e.g., mice, northern flying squirrels, dusky-footed woodrats) sampled in two study areas (Willow Creek and Eldorado) ($n$ = 251) tested positive for WNV (Franklin *in litt.* 2005). Neither the petition nor information available in our files presents substantial information that WNV may threaten the continued existence of the California spotted owl.

The petition does not present any scientific information that supports the idea that logging increases predation of spotted owls by great horned owls or red-tailed hawks, and we are unaware of any such information. Therefore, neither the petition nor information available in our files presents substantial information that predation may threaten the continued existence of the California spotted owl.

*D. Inadequacy of Existing Regulatory Mechanisms*

The petition contends that the SNFPA (USFS 2004a) does not adequately protect large trees, high canopy closure, multiple-canopy layers, snags, and downed wood, that it allows for fuels treatment in more Protected Activity Centers (PACs) than the 2001 Sierra Nevada Forest Plan (USFS 2001), and that it does not provide limits on the proportion of areas that can be degraded through logging. The appendices to the petition include letters and declarations from spotted owl biologists (e.g., J. Blakesley, B. Noon, Z. Peery, and J. Verner) in support of this contention. The petition also contends that the California State Forest Practices Code provides almost no specific protections for the spotted owl or its habitat.

**Evaluation of Information in the Petition and Other Information in our Files**

As stated above in factor A, we analyzed the effects to spotted owl habitat from timber harvest on Federal, State, and private lands in our 2003 12-month finding (68 FR 7580) relative to the Federal and State regulations in effect at that time, and we are aware that recent changes to the 2001 SNFPA (USFS 2001) and to the California State Forest Practices Code (the Fuel Hazard Reduction Emergency Rule and Variable Retention Rule of the Code) may affect California spotted owl habitat. Accordingly, the petition and information available in our files present substantial scientific information that due to the change in regulatory mechanisms since our last status review, existing regulatory mechanisms may be inadequate to ensure the continued existence of the California spotted owl, and thus that the petitioned action may be warranted.

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

The petition states that short-term fluctuations in climate negatively affect reproduction in spotted owls and may increase the risk of extinction of California spotted owls. It states that logging, historic livestock grazing, and fire suppression have increased the risk of stand-replacing fires. The petition also presents concern that threats from hybridization and site competition with the barred owl have increased in recent years due to the barred owl's recent expansion farther into the range of the California spotted owl.

**Evaluation of Information in the Petition and Other Information in Our Files**

As stated in the petition, variation in survival of California spotted owls has been shown to be based on habitat variation, whereas variation in reproductive output was based equally on variations in habitat and climate (Franklin *et al.* 2000). Although not stated in the petition, research shows that weather conditions explained all or most of the temporal variations in fecundity observed in California spotted owls (North *et al.* 2000, Franklin *et al.* 2004, LaHaye *et al.* 2004) and northern spotted owls in northwestern California (Franklin *et al.* 2000), and that spotted owls compensate for this highly variable annual reproduction with high annual adult survival (Franklin *et al.* 2000). Researchers also state that the long-term effects of variations in reproductive success of spotted owls in California due to climate are unknown, and will require decades of study (Franklin *et al.* 2000, North *et al.* 2000, Franklin *et al.* 2004, LaHaye *et al.* 2004). Therefore, neither the petition nor our files contain substantial information that indicates that climate is a threat to the continued existence of the California spotted owl at this time.

Various human activities, especially fire suppression, have resulted in more fire-prone forests, as discussed in our 2003 12-month finding (68 FR 7580). Management of this threat is the purpose of the SNFPA (USFS 2004a), and, as described in factors A and D above, changes to the 2001 SNFPA and California State Forest Practices Code will be addressed in our 12-month finding. In addition, as described in factor A above, anticipated effects due to fires will be addressed in our 12-month finding.

As stated in the petition, barred owls hybridize with spotted owls. However, information in our files indicates that, although barred owls and spotted owls occasionally hybridize (*e.g.,* Hamer et al. 1994, Kelly and Forsman 2004), this behavior is an ''inconsequential'' phenomenon that takes place mostly when barred owls move into new areas, and declines as barred owls become more numerous and have more access to other barred owls (Kelly and Forsman 2004:808). Further, Kelly and Forsman (2004) documented only 47 hybrids out of more than 9,000 banded northern spotted owls and barred owls in Oregon and Washington from 1970 to 1999. Thus, we conclude that there is not substantial scientific information indicating that hybridization with barred owls poses a threat to the continued existence of the California spotted owl.

However, as stated in the petition, barred owls apparently have displaced many northern spotted owls from their territories (Kelly *et al.* 2003, Pearson and Livezey 2003, Gremel 2004), and have expanded their range into that of the California spotted owl (Dark *et al.* 1998) as far south as Sequoia National Park. Information in our files indicates that, during the past 2 years, the known range of barred owls has expanded 200 miles southward in the Sierras, including two hybrid spotted/barred owls in the Eldorado National Forest (Seamans *et al.* in press 2005, Seamans *in litt.* 2005b) and a male barred owl in Kings Canyon National Park (Steger *et al.* in review). Other information in our files shows that barred owls physically attack (Pearson and Livezey 2003) and possibly kill (Leskiw and Gutiérrez 1998) northern spotted owls as well as negatively affect northern spotted owl site occupancy (Kelly *et al.* 2003, Pearson and Livezey 2003), reproduction (Olson *et al.* 2004, Livezey 2005), and survival (Anthony *et al.* 2004). Thus, we have determined that the petition and our files present substantial scientific information to conclude that barred owls constitute a threat to site occupancy, reproduction, and survival of California spotted owls.

To summarize Factor E, neither the petition nor information in our files present substantial scientific information regarding the threats to California spotted owls from climate or from hybridization with barred owls. However, we find that the petition and information in our files present substantial scientific information regarding the threat of fires to California spotted owl habitat and of barred owls to site occupancy, reproduction, and survival of California spotted owls.

**Summary of Threats Analysis**

The petitioners have not presented substantial new scientific information on many of the threats to California spotted owls and their habitat (e.g., effects from past logging, livestock grazing, urban development, and recreation) that were addressed in our 12-month finding of February 14, 2003 (68 FR 7580). However, as noted by the petition, the following changes have taken place during the past 2 years that may affect the status and distribution of the California spotted owl or change our understanding of possible declines in California spotted owl populations: (1) Revisions to the 2001 SNFPA (USFS 2001) in the 2004 SNFPA (USFS 2004a); (2) revisions to the California State Forest Practices Code; (3) possible changes to the draft meta-analysis of the population dynamics of the California spotted owl in the final, published meta-analysis (Franklin *et al.* 2004); (4) impacts of recent fires and anticipated future fires in spotted owl habitat; and (5) further range expansion of the barred owl. These changes constitute substantial information and thus justify further detailed analysis in a status review and 12-month finding.

**Finding**

We have reviewed the petition and other information available in our files. Based on this review, we find that the petition and information in our files present substantial information that listing the California spotted owl as threatened or endangered may be warranted.

The petition also requested that critical habitat be designated for the California spotted owl. If we determine in our 12-month finding that listing the California spotted owl is warranted, we will address the designation of critical habitat in the subsequent proposed listing rule or as funding allows.

**References Cited**

A complete list of all references cited herein is available, upon request, from the Sacramento Fish and Wildlife Office (*see* **ADDRESSES** section).

**Author**

The primary author of this notice is Kent Livezey, Western Washington Fish and Wildlife Office, U.S. Fish and Wildlife Service, 510 Desmond Drive SE, Lacey, Washington 98503.

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

Dated: June 13, 2005.

**Elizabeth H. Stevens,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 05–11938 Filed 6–20–05; 8:45 am]

**BILLING CODE 4310–55–P**

# Notices

Federal Register
Vol. 70, No. 118
Tuesday, June 21, 2005

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

### Agricultural Marketing Service

**[Docket Number FV–05–309]**

### United States Standards for Grades of Dewberries and Blackberries

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Agricultural Marketing Service (AMS), prior to undertaking research and other work associated with revising official grade standards, is soliciting comments on the need for possible revisions of the United States Standards for Grades of Dewberries and Blackberries. At a 2003 meeting with the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review the Fresh Fruit and Vegetable grade standards for usefulness in serving the industry. As a result AMS has identified the color requirement for possible revision. Additionally, AMS is seeking comments regarding any other revisions that may be necessary to better serve the industry.

**DATES:** Comments must be received by August 22, 2005.

**ADDRESSES:** Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Room 1661 South Building, Stop 0240, Washington, DC 20250–0240; Fax (202) 720–8871, E-mail *FPB.DocketClerk@usda.gov.* Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours. The United States Standards for Grades of Dewberries and Blackberries are available either at the above address or by accessing the Fresh Products Branch Web site at: *http://www.ams.usda.gov/standards/stanfrfv.htm.*

**FOR FURTHER INFORMATION CONTACT:** David L. Priester, at the above address or call (202) 720–2185; E-mail *David.Priester@usda.gov.*

**SUPPLEMENTARY INFORMATION:** Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture ''To develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements no longer appear in the Code of Federal Regulations, but are maintained by USDA/AMS/Fruit and Vegetable Programs.

AMS is proposing to revise the voluntary United States Standards for Grades of Dewberries and Blackberries using procedures that appear in Part 36, Title 7 of the Code of Federal Regulations (7 CFR part 36). These standards were published on February 13, 1928.

#### Background

At a 2003 meeting with the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review the Fresh Fruit and Vegetable grade standards for usefulness in serving the industry. AMS has identified the United States Standards for Grades of Dewberries and Blackberries for possible revision. One area being reviewed is the color requirement. This requirement currently states, ''The whole surface of the berry shall be a blue or black color.'' AMS is considering changing the color requirement to allow for a lesser amount of color and/or requirement currently states, ''The whole surface of the berry shall be a blue or black color.'' AMS is considering changing the color requirement to allow for a lesser amount of color and/or varying shades of color. However, prior to undertaking detailed work to develop the proposed revision to the standards, AMS is soliciting comments on the proposed revision and any other comments on the United States Standards for Grades of Dewberries and Blackberries to better serve the industry and the probable impact of any revisions on distributors, processors, and growers.

This notice provides for a 60-day comment period for interested parties to comment on whether any changes are necessary to the standards. Should AMS conclude that there is a need for any revisions of the standards, the proposed revisions will be published in the **Federal Register** with a request for comments in accordance with 7 CFR part 36.

**Authority:** 7 U.S.C. 1621–1627.

Dated: June 15, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05–12155 Filed 6–20–05; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Docket Number FV–04–311]**

### United States Standards for Grades of Kale

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is revising the United States Standards for Grades of Kale. Specifically, AMS is revising the standards to allow percentages to be determined by count rather than weight and the application of tolerances for packages which contain less than 15 specimens. Additionally, AMS is revising the standards to allow the standards to be used for kale leaves and bunches of leaves in addition to kale plants. The revisions will bring the standards for kale in-line with current marketing practices, thereby improving their usefulness in serving the industry.

**DATES:** *Effective Date:* July 21, 2005.

**FOR FURTHER INFORMATION CONTACT:** David Priester, Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of

Agriculture, 1400 Independence Avenue, SW., Room 1661 South Building, STOP 0240, Washington, DC 20250–0240, Fax (202) 720–8871 or call (202) 720–2185; E-mail *David.Priester@usda.gov.* The revised United States Standards for Grades of Kale will be available either through the address cited above or by accessing the AMS, Fresh Products Branch Web site at: *http://www.ams.usda.gov/standards/stanfrfv.htm.*

**SUPPLEMENTARY INFORMATION:** Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture ''To develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities. AMS makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements no longer appear in the Code of Federal Regulations, but are maintained by USDA/AMS/Fruit and Vegetable Programs.

AMS is revising the voluntary U.S. Standards for Grades of Kale using procedures that appear in Part 36, Title 7 of the Code of Federal Regulations (7 CFR part 36).

**Background**

On October 1, 2004, AMS published a notice in the **Federal Register** (69 FR 58879) soliciting comments on the possible revision to the United States Standards for Grades of Kale. In response to our request for comments, AMS received one comment from an industry group in favor of the proposed revision. The group also requested to allow the standards to be used for kale leaves and bunched kale leaves in addition to kale plants.

A second notice was published in the March 11, 2005, **Federal Register** (70 FR 12172) based on the comment received on the first notice. AMS received one comment from an industry group in response to the second notice. The comment was in favor of the revision to the standard. The favorable comment stated that a well-defined standard for kale shipped in a variety of ways will improve consistency of delivered product and enhance the relevance and effectiveness of USDA inspections. The comment is available by accessing AMS's Home Page on the Internet at: *http://www.ams.usda.gov/fv/fpbdocketlist.htm.*

Additionally, AMS is eliminating the unclassified category. This section is being removed in all standards, when they are revised. This category is not a grade and only serves to show that no grade has been applied to the lot. It is no longer considered necessary.

Based on comments received and information gathered, AMS believes the revisions to the standards will bring the standards for kale in-line with current marketing practices and thereby improve their usefulness.

The official grade of a lot of kale covered by these standards is determined by the procedures set forth in the Regulations Governing Inspection, Certification, and Standards of Fresh Fruits, Vegetables and Other Products (Sec. 51.1 to 51.61).

The United States Standards for Grades of Kale will become effective 30 days after the publication of this notice in the **Federal Register**.

**Authority:** 7 U.S.C. 1621–1627.

Dated: June 15, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05–12154 Filed 6–20–05; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 05–032–1]**

### Notice of Request for Extension of Approval of an Information Collection; Importation of Clementines From Spain

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Extension of approval of an information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for importation of clementines to the United States from Spain.

**DATES:** We will consider all comments that we receive on or before August 22, 2005.

**ADDRESSES:** You may submit comments by any of the following methods:

EDOCKET: Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the ''View Open APHIS Dockets'' link to locate this document.

Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 05–032–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 05–032–1.

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

*Other Information:* You may view APHIS documents published in the **Federal Register** and related information on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

**FOR FURTHER INFORMATION CONTACT:**

For information regarding the importation of clementines from Spain, contact Donna L. West, Senior Import Specialist, Commodity Analysis and Operations, PRI, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 734–8758. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS* Information Collection Coordinator, at (301) 734–7477.

**SUPPLEMENTARY INFORMATION**

*Title:* Importation of Clementines from Spain.

*OMB Number:* 0579–0203.

*Type of Request:* Extension of approval of an information collection.

*Abstract:* As authorized by the Plant Protection Act (7 U.S.C. 7701–7772) (PPA), the Secretary of Agriculture may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, means of conveyance, or other article if the Secretary determines that the prohibition or restriction is necessary to prevent a plant pest or noxious weed from being introduced into or disseminated within the United States. This authority has been delegated to the Animal and Plant

Health Inspection Service (APHIS), which administers regulations to implement the PPA. The regulations in ''Subpart—Fruits and Vegetables,'' 7 CFR 319.56 through 319.56–8, prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests, including fruit flies.

Under these regulations, clementines from Spain are subject to certain conditions before entering the United States to ensure that exotic plant pests, such as the Mediterranean fruit fly, are not introduced into the United States. The regulations require the use of information collection activities including a trust fund agreement, grower registration and agreement, a Mediterranean fruit fly management program, fruit fly trapping and control activities, recordkeeping, a phytosanitary certificate, and box labeling.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate 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;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

*Estimate of burden:* The public reporting burden for this collection of information is estimated to average 0.000578 hours per response.

*Respondents:* Full-time, salaried plant health officials of Spain's plant inspection service, and growers and shippers of clementines.

*Estimated annual number of respondents:* 4,515.

*Estimated annual number of responses per respondent:* 3,870.1328.

*Estimated annual number of responses:* 17,473,650.

*Estimated total annual burden on respondents:* 10,101 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 15th day of June, 2005.

**Elizabeth E. Gaston,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E5–3203 Filed 6–20–05; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 04–133–1]**

### Secretary's Advisory Committee on Foreign Animal and Poultry Diseases; Notice of Solicitation for Membership

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of solicitation for membership.

**SUMMARY:** We are giving notice that the Secretary has renewed the Advisory Committee on Foreign Animal and Poultry Diseases for a 2-year period. The Secretary is soliciting nominations for membership for this Committee.

**DATES:** Consideration will be given to nominations received on or before August 5, 2005.

**ADDRESSES:** Nominations should be addressed to the person listed under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** Dr. Joe Annelli, Director of Emergency Management Outreach and Liaisons, Emergency Management, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073.

**SUPPLEMENTARY INFORMATION:** The Secretary's Advisory Committee on Foreign Animal and Poultry Diseases (the Committee) advises the Secretary of Agriculture on actions necessary to keep foreign diseases of livestock and poultry from being introduced into the United States. In addition, the Committee advises on contingency planning and on maintaining a state of preparedness to deal with these diseases, if introduced.

The Committee Chairperson and Vice Chairperson shall be elected by the Committee from among its members.

Terms will expire for the current members of the Committee in August 2005. We are soliciting nominations from interested organizations and individuals to replace members on the Committee. An organization may nominate individuals from within or outside its membership. The Secretary will select members to obtain the broadest possible representation on the Committee, in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) and U.S. Department of Agriculture (USDA) Regulation 1041–1. Equal opportunity practices, in line with the USDA policies, will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Done in Washington, DC, this 15th day of June, 2005.

**Elizabeth E. Gaston,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E5–3206 Filed 6–20–05; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 05–029–1]**

### Public Meeting; Proposed Design and Development of a Phytosanitary Certificate Issuance and Tracking System

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** We are advising the public that the Plant Protection and Quarantine program of the Animal and Plant Health Inspection Service will hold a meeting to exchange information and receive input on the proposed Phytosanitary Certificate Issuance and Tracking System, which will improve the efficiency of the Federal phytosanitary certificate issuance process.

**DATES:** The public meeting will be held on July 14, 2005, from 9 a.m. to noon.

**ADDRESSES:** The public meeting will be held at the USDA Center at Riverside, 4700 River Road, Riverdale, MD.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jo Ann Morris, Computer Specialist, Program Data Management and Analysis, PPQ, APHIS, 4700 River Road

Unit 144, Riverdale, MD 20737–1236; (301) 734–5255.

**SUPPLEMENTARY INFORMATION:** The Animal and Plant Health Inspection Service's (APHIS) Plant Protection and Quarantine program (PPQ) provides certification of plants and plant products as a service to exporters. After assessing the phytosanitary condition of the plants or plant products intended for export, relative to the receiving country's regulations, an inspector issues an internationally recognized phytosanitary certificate (PPQ Form 577), a phytosanitary certificate for reexport (PPQ Form 579), an export certificate for processed plant products (PPQ Form 578), or a certificate of heat treatment (PPQ Form 553) if warranted. The regulations concerning export certification for plants and plant products are contained in 7 CFR part 353. Currently, more than 1,000 phytosanitary certificates are being tracked and issued manually per year.

Since 2002, PPQ has been working with Electronic Data Systems to develop a national Phytosanitary Certificate Issuance and Tracking System (PCIT), which would improve the tracking and traceback of Federal phytosanitary certificates, improve reporting capabilities, and reduce the incidence of errors and fraud. The PCIT is an interactive, Web-based system that will allow U.S. exporters to apply for phytosanitary certificates, schedule commodity inspections, and make payments on-line. PCIT will also allow APHIS to better manage Authorized Certification Officers' workload and enhance security and accountability of phytosanitary certificates.

In order to demonstrate the capabilities of the system and to provide information to interested industries about PCIT releases 2.0, 2.5 (the payment engine), and 3.0, PPQ will be holding a public meeting on July 14, 2005, in Riverdale, MD.

### Registration

Due to space considerations, attendance at the public meeting will be limited to 100 people. We encourage preregistration. You may register by visiting *http://www.aphis.usda.gov/ppq/pim/exports/pcit/* or by contacting Ms. Linda Toran by July 8, 2005, at (301) 734–5307 or by fax at (301) 734–8693. Onsite registration for any remaining spaces will be held on the day of the meeting from 8 a.m. to 9 a.m.

### Parking and Security Procedures

Please note that a fee of $2.25 is required to enter the parking lot at the USDA Center at Riverside. The machine accepts $1 bills or quarters.

Picture identification is required to be admitted into the building. Upon entering the building, visitors should inform security personnel that they are attending the PCIT meeting.

Done in Washington, DC, this 15th day of June, 2005.

**Elizabeth E. Gaston,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E5–3205 Filed 6–20–05; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of Resource Advisory Committee Meeting

**AGENCY:** Modoc Resource Advisory Committee, Alturas, California, USDA Forest Service.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Modoc National Forest's Modoc Resource Advisory Committee will meet Monday, July 11th, 2005, August 1st, 2005 and August 29th, 2005 in Alturas, California for business meetings. The meetings are open to the public.

**SUPPLEMENTARY INFORMATION:** The business meeting July 11th begins at 6 pm., at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas. Agenda topics will include existing and future projects that meet the intent of Pub. L. 106–393. Time will also be set aside for public comments at the beginning of the meeting.

The business meeting August 1st begins at 6 pm; at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas. Agenda topics will include existing and future projects that meet the intent of Pub. L. 106–393. Time will also be set aside for public comments at the beginning of the meeting.

The business meeting August 29th begins at 6 pm; at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas. Agenda topics will include existing and future projects that meet the intent of Pub. L. 106–393. Time will also be set aside for public comments at the beginning of the meeting.

**FOR FURTHER INFORMATION CONTACT:** Stan Sylva, Forest Supervisor and Designated Federal Officer, at (530) 233–8700; or Public Affairs Officer Louis J Haynes at (530) 233–8846.

**Stanley G. Sylva,**

*Forest Supervisor.*

[FR Doc. 05–12188 Filed 6–20–05; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–588–824]**

### Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Preliminary Results of Antidumping Duty Changed Circumstances Review and Intent Not to Revoke, In Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On December 7, 2004, the Department of Commerce (''the Department'') published a notice of initiation of a changed circumstances review regarding certain corrosion–resistant carbon steel flat products from Japan in response to a request for partial revocation received from Metal One Corporation (''Metal One''), and invited interested parties to submit comments. On December 27, 2004, United States Steel Corporation (''U.S. Steel'') submitted a letter opposing the request for revocation. As a result, we preliminarily determine not to revoke the order, in part, with respect to the diffusion–annealed nickel plate products covered by Metal One's request.

**EFFECTIVE DATE:** June 21, 2005.

**FOR FURTHER INFORMATION CONTACT:** Christopher Hargett, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4161.

**SUPPLEMENTARY INFORMATION:**

### Background

On October 13, 2004, Metal One filed a request for a changed circumstances review on diffusion–annealed nickel plate, in accordance with 19 CFR 351.216(b). Metal One argued that its products were similar to products already excluded from the order. *See Letter from Metal One*, October 13, 2004. On December 7, 2004, the Department published in the **Federal Register** a notice of initiation of a changed circumstances review on certain corrosion–resistant carbon steel flat products from Japan with respect to

diffusion–annealed nickel plate. *See Notice of Initiation of Antidumping Duty Changed Circumstances Review*, 69 FR 70633 (December 7, 2004). On December 27, 2004, U.S. Steel submitted comments on the Department's initiation of a changed circumstances review. Specifically, U.S. Steel asserted that the domestic producers maintain interest in the products included in the changed circumstances review. U.S. Steel stated that their production of the domestic like product is will in excess of 15 percent of total domestic production. *See Letter from U.S. Steel*, December 27, 2004. Furthermore, U.S. Steel claimed that the products Metal One requested be excluded from the order are significantly different form those excluded by the Department in July 2002, and fall within the scope of the order. *See Letter from U.S. Steel*, December 27, 2004. On December 29, 2004, two days after the close of the comment period for the initiation period, Thomas Steel Strip Corporation (''Thomas Steel'') submitted comments objecting to the changed circumstances review. Because the letter was untimely filed, the Department has not taken the comments from Thomas Steel into consideration.

**Scope of Order**

The products subject to this order include flat–rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion–resistant metals such as zinc, aluminum, or zinc−, aluminum−, nickel− or iron–based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 mm, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness, or if of a thickness of 4.75 mm or more, are of a width which exceeds 150 mm and measures at least twice the thickness, as currently classifiable in the HTS under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090.

Included in the order are flat–rolled products of nonrectangular cross−section where such cross−section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'') −− for example, products which have been beveled or rounded at the edges.

Excluded from the scope of the order are flat–rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin–free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from the scope of the order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Also excluded from the scope of the order are certain clad stainless flat–rolled products, which are three–layered corrosion− resistant carbon steel flat–rolled products less than 4.75 mm in composite thickness that consist of a carbon steel flat–rolled product clad on both sides with stainless steel in a 20%−60%−20% ratio. *See Antidumping Duty Order: Certain Corrosion–Resistant Carbon Steel Flat Products From Japan*, 58 FR 44163 (August 19, 1993).

**Exclusions due to Changed Circumstances Reviews**

The Department has issued the following rulings to date:

Excluded from the scope of this order are imports of certain corrosion–resistant carbon steel flat products meeting the following specifications: widths ranging from 10 mm (0.394 inches) through 100 mm (3.94 inches); thicknesses, including coatings, ranging from 0.11 mm (0.004 inches) through 0.60 mm (0.024 inches); and a coating that is from 0.003 mm (0.00012 inches) through 0.005 mm (0.000196 inches) in thickness and that is comprised of three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, and finally a layer consisting of silicate. *See Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order*, 62 FR 66848 (December 22, 1997).

Also excluded from the scope of this order are imports of subject merchandise meeting all of the following criteria: (1) Widths ranging from 10 mm (0.394 inches) through 100 mm (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 mm (0.004 inches) through 0.60 mm (0.024 inches); and (3) a coating that is from 0.003 mm (0.00012 inches) through 0.005 mm (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of chromate, and finally a layer consisting of silicate. *See Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order*, 64 FR 14861 (March 29, 1999).

Also excluded from the scope of this order are: (1) Carbon steel flat products measuring 1.84 mm in thickness and 43.6 mm or 16.1 mm in width consisting of carbon steel coil (SAE 1008) clad with an aluminum alloy that is balance aluminum, 20% tin, 1% copper, 0.3% silicon, 0.15% nickel, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys; and (2) carbon steel flat products measuring 0.97 mm in thickness and 20 mm in width consisting of carbon steel coil (SAE 1008) with a two–layer lining, the first layer consisting of a copper–lead alloy powder that is balance copper, 9% to 11% tin, 9% to 11% lead, less than 1% zinc, less than 1% other materials and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 45% to 55% lead, 38% to 50% PTFE, 3% to 5% molybdenum disulfide and less than 2% other materials. *See Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 64 FR 57032 (October 22, 1999).

Also excluded from the scope of the order are imports of doctor blades meeting the following specifications: carbon steel coil or strip, plated with nickel phosphorous, having a thickness of 0.1524 mm (0.006 inches), a width between 31.75 mm (1.25 inches) and 50.80 mm (2.00 inches), a core hardness between 580 to 630 HV, a surface hardness between 900−−990 HV; the carbon steel coil or strip consists of the

following elements identified in percentage by weight: 0.90% to 1.05% carbon; 0.15% to 0.35% silicon; 0.30% to 0.50% manganese; less than or equal to 0.03% of phosphorous; less than or equal to 0.006% of sulfur; other elements representing 0.24%; and the remainder of iron. *See Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 65 FR 53983 (September 6, 2000).

Also excluded from the scope of the order are imports of carbon steel flat products meeting the following specifications: carbon steel flat products measuring 1.64 mm in thickness and 19.5 mm in width consisting of carbon steel coil (SAE 1008) with a lining clad with an aluminum alloy that is balance aluminum; 10 to 15% tin; 1 to 3% lead; 0.7 to 1.3% copper; 1.8 to 3.5% silicon; 0.1 to 0.7% chromium; less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys. *See Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 66 FR 8778 (February 2, 2001).

Also excluded from the scope of the order are carbon steel flat products meeting the following specifications: (1) Carbon steel flat products measuring 0.975 mm in thickness and 8.8 mm in width consisting of carbon steel coil (SAE 1012) clad with a two–layer lining, the first layer consisting of a copper–lead alloy powder that is balance copper, 9% – 11% tin, 9% – 11% lead, maximum 1% other materials and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 13% – 17% carbon, 13% – 17% aromatic polyester, with a balance (approx. 66% – 74%) of polytetrafluorethylene (''PTFE''); and (2) carbon steel flat products measuring 1.02 mm in thickness and 10.7 mm in width consisting of carbon steel coil (SAE 1008) with a two–layer lining, the first layer consisting of a copper–lead alloy powder that is balance copper, 9% – 11% tin, 9% – 11% lead, less than 0.35% iron, and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 45% – 55% lead, 3% – 5% molybdenum disulfide, with a balance (approx. 40% – 52%) of PTFE. *See Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 66 FR 15075 (March 15, 2001).

Also excluded from this order are products meeting the following specifications: carbon steel coil or strip, measuring 1.93 mm or 2.75 mm (0.076 inches or 0.108 inches) in thickness, 87.3 mm or 99 mm (3.437 inches or 3.900 inches) in width, with a low carbon steel back comprised of: carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 0.3% antimony, 2.5% silicon, 1% maximum total other (including iron), and remainder aluminum. Also excluded from this order are products meeting the following specifications: carbon steel coil or strip, clad with aluminum, measuring 1.75 mm (0.069 inches) in thickness, 89 mm or 94 mm (3.500 inches or 3.700 inches) in width, with a low carbon steel back comprised of: carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 2.5% silicon, 0.3% antimony, 1% maximum total other (including iron), and remainder aluminum. *See Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 66 FR 20967 (April 26, 2001).

Also excluded from this order are products meeting the following specifications: carbon steel coil or strip, measuring a minimum of and including 1.10 mm to a maximum of and including 4.90 mm in overall thickness, a minimum of and including 76.00 mm to a maximum of and including 250.00 mm in overall width, with a low carbon steel back comprised of: carbon under 0.10%, manganese under 0.40%, phosphorous under 0.04%, sulfur under 0.05%, and silicon under 0.05%; clad with aluminum alloy comprised of: under 2.51% copper, under 15.10% tin, and remainder aluminum as listed on the mill specification sheet. *See Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 67 FR 7356 (February 19, 2002).

Also excluded from this order are products meeting the following specifications: (1) Diffusion–annealed, non–alloy nickel–plated carbon products, with a substrate of cold–rolled battery grade sheet (''CRBG'') with both sides of the CRBG initially electrolytically plated with pure, unalloyed nickel and subsequently annealed to create a diffusion between the nickel and iron substrate, with the nickel plated coating having a thickness of 0–5 microns per side with one side equaling at least 2 microns; and with the nickel carbon sheet having a thickness of from 0.004'' (0.10 mm) to 0.030'' (0.762 mm) and conforming to the following chemical specifications (%): C <= 0.08; Mn <= 0.45; P <= 0.02; S <= 0.02; Al <= 0.15; and Si <= 0.10; and the following physical specifications: Tensile = 65 KSI maximum; Yield = 32 – 55 KSI; Elongation = 18% minimum (aim 34%); Hardness = 85 – 150 Vickers; Grain Type = Equiaxed or Pancake; Grain Size (ASTM) = 7–12; Delta r value = aim less than +/– 0.2; Lankford value = <== 1.2.; and (2) next generation diffusion–annealed nickel plate meeting the following specifications: (a) nickel–graphite plated, diffusion–annealed, tin–nickel plated carbon products, with a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion–annealed tin–nickel plated carbon steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel–tin alloy is created, and an additional layer of mixture of natural nickel and graphite then electrolytically plated on the top side of the strip of the nickel–tin alloy; having a coating thickness: top side: nickel–graphite, tin–nickel layer <== 1.0 micrometers; tin layer only <== 0.05 micrometers, nickel–graphite layer only <= 0.2 micrometers, and bottom side: nickel layer <== 1.0 micrometers; (b) nickel–graphite, diffusion–annealed, nickel plated carbon products, having a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion–annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; with both sides of the cold rolled base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion between the nickel and the iron substrate; with an additional layer of natural nickel–graphite then electrolytically plated on the top side of the strip of the nickel plated steel strip; with the nickel–graphite, nickel plated material sufficiently ductile and adherent to the

substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having a coating thickness: top side: nickel–graphite, tin–nickel layer <== 1.0 micrometers; nickel–graphite layer <== 0.5 micrometers; bottom side: nickel layer <== 1.0 micrometers; (c) diffusion–annealed nickel–graphite plated products, which are cold–rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; having the bottom side of the base metal first electrolytically plated with natural nickel, and the top side of the strip then plated with a nickel–graphite composition; with the strip then annealed to create a diffusion of the nickel–graphite and the iron substrate on the bottom side; with the nickel–graphite and nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having coating thickness: top side: nickel–graphite layer <== 1.0 micrometers; bottom side: nickel layer <== 1.0 micrometers; (d) nickel–phosphorous plated diffusion–annealed nickel plated carbon product, having a natural composition mixture of nickel and phosphorus electrolytically plated to the top side of a diffusion–annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion of the nickel and iron substrate; another layer of the natural nickel–phosphorous then electrolytically plated on the top side of the nickel plated steel strip; with the nickel–phosphorous, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel–phosphorous, nickel layer <== 1.0 micrometers; nickel–phosphorous layer <== 0.1 micrometers; bottom side: nickel layer <== 1.0 micrometers; (e) diffusion–annealed, tin–nickel plated products, electrolytically plated with natural nickel to the top side of a diffusion–annealed tin–nickel plated cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the cold rolled strip initially electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel–tin alloy is created, and an additional layer of natural nickel then electrolytically plated on the top side of the strip of the nickel–tin alloy; sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having coating thickness: top side: nickel–tin – nickel combination layer <== 1.0 micrometers; tin layer only <== 0.05 micrometers; bottom side: nickel layer <== 1.0 micrometers; and (f) tin mill products for battery containers, tin and nickel plated on a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel; then annealed to create a diffusion of the nickel and iron substrate; then an additional layer of natural tin electrolytically plated on the top side; and again annealed to create a diffusion of the tin and nickel alloys; with the tin–nickel, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel–tin layer <== 1 micrometer; tin layer alone <== 0.05 micrometers; bottom side: nickel layer <== 1.0 micrometer. *See Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 67 FR 47768 (July 22, 2002).

Also excluded from this order are products meeting the following specifications: (1) Widths ranging from 10 mm (0.394 inches) through 100 mm (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 mm (0.004 inches) through 0.60 mm (0.024 inches); and (3) a coating that is from 0.003 mm (0.00012 inches) through 0.005 mm (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of phosphate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of phosphate, and finally a layer consisting of silicate. *See Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 67 FR 57208 (September 9, 2002).

Also excluded from this order are products meeting the following specifications: (1) Flat–rolled products (provided for in HTSUS subheading 7210.49.00), other than of high–strength steel, known as ''ASE Iron Flash'' and either: (A) having a base layer of zinc–based zinc–iron alloy applied by hot–dipping and a surface layer of iron–zinc alloy applied by electrolytic process, the weight of the coating and plating not over 40% by weight of zinc; or (B) two–layer – coated corrosion–resistant steel with a coating composed of (a) a base coating layer of zinc–based zinc–iron alloy by hot–dip galvanizing process, and (b) a surface coating layer of iron–zinc alloy by electro–galvanizing process, having an effective amount of zinc up to 40% by weight, and (2) corrosion resistant continuously annealed flat–rolled products, continuous cast, the foregoing with chemical composition (percent by weight): carbon not over 0.06% by weight, manganese 0.20 or more but not over 0.40, phosphorus not over 0.02, sulfur not over 0.023, silicon not over 0.03, aluminum 0.03 or more but not over 0.08, arsenic not over 0.02, copper not over 0.08 and nitrogen 0.003 or more but not over 0.008; and meeting the characteristics described below: (A) Products with one side coated with a nickel–iron – diffused layer which is less than 1 micrometer in thickness and the other side coated with a two–layer coating composed of a base nickel–iron – diffused coating layer and a surface coating layer of annealed and softened pure nickel, with total coating thickness for both layers of more than 2 micrometers; surface roughness (RA–microns) 0.18 or less; with scanning electron microscope (SEM) not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; (B) products having one side coated with a nickel–iron – diffused layer which is less than 1 micrometer in thickness and the other side coated with a four–layer coating composed of a base nickel–iron – diffused coating layer; with an inner middle coating layer of annealed and softened pure nickel, an outer middle surface coating layer of hard nickel and a topmost nickel–phosphorus – plated layer; with combined coating thickness for the four layers of more than 2 micrometers; surface roughness (RA–microns) 0.18 or less; with SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; (C) products having

one side coated with a nickel–iron – diffused layer which is less than 1 micrometer in thickness and the other side coated with a three–layer coating composed of a base nickel–iron – diffused coating layer, with a middle coating layer of annealed and softened pure nickel and a surface coating layer of hard, luster–agent – added nickel which is not heat–treated; with combined coating thickness for all three layers of more than 2 micrometers; surface roughness (RA–microns) 0.18 or less; with SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; or (D) products having one side coated with a nickel–iron – diffused layer which is less than 1 micrometer in thickness and the other side coated with a three–layer coating composed of a base nickel–iron – diffused coating layer, with a middle coating layer of annealed and softened pure nickel and a surface coating layer of hard, pure nickel which is not heat–treated; with combined coating thickness for all three layers of more than 2 micrometers; surface roughness (RA–microns) 0.18 or less; SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length. *See Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 68 FR 19970 (April 23, 2003).

Also excluded from the scope of this order is merchandise meeting the following specifications: (1) Base metal: Aluminum Killed, Continuous Cast, Carbon Steel SAE 1008, (2) Chemical Composition: Carbon 0.08% max. Silicon, 0.03% max., Manganese 0.40% max., Phosphorus, 0.02% max., Sulfur 0.02% max., (3) Nominal thickness of 0.054 mm, (4) Thickness Tolerance minimum 0.0513 mm, maximum 0.0567 mm, (5) Width of 600 mm or greater, and (7) Nickel plate min. 2.45 microns per side. *See Notice of Final Results of Changed Circumstances Review and Revocation, in Part: Certain Corrosion–Resistant Carbon Steel Flat Products From Japan*, 70 FR 2608 (January 14, 2005).

Also excluded from the scope of this order are the following 24 separate corrosion–resistant carbon steel coil products meeting the following specifications:

*Product 1* Products described in industry usage as of carbon steel, measuring 1.625 mm to 1.655 mm in thickness and 19.3 mm to 19.7 mm in width, consisting of carbon steel coil (SAE 1010) with a lining clad with an aluminum alloy containing by weight 10% or more but not more than 15% of tin, 1% or more but not more than 3% of lead, 0.7% or more but not more than 1.3% of copper, 1.8% or more but not more than 3.5% of silicon, 0.1% or more but not more than 0.7% of chromium and less than or equal to 1% of other materials, and meeting the requirements of SAE standard 788 for Bearing and Bushing Alloys.

*Product 2* Products described in industry usage as of carbon steel, measuring 0.955 mm to 0.985 mm in thickness and 8.6 mm to 9.0 mm in width, consisting of carbon steel coil (SAE 1012) clad with a two–layer lining, the first layer consisting of a copper–lead alloy powder that contains by weight 9% or more but not more than 11% of tin, 9% or more but not more than 11% of lead, less than 0.05% phosphorus, less than 0.35% iron and less than or equal to 1% other materials, and meeting the requirements of SAE standard 797 for Bearing and Bushing Alloys, with the second layer containing by weight 13% or more but not more than 17% of carbon, 13% or more but not more than 17% of aromatic polyester, and the remainder (approx. 66–74%) of PTFE.

*Product 3* Products described in industry usage as of carbon steel, measuring 1.01 mm to 1.03 mm in thickness and 10.5 mm to 10.9 mm in width, consisting of carbon steel coil (SAE 1010) with a two–layer lining, the first layer consisting of a copper–lead alloy powder that contains by weight 9% or more but not more than 11% of tin, 9% or more but not more than 11% of lead, less than 1% zinc and less than or equal to 1% other materials, and meeting the requirements of SAE standard 797 for Bearing and Bushing Alloys, with the second layer containing by weight 45% or more but not more than 55% of lead, 3% or more but not more than 5% of molybdenum disulfide, and the remainder made up of PTFE (approximately 38% to 52%) and less than 2% in the aggregate of other materials.

*Product 4* Products described in industry usage as of carbon steel, measuring 1.8 mm to 1.88 mm in thickness and 43.4 mm to 43.8 mm or 16.1 mm to 1.65 mm in width, consisting of carbon steel coil (SAE 1010) clad with an aluminum alloy that contains by weight 19% to 20% tin, 1% to 1.2% copper, less than 0.3% silicon, 0.15% nickel and less than 1% in the aggregate other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.

*Product 5* Products described in industry usage as of carbon steel, measuring 0.95 mm to 0.98 mm in thickness and 19.95 mm to 20 mm in width, consisting of carbon steel coil (SAE 1010) with a two–layer lining, the first layer consisting of a copper–lead alloy powder that contains by weight 9% or more but not more than 11% of tin, 9% or more but not more than 11% of lead, less than 1% of zinc and less than or equal to 1% in the aggregate of other materials and meeting the requirements of SAE standard 797 for Bearing and Bushing Alloys, with the second layer consisting by weight of 45% or more but not more than 55% of lead, 3% or more but not more than 5% of molybdenum disulfide and with the remainder made up of PTFE (approximately 38% to 52%) and up to 2% in the aggregate of other materials.

*Product 6* Products described in industry usage as of carbon steel, measuring 0.96 mm to 0.98 mm in thickness and 18.75 mm to 18.95 mm in width; base of SAE 1010 steel with a two–layer lining, the first layer consisting of copper–base alloy powder with chemical composition (percent by weight): tin 9 to 11, lead 9 to 11, phosphorus less than 0.05, ferrous group less than 0.35, and other materials less than 1%; meeting the requirements of SAE standard 797 for bearing and bushing alloys; the second layer consisting of lead 33 to 37%, aromatic polyester 28 to 32%, and other materials less than 2% with a balance of PTFE.

*Product 7* Products described in industry usage as of carbon steel, measuring 1.21 mm to 1.25 mm in thickness and 19.4 mm to 19.6 mm in width; base of SAE 1012 steel with lining of copper base alloy with chemical composition (percent by weight): tin 9 to 11, lead 9 to 11, phosphorus less than 0.05, ferrous group less than 0.35 and other materials less than 1%; meeting the requirements of SAE standard 797 for bearing and bushing alloys.

*Product 8* Products described in industry usage as of carbon steel, measuring 0.96 mm to 0.98 mm in thickness and 21.5 mm to 21.7 mm in width; base of SAE 1010 steel with a two–layer lining, the first layer consisting of copper–base alloy powder with chemical composition (percent by weight): tin 9 to 11, lead 9 to 11, phosphorus less than 0.05%, ferrous group less than 0.35 and other materials less than 1; meeting the requirements of SAE standard 797 for bearing and bushing alloys; the second layer consisting of (percent by weight) lead 33 to 37, aromatic polyester 28 to 32 and other materials less than 2 with a balance of PTFE.

*Product 9* Products described in industry usage as of carbon steel, measuring 0.96 mm to 0.99 mm in thickness and 7.65 mm to 7.85 mm in width; base of SAE 1012 steel with a two–layer lining, the first layer consisting of copper–based alloy powder with chemical composition (percent by weight): tin 9 to 11, lead 9 to 11, phosphorus less than 0.05, ferrous group less than 0.35 and other materials less than 1; meeting the requirements of SAE standard 797 for bearing and bushing alloys; the second layer consisting of (percent by weight) carbon 13 to 17 and aromatic polyester 13 to 17, with a balance of polytetrafluoroethylene (''PTFE'')

*Product 10* Products described in industry usage as of carbon steel, measuring 0.955 mm to 0.985 mm in thickness and 13.6 mm to 14 mm in width; base of SAE 1012 steel with a two–layer lining, the first layer consisting of copper–based alloy powder with chemical composition (percent by weight): tin 9 to 11, lead 9 to 11, phosphorus less than 0.05, ferrous group less than 0.35 and other materials less than 1; meeting the requirements of SAE standard 797 for bearing and bushing alloys; the second layer consisting of (percent by weight) carbon 13 to 17, aromatic polyester 13 to 17, with a balance (approximately 66 to 74) of PTFE.

*Product 11* Products described in industry usage as of carbon steel, measuring 1.2 mm to 1.24 mm in thickness; 20 mm to 20.4 mm in width; consisting of carbon steel coils (SAE 1012) with a lining of sintered phosphorus bronze alloy with chemical composition (percent by weight): tin 5.5 to 7; phosphorus 0.03 to 0.35; lead less than 1 and other non–copper materials less than 1.

*Product 12* Products described in industry usage as of carbon steel, measuring 1.8 mm to 1.88 mm in thickness and 43.3 mm to 43.7 mm in width; base of SAE 1010 steel with a lining of aluminum based alloy with chemical composition (percent by weight: tin 10 to 15, lead 1 to 3, copper 0.7 to 1.3, silicon 1.8 to 3.5, chromium 0.1 to 0.7 and other materials less than 1; meeting the requirements of SAE standard 788 for bearing and bushing alloys.

*Product 13* Products described in industry usage as of carbon steel, measuring 1.8 mm to 1.88 mm in thickness and 24.2 mm to 24.6 mm in width; base of SAE 1010 steel with a lining of aluminum alloy with chemical composition (percent by weight): tin 10 to 15, lead 1 to 3, copper 0.7 to 1.3, silicon 1.8 to 3.5, chromium 0.1 to 0.7 and other materials less than 1; meeting the requirements of SAE standard 788 for bearing and bushing alloys.

*Product 14* Flat–rolled coated SAE 1009 steel in coils, with thickness not less than 0.915 mm but not over 0.965 mm, width not less than 19.75 mm or more but not over 20.35 mm; with a two–layer coating; the first layer consisting of tin 9 to 11%, lead 9 to 11%, zinc less than 1%, other materials (other than copper) not over 1% and balance copper; the second layer consisting of lead 45 to 55%, molybdenum disulfide (MoS2) 3 to 5%, other materials not over 2%, balance PTFE.

*Product 15* Flat–rolled coated SAE 1009 steel in coils with thickness not less than 0.915 mm or more but not over 0.965 mm; width not less than 18.65 mm or more but not over19.25 mm; with a two–layer coating; the first layer consisting of tin 9 to 11%, lead 9 to 11%, zinc less than 1%, other materials (other than copper) not over 1%, balance copper; the second layer consisting of lead 33 to 37%, aromatic polyester 13 to 17%, other materials other than PTFE less than 2%, balance PTFE.

*Product 16* Flat–rolled coated SAE 1009 steel in coils with thickness not less than 0.920 mm or more but not over 0.970 mm; width not less than 21.35 mm or more but not over 21.95 mm; with a two–layer coating; the first layer consisting of tin 9 to 11%, lead 9 to 11%, zinc less than 1%, other materials (other than copper) not over 1%, balance copper; the second layer consisting of lead 33 to 37%, aromatic polyester 13 to 17%, other materials (other than PTFE) less than 2%, balance PTFE.

*Product 17* Flat–rolled coated SAE 1009 steel in coils with thickness not less than 1.80 mm or more but not over 1.85 mm, width not less than 14.7 mm or more but not over 15.3 mm; with a lining consisting of tin 2.5 to 4.5%, lead 21.0 to 25.0%, zinc less than 3%, iron less than 0.35%, other materials (other than copper) less than 1%, balance copper.

*Product 18* Flat–rolled coated SAE 1009 steel in coils with thickness 1.59 mm or more but not over 1.64 mm; width 14.5 mm or more but not over 15.1 mm; with a lining consisting of tin 2.3 to 4.2%, lead 20 to 25%, iron 1.5 to 4.5%, phosphorus 0.2 to 2.0%, other materials (other than copper) less than 1%, balance copper.

*Product 19* Flat–rolled coated SAE 1009 steel in coils with thickness not less than 1.75 mm or more but not over 1.8 mm; width not less than 18.0 mm or more but not over 18.6 mm; with a lining consisting of tin 2.3 to 4.2%, lead 20 to 25%, iron 1.5 to 4.5%, phosphorus 0.2 to 2.0%, other materials (other than copper) less than 1%, balance copper.

*Product 20* Flat–rolled coated SAE 1009 steel in coils with thickness 1.59 mm or more but not over 1.64 mm; width 13.6 mm or more but not over14.2 mm; with a lining consisting of tin 2.3 to 4.2%, lead 20 to 25%, iron 1.5 to 4.5%, phosphorus 0.2 to 2.0%, other materials (other than copper) less than 1%, with a balance copper.

*Product 21* Flat–rolled coated SAE 1009 steel in coils with thickness 1.59 mm or more but not over 1.64 mm; width 11.5 mm or more but not over 12.1 mm; with a lining consisting of tin 2.3 to 4.2%, lead 20 to 25%, iron 1.5 to 4.5%, phosphorus 0.2 to 2.0%, other materials (other than copper) less than 1%, balance copper.

*Product 22* Flat–rolled coated SAE 1009 steel in coils with thickness 1.59 mm or more but not over 1.64 mm; width 11.2 mm or more but not over 11.8 mm, with a lining consisting of copper 0.7 to 1.3%, tin 17.5 to 22.5%, silicon less than 0.3%, nickel less than 0.15%, other materials less than 1%, balance aluminum.

*Product 23* Flat–rolled coated SAE 1009 steel in coils with thickness 1.59 mm or more but not over1.64 mm; width 7.2 mm or more but not over 7.8 mm; with a lining consisting of copper 0.7 to 1.3%, tin 17.5 to 22.5%, silicon less than 0.3%, nickel less than 0.15%, other materials (other than copper) less than 1%, balance copper.

*Product 24* Flat–rolled coated SAE 1009 steel in coils with thickness 1.72 mm or more but not over 1.77 mm; width 7.7 mm or more but not over 8.3 mm; with a lining consisting of copper 0.7 to 1.3%, tin 17.5 to 22.5%, silicon less than 0.3%, nickel less than 0.15%, other materials (other than copper) less than 1%, balance copper. *See Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation, In Part: Certain Corrosion–Resistant Carbon Steel Flat Products From Japan*, 70 FR 5137 (February 1, 2005).

**Merchandise requested for Exclusion from the Scope of the Order**

Metal One requested that certain diffusion–annealed nickel–plate products meeting the following specifications be excluded from the scope of the order:

| Short description | Diffusion–annealed, non–alloy nickel–plated steel sheet (cold rolled battery grade sheet or CRBG) with an unalloyed nickel plated coating. |
|---|---|
| Thickness of nickel–plated coating | 0 – 8 microns with both sides having a coating of at least 0.2 microns. |
| Thickness of CRBG | 0.035 mm to 0.762 mm. |
| Chemical Specifications:. | |
| Carbon (C) | ≤ 0.03 |
| Manganese (Mn) | ≤ 0.60 |
| Phosphorus (P) | ≤ 0.04 |
| Sulfur (S) | ≤ 0.04 |
| Aluminum (Al) | < 0.15 |
| Silicon (Si) | < 0.10 |
| Mechanical Specifications. | |
| Tensile strength | ≤ 70 KSI Maximum |
| Yield | 22 – 55 KSI |
| Elongation | 18% Minimum |
| Hardness | 85 – 150 Vickers |
| Grain Type | Equiaxed or Pancake |
| Grain Size (ASTM) | 7 – 12 |
| Delta r value | +/– 0.3 |
| Lankford value | ≥ 0.7 |

**Preliminary Results of Changed Circumstances Review**

Pursuant to section 751(d) of the Tariff Act of 1930, as amended, (''the Act''), the Department may revoke an antidumping duty order based on a review under section 751(b) of the Act. 19 CFR 351.222(g)(1)(i) provides that the Department may revoke an order, in whole or in part, based on changed circumstances if ''(p)roducers accounting for substantially all of the production of the domestic like product to which the order (or part of the order to be revoked) have expressed a lack of interest in the order, in whole or in part.'' *See also* section 781(h)(2) of the Act. In this context, the Department has interpreted ''substantially all'' production normally to mean at least 85 percent of domestic production of the like product. *See Oil Country Tubular Goods from Mexico: Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 14213, 14214 (March 24, 1999). *See also Certain Tin Mill Products from Japan: Final Results of Changed Circumstances Review*, 66 FR 52109, 52110 (October 12, 2001). U.S. Steel objects to the revocation, in part, of the order and claims that it constitutes over 15 percent of the total domestic production. *See Letter from U.S. Steel*, December 27, 2004.

Metal One has not shown, as required by 351.222(g)(1)(i) of the Department's regulations, that producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the order. Therefore, the Department preliminarily determines that there is insufficient evidence to warrant exclusion of the products included in Metal One's changed circumstances review request from the scope of the order.

As Metal One has not met the requirement showing that substantially all of the producers of the domestic like product are no longer interested in the products included in Metal One's changes circumstances review request, Metal One's claim that its products is similar to products already excluded from the order is moot.

**Public Comment**

Any interested party may request a hearing within 10 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 21 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 14 days after the date of publication of this notice. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed no later than 19 days after the date of publication of this notice. *See* 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.

Consistent with 19 CFR 351.216(e), we will issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated.

We are issuing and publishing this notice in accordance with sections 751(b)(1) and 777(I)(1) of the Act and 19 CFR 351.216.

Dated: June 15, 2005.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E5–3211 Filed 6–20–05; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–485–803]**

### Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Cut–to-Length Carbon Steel Plate from Romania

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On May 3, 2005, the Department of Commerce (''the Department'') published a notice of initiation and the preliminary results of its changed circumstances review of the antidumping duty finding on certain cut–to-length carbon steel plate (''carbon steel plate'') from Romania in which we preliminarily determined that Mittal Steel Galati S.A. (''Mittal Steel'') is the successor–in-interest to the S.C. Ispat Sidex S.A. (''Sidex''). *See Certain Cut–to-Length Carbon Steel Plate from Romania: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 70 FR 22847 (May 3, 2005) (''*Preliminary Results*''). We gave interested parties the opportunity to comment on the *Preliminary Results*. We received no comments. Therefore, for these final results, the Department is adopting its preliminary determination that Mittal Steel is the successor–in-interest to Sidex.

**EFFECTIVE DATE:** June 21, 2005.

**FOR FURTHER INFORMATION CONTACT:** Patrick Edwards or Abdelali Elouaradia, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–8029 or (202) 482–1374, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 19, 1993, the Department published in the **Federal Register** the antidumping duty order on carbon steel plate from Romania. *See Notice of Antidumping Duty Order: Certain Cut–to-Length Carbon Steel Plate from Romania*, 58 FR 44167 (August 19, 1993) (''*Order*''). On March 14, 2005, Mittal Steel submitted a letter stating that it is the successor–in-interest to Sidex and, as such, is entitled to receive the same antidumping duty treatment previously accorded to Sidex. *See Certain Cut–to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005). In that same letter, Mittal Steel explained that on February 7, 2005, Sidex changed its corporate name to Mittal Steel, following the approval of the name change by Sidex's General Meeting of Shareholders on January 10, 2005. Mittal provided record evidence indicating that the name change was unconditionally recorded and approved by the Trade Register Office of the Galati Tribunal and the National Office of the Trade Registry, a bureau of the Romanian Ministry of Justice, on February 7, 2005. In the March 14, 2005, letter, Mittal Steel also requested that the Department conduct an expedited changed circumstances review of the antidumping duty order on carbon steel plate from Romania pursuant to section 751(b)(1) of the Tariff Act (''the Act''), as amended, and 19 CFR 351.221(c)(3)(ii). Because the record evidence supporting Mittal Steel's claim was sufficient, the Department found that an expedited review was practicable and, on May 3, 2005, issued a combined notice of initiation with the preliminary results. See *Preliminary Results*.

In its *Preliminary Results*, the Department provided the interested parties with an opportunity to comment or request a public hearing regarding the Department's finding that Mittal Steel is the successor–in-interest to Sidex. No comments were submitted, nor was a public hearing requested.

**Scope of the Order**

For a complete description of the scope of the order, *see Certain Cut–to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005).

**Final Results of Changed Circumstances Review**

For the reasons stated in the *Preliminary Results*, and because we received no comments to the contrary, we continue to find that Mittal Steel is the successor–in-interest to Sidex. We will instruct U.S. Customs and Border Protection (''CBP'') to apply the cash deposit rate determination in this changed circumstances review to all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this changed circumstances review. *See Granular Polytetrafluoroethylene Resin from Italy: Final Results of Antidumping Duty Changed Circumstances Review*, 68 FR 25327 (May 12, 2003). The cash deposit rate shall remain in effect until publication of the final results of the next administrative review in which Mittal Steel participates.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of APO is a sanctionable violation.

This notice is in accordance with sections 751(b)(1) and 777(i)(1) of the Act, and 19 CFR 351.216.

Dated: June 13, 2005.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E5–3216 Filed 6–20–05; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–900 and A–580–855]**

### Initiation of Antidumping Duty Investigations: Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** June 21, 2005.

**FOR FURTHER INFORMATION CONTACT:** Catherine Bertrand, Carrie Blozy (China) or Mark Manning (Korea), AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3207, (202) 482–5403 and (202) 482–5253, respectively.

**INITIATION OF INVESTIGATIONS**

**The Petitions**

On May 3, 2005, the Department of Commerce (''Department'') received petitions on imports of diamond sawblades and parts thereof (''diamond sawblades'') from the People's Republic of China (''PRC'') and the Republic of Korea (''Korea'') filed in proper form by the Diamond Sawblade Manufacturers' Coalition (''Petitioner'') on behalf of the domestic industry and workers producing diamond sawblades. The period of investigation (''POI'') for the PRC is October 1, 2004, through March 31, 2005. The POI for Korea is April 1, 2004, through March 31, 2005.

In accordance with section 732(b) of the Tariff Act of 1930, as amended (''the Act''), Petitioner alleged that imports of diamond sawblades from the PRC and Korea are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring and threaten to injure an industry in the United States.

**Scope of Investigations**

The products covered by these investigations are all finished circular sawblades, whether slotted or not, with a working part that is comprised of a diamond segment or segments, and parts thereof, regardless of specification or size, except as specifically excluded below. Within the scope of these investigations are semifinished diamond sawblades, including diamond sawblade cores and diamond sawblade segments. Diamond sawblade cores are circular steel plates, whether or not attached to

non–steel plates, with slots. Diamond sawblade cores are manufactured principally, but not exclusively, from alloy steel. A diamond sawblade segment consists of a mixture of diamonds (whether natural or synthetic, and regardless of the quantity of diamonds) and metal powders (including, but not limited to, iron, cobalt, nickel, tungsten carbide) that are formed together into a solid shape (from generally, but not limited to, a heating and pressing process).

Sawblades with diamonds directly attached to the core with a resin or electroplated bond, which thereby do not contain a diamond segment, are not included within the scope of the investigations. Diamond sawblades and/or sawblade cores with a thickness of less than 0.025 inches, or with a thickness greater than 1.1 inches, are excluded from the scope of the investigations. Circular steel plates that have a cutting edge of non–diamond material, such as external teeth that protrude from the outer diameter of the plate, whether or not finished, are excluded from the scope of these investigations. Diamond sawblade cores with a Rockwell C hardness of less than 25 are excluded from the scope of the petition. Diamond sawblades and/or diamond segment(s) with diamonds that predominantly have a mesh size number greater than 240 (such as 250 or 260) are excluded from the scope of the investigations.

Merchandise subject to these investigations is typically imported under heading 8202.39.00.00 of the Harmonized Tariff Schedule of the United States (''HTSUS''). When packaged together as a set for retail sale with an item that is separately classified under headings 8202 to 8205 of the HTSUS, diamond sawblades or parts thereof may be imported under heading 8206.00.00.00 of the HTSUS. The tariff classification is provided for convenience and U.S. Customs and Border Protection purposes; however, the written description of the scope of these investigations is dispositive.

**Comments on Scope of Investigations**

During our review of the Petitions, we discussed the scope with Petitioner to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27295, 27323 (1997). The Department encourages all interested parties to submit such comments within 20 calendar days of publication of this initiation notice. Comments should be addressed to Import Administration's Central Records Unit in Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230 - Attn: Mark Manning. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with interested parties prior to the issuance of the preliminary determinations.

**Determination of Industry Support for the Petitions**

Section 732(b)(1) of the Act requires that a Petition be filed by or on behalf of the domestic industry. In order to determine whether a petition has been filed by or on behalf of the industry the Department, pursuant to section 732(c)(4)(A) of the Act, determines whether a minimum percentage of the relevant industry supports the Petition. A Petition meets this requirement if the domestic producers or workers who support the Petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the Petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the Petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether a Petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 642–44 (CIT 1988).

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition.

With regard to the domestic like product, Petitioner does not offer a definition of domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted in the Petitions, we have determined there is a single domestic like product, diamond sawblades, which is defined further in the ''Scope of the Investigations'' section above, and we have analyzed industry support in terms of that domestic like product.

Based on information provided in the Petitions, the share of total estimated U.S. production of the domestic like product in calendar year 2004 represented by Petitioner did not account for more than 50 percent of the total production of the domestic like product. Therefore, in accordance with 732(c)(4)(D) of the Act, we polled the industry. *See Notice of Request for Information and Extension of the Deadline for Determining the Adequacy of the Petitions for: Diamond Sawblades and Parts Thereof From the People's Republic of China and the Republic of Korea*, 70 FR 29478 (May 23, 2005).

On May 18, 20, 23, and 25, 2005, we issued polling questionnaires to all known producers of diamond sawblades identified in the Petitions, submission from other interested parties, and found on the internet by the Department. The questionnaires are on file in the Central Records Unit (''CRU'') in room B–099 of the main Department of Commerce building. Additionally, the questionnaires were available on the Import Administration website. We requested that each company complete the polling questionnaire and certify their responses by faxing their responses to the Department by the due date. Late responses were not included in our analysis. For a detailed discussion of the

responses received please see the *Initiation Checklists* at Attachment I.

Our analysis of the data indicates that the domestic producers of diamond sawblades who support the Petitions account for at least 25 percent of the total production of the domestic like product and more than 50 percent of the production (by U.S. dollar sales value) of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. *See Initiation Checklist* at Attachment I. Accordingly, the Department determines that the industry support requirements of section 732(c)(4)(A) of the Act have been met. Therefore, the Department determines that Petitioner filed these petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(F) of the Act and it has demonstrated sufficient industry support with respect to the antidumping investigations that it is requesting the Department initiate. *See Initiation Checklists* at Attachment I (Industry Support).

**U.S. Price and Normal Value**

The following is a description of the allegation of sales at less than fair value upon which the Department based its decision to initiate these investigations on Korea and the PRC. The sources of data for the deductions and adjustments relating to the U.S. price, home–market price (Korea only) and the factors of production (PRC only) are also discussed in the country–specific *Initiation Checklist*. *See Korea Initiation Checklist* and *PRC Initiation Checklist*. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may reexamine the information and revise the margin calculations, if appropriate.

**PRC**

*Export Price*

Petitioner based export price on a price quotation from a Chinese producer/exporter of diamond sawblades. Based on information provided by the Petitioner, contained in a price quote sheet from a Chinese producer/exporter of diamond sawblades, the Department recalculated the price. *See* proprietary *PRC Initiation Checklist* for details of recalculation. The Department deducted from this price the costs associated with exporting and delivering the product, including freight expense, inland insurance, and brokerage and handling. The Department adjusted this price quotation to the PRC. *See* proprietary *PRC Initiation Checklist*.

*Normal Value*

Petitioner asserted that the PRC is a non–market economy (''NME'') and no determination to the contrary has yet been made by the Department. In previous investigations, the Department has determined that the PRC is a NME. *See Notice of Final Determination of Sales at Less Than Fair Value: Magnesium Metal from the People's Republic of China*, 70 FR 9037 (February 24, 2005), *Notice of Final Determination of Sales at Less Than Fair Value: Certain Tissue Paper Products from the People's Republic of China*, 70 FR 7475 (February 14, 2005), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China*, 69 FR 70997 (December 8, 2004). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and remains in effect for purposes of the initiation of this investigation. Accordingly, the normal value (''NV'') of the product is appropriately based on factors of production valued in a surrogate market economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

Petitioner selected India as the surrogate country. Petitioner argued that, pursuant to section 773(c)(4) of the Act, India is an appropriate surrogate because it is a market–economy country that is at a comparable level of economic development to the PRC and is a significant producer and exporter of diamond sawblades. *See* Petition, Vol. II at 9 and 10. Based on the information provided by Petitioner, we believe that its use of India as a surrogate country is appropriate for purposes of initiating this investigation. After the initiation of the investigation, we will solicit comments regarding surrogate country selection. Also, pursuant to 19 CFR 351.301(c)(3)(i) of the Department=s regulations, interested parties will be provided an opportunity to submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

Petitioner explained that the production process for diamond sawblades takes place in two stages: 1) the production of diamond blade cores; and 2) the production of the finished diamond blade, which includes the production of diamond segments. Petitioner stated that Chinese manufacturers of diamond sawblades may either produce both cores and finished blades, or may purchase sawblade cores from other Chinese entities. *See* Petition Vol. II at 12. In building–up the factors of production, Petitioner started with a complete core as the primary input in finished diamond sawblades.

Petitioner provided a dumping margin calculation using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C). *See* Petition at Exhibit II–21, *see also*, June 1, 2005, Amendment to the Petition, at Exhibit 3, and June 8, 2005, Amendment to the Petition, at Exhibit 4. To determine the quantities of inputs used by the PRC producers to produce a finished diamond sawblade, Petitioner relied on the production experience and actual consumption rates of a U.S. diamond sawblade producer for the period October 2004 through March 2005. Petitioner stated that the product selected was chosen because it is commonly offered for sale by Chinese producers and sold in the United States. *See* Petition Vol. II at 3.

In accordance with section 773(c)(4) of the Act, Petitioner valued factors of production, where possible, on reasonably available, public surrogate country data. To value certain factors of production, Petitioner used official Indian government import statistics, excluding those values from countries previously determined by the Department to be NME countries and excluding imports into India from Indonesia, Korea and Thailand, because the Department has previously excluded prices from these countries because they maintain broadly–available, non–industry specific export subsidies. *See Automotive Replacement Glass Windshields From the People's Republic of China: Final Results of Administrative Review*, 69 FR 61790 (October 21, 2004), and accompanying Issues and Decision Memorandum at Comment 5.

For inputs valued in Indian rupees and not contemporaneous with the POI, Petitioner used information from the wholesale price indices (''WPI'') in India as published by the International Monetary Fund in the *International Financial Statistics* to determine the appropriate adjustments for inflation. In addition, Petitioner made currency conversions, where necessary, based on the average rupee/U.S. dollar exchange rate for the POI as reported on the Department's website.

To value electricity, the Petitioner relied on information collected by the International Energy Agency during the year 2000 concerning prices paid by industrial users. Petitioner revised this data to adjust for inflation using the Indian WPI in effect during the POI.

To value cores as an input of finished diamond saw blades, Petitioner utilized imports of cores imported into India during the period October 2004 through March 2005 as reported by www.infodriveindia.com, which is a fee–based website providing Indian customs data. *See* June 8, 2005, Amendment to the Petition at 2. Petitioner explained that it excluded from the calculation Indian imports of cores with average unit values above Rs. 1500.00 because cores above this price point are likely to be larger than the models examined in the Petition. We note that the infodrive data submitted by Petitioner, which for some observations indicates the size of the cores, demonstrates that cores above 1500 Rs are likely to be a larger size. Petitioner did not include imports from NME countries and from Thailand, Korea, and Indonesia. Petitioner explained that the infodrive data is one of the only publicly available data sources for import values which permits disaggregation at a detailed level and is the best information reasonably available to Petitioner to obtain product specific information to value sawblade cores for finished sawblades.

While Petitioner previously submitted Indian import statistics from the Indian Ministry of Commerce publication *Monthly Statistics of the Foreign Trade of India* (''*MSFTI*'') to value cores, we noted that the applicable HTS category (8202.39.00), can include both cores and finished diamond sawblades. *See* June 1, 2005, Amendment to the Petition at 2. We find that the use of the *MSFTI* import data could result in a potential under–statement or over–statement of normal value depending on the relative composition of cores to other merchandise imported under this HTS category. Given: (1) that the record currently contains insufficient detail to resolve this potential drawback regarding the MSFTI data; (2) that the infodrive data, although it may be incomplete, appears to be both specific to the input in question as well as contemporaneous; (3) that there is no better data currently on the record to value this input; (4) that the statutory standard Petitioner bears at initiation involving the provision of data reasonably available to it appears to be satisfied by the infodrive data; (5) that Petitioner's methodology of disregarding higher–valued importations is an inherently conservative approach; and finally, (6) that using either the MSFTI or infodrive data source provide adequate evidence of dumping at the initiation stage, we find that for initiation purposes in this instance, it is appropriate to use Petitioners' submitted infodrive data to value cores. However, should the need arise to use the petition margin as facts available under section 776 of the Act in our preliminary or final determinations, we will re–examine the valuation of cores for the purposes of relying on the petition margin.

The Department calculates and publishes the surrogate values for labor to be used in NME cases. Therefore, to value labor, Petitioner used a labor rate of $0.93 per hour, in accordance with the Department's regulations. *See* 19 CFR 351.408(c)(3) and Petition Vol. II at 20.

Petitioner calculated surrogate financial ratios (overhead, SG&A and profit) using information obtained from the Reserve Bank of India publication *Reserve Bank of Indian Bulletin* published in August 2004, for the period 2002–2003. Petitioner stated that it was unable to obtain financial reports from an Indian diamond sawblade producer. *See* Petition Vol. II at 22. The Department agrees with Petitioner's contention that, in the absence of surrogate financial data for the specific subject merchandise, the Department may consider other financial data, such as the *Reserve Bank of India Bulletin*. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Preliminary Results of Administrative Reviews and Preliminary Partial Rescission of Antidumping Duty Administrative Reviews*, 70 FR 11934 (March 10, 2005). In this case, the Department has accepted the financial information from the *Reserve Bank of India Bulletin* for the purposes of initiation, because these data appear to be the best information on such expenses currently available to Petitioner.

The Department's practice in NME proceedings is to add to surrogate values based on import statistics a surrogate freight cost calculated using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1408 (Fed. Cir. 1997). Here, the Department has adjusted Petitioner's NV calculation to remove the raw material freight expense. Petitioner was unable to obtain the actual supplier distances to the Chinese producer, and instead used the distance from the port of exportation to the Chinese company, 265 kilometers, to calculate raw material supplier freight expense. As the Petitioner was unable to provide reasonably available information to demonstrate that 265 kilometers was the shorter of the two distances, *see* May 11, 2005, Amendment to the Petition at 7, the Department removed all supplier freight expenses from the NV calculation.

Based on comparisons of EP to NV, calculated in accordance with section 773(c) of the Act, the estimated recalculated dumping margin for diamond sawblades from the PRC is 164.09 percent.

**Korea**

*Constructed Export Price*

Petitioner based U.S. price on constructed export price (''CEP'') because it stated that Korean producers of diamond blades typically sell subject merchandise through affiliated trading companies. *See* Volume III of the Petition at page 2. Specifically, Petitioner calculated CEP based on offers of diamond sawblades manufactured in Korea by Ehwa Diamond Industrial Tool Co., Ltd. (''Ehwa''), a large Korean manufacturer of diamond sawblades, and offered for sale in the United States by General Tool, Inc. (''General Tool''), Ehwa's U.S. sales affiliate. *See* Supplement to the Petition, dated May 13, 2005 at Exhibit 6. Petitioner identified two sizes of diamond sawblades commonly sold in the U.S. market and obtained price quotes for each size from General Tool. *Id.* Petitioner calculated net U.S. prices by deducting ocean freight/insurance, harbor maintenance tax and merchandise processing fee, U.S. domestic freight, imputed credit expense, commission fees, and an amount for CEP profit. *Id.* at Exhibit 7. The petitioner made no adjustments to CEP for packing expenses. *Id.* at page 20.

We reviewed Petitioner's data and adjusted its calculation of CEP by disallowing the deduction of commission fees from the starting U.S. price. Specifically, Petitioner did not adjust NV for commission fees because it stated that sales in the Korean market were offered for sale directly by Ehwa with no distributor involved. *See* Volume III of the Petition at Exhibit III–13. For CEP sales, Petitioner states that General Tool sells sawblades to end–users, distributors, and U.S. producers of diamond blades. *See* Supplement to the Petition, dated May 13, 2005 at Exhibit 6. Further, Petitioner's U.S.

price quotes are based upon a negotiation of sales terms between a petitioning U.S. company and an employee of General Tool. *Id.* Based upon the affidavit provided in Exhibit 6 of the Supplement to the Petition, dated May 13, 2005, it is reasonable to infer that the sales offers in the United States were negotiated and offered without the benefit of an outside sales agent. Therefore, since the price quotes obtained in the Korean market were directly from the Korean manufacturer, and the price quotes obtained in the U.S. market were directly from the Korean manufacturer's affiliate, the Department is disallowing the adjustment for commission fees. *See* Checklist at Attachments IV and V for the re–calculation of CEP and the dumping margins.

*Normal Value*

To calculate NV, Petitioner provided two price quotes, for two different sizes of diamond sawblades, obtained through foreign market research regarding products manufactured by Ehwa and offered for sale in the Korean market. *See* Volume III of the Petition at pages 14–15 and Exhibit III–13. These sales prices were offered by Ehwa without the involvement of a distributor or agent. *Id.* Petitioner did not deduct imputed credit expense from NV due to a business proprietary reason. *See Korea Initiation Checklist* for a discussion of this issue. Petitioner made no adjustment to the prices quotes, nor did it adjust NV for packing expenses. *See* Volume III of the Petition at page 15; *see* Supplement to the Petition, dated May 13, 2005 at page 20.

Based on a comparison of CEP to NV, calculated in accordance with section 773(a) of the Act, the estimated recalculated dumping margin for diamond sawblades from Korea is 63.61 percent to 67.59 percent.

**Fair Value Comparisons**

Based on the data provided by Petitioner, there is reason to believe that imports of diamond sawblades from the PRC and Korea are being, or are likely to be, sold in the United States at less than fair value. Based upon comparisons of export price to the NV, calculated in accordance with section 773(c) of the Act, the estimated recalculated dumping margin for diamond sawblades from the PRC is 164.09 percent. Based upon comparisons of CEP to the NV, calculated in accordance with section 773(c) of the Act, the estimated recalculated dumping margins for diamond sawblades from Korea range from 63.61 percent to 67.59 percent.

**Allegations and Evidence of Material Injury and Causation**

With regard to the PRC and Korea, Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. Petitioner contends that the industry's injured condition is illustrated by the decline in customer base, market share, domestic shipments, prices and profit. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See Initiation Checklists*.

**Separate Rates and Quantity and Value Questionnaire**

The Department recently modified the process by which exporters and producers may obtain separate–rate status in NME investigations. This change is described in *Policy Bulletin 05.1: Separate–Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non–Market Economy Countries*, (April 5, 2005), (''*Policy Bulletin 05.1*'') available at *http://ia.ita.doc.gov/*. Although the process has changed, now requiring submission of a separate–rate status application, the standard for eligibility for a separate rate (which is whether a firm can demonstrate an absence of both *de jure* and *de facto* governmental control over its export activities) has not changed.

The specific requirements for submitting a separate–rates application are outlined in detail in the application itself, and in Policy Bulletin 05.1, which is also available on the Department's website at *http://ia.ita.doc.gov/policy/bull05–1.pdf*. Regarding deadlines, Policy Bulletin 05.1 explains that ''(a)ll applications are due sixty calendar days after publication of the initiation notice. This deadline applies equally to NME–owned and wholly foreign–owned firms for completing the applicable provisions of the application and for submitting the required supporting documentation.'' *See Policy Bulletin 05.1* at page 5.

The deadline for submitting a separate–rates application applies equally to NME–owned firms, wholly foreign–owned firms, and foreign sellers who purchase the subject merchandise and export it to the United States. Therefore, this notice constitutes public notification to all firms eligible to seek separate–rate status in the investigation of diamond sawblades from the PRC that they must submit a separate–rates application within 60 calendar days of the date of publication of this initiation notice in the **Federal Register**. All potential respondents should also bear in mind that firms to which the Department issues a Quantity and Value (''Q&V'') questionnaire must respond both to this questionnaire and to the separate–rates application by the respective deadlines in order to receive consideration for a separate–rate status. In other words, the Department will not give consideration to any separate rate–status application made by parties that were issued a Q&V questionnaire by the Department but failed to respond to that questionnaire within the established deadline. The particular separate–rate status application for this investigation is available on the Department's web site *http://ia.ita.doc.gov*.

**Use of Combination Rates in an NME Investigation**

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The Separate Rates and Combination Rates Bulletin, states:

> ''(w)hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non–investigated firms receiving the weighted–average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash–deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.''

*Separate Rates and Combination Rates Bulletin*, at page 6.

**Initiation of Antidumping Investigations**

Based upon our examination of the Petitions on diamond sawblades and parts thereof from the PRC and Korea, we find that these Petitions meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of diamond sawblades from the PRC and Korea are being, or are likely to be, sold in the United States at less than fair value. Unless postponed, we will make our preliminary determinations no later than 140 days after the date of these initiations.

**Distribution of Copies of the Petition**

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the Petition has been provided to the Government of the PRC and the Government of Korea.

**International Trade Commission Notification**

We have notified the International Trade Commission (''ITC'') of our initiations, as required by section 732(d) of the Act.

**Preliminary Determination by the ITC**

The ITC will preliminarily determine, within 25 days after the date on which it receives notice of these initiations, whether there is a reasonable indication that imports of diamond sawblades and parts thereof from China and Korea are causing material injury, or threatening to cause material injury, to a U.S. industry. See section 733(a)(2) of the Act. A negative ITC determination will result in the investigations being terminated; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: June 13, 2005.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E5–3209 Filed 6–20–05; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–001]**

### Continuation of Antidumping Duty Order; Potassium Permanganate from the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** As a result of the determinations by the Department of Commerce (''the Department'') and the International Trade Commission (''ITC'') that revocation of the antidumping duty order on potassium permanganate from the People's Republic of China (''China'') would likely lead to continuation or recurrence of dumping, and material injury to an industry in the United States, the Department is publishing notice of the continuation of this antidumping duty order.

**EFFECTIVE DATE:** June 21, 2005.

**FOR FURTHER INFORMATION CONTACT:** Martha V. Douthit or Dana Mermelstein, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–1391, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On October 1, 2004, the Department initiated and the ITC instituted a sunset review of the antidumping duty order on potassium permanganate from China, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act'').[1] As a result of its review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margins likely to prevail were the order to be revoked.[2] On June 2, 2005, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on potassium permanganate from China would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

**Scope of the Order**

Imports covered by this antidumping duty order are shipments of potassium permanganate, an inorganic chemical produced in free–flowing, technical, and pharmaceutical grades. Potassium permanganate is currently classifiable under item 2841.61.00 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and customs purposes; however, the written description remains dispositive.

**Determination**

As a result of the determinations by the Department and the ITC that revocation of this antidumping duty order would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on potassium permanganate from China.

U.S. Customs and Border Protection will continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of this order will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of this order not later than May 2010.

This five-year (sunset) review and notice are in accordance with section 751(c) of the Act.

Dated: June 9, 2005.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E5–3210 Filed 6–20–05; 8:45 am]

**BILLING CODE 3510–DS–S**

[1] *See Initiation of Five-year (''Sunset'') Reviews*, 69 FR 58890 (October 1, 2004), and ITC *Investigation No.731-TA-125 (Second Review)*, 69 FR 58955 (October 1, 2004).

[2] *See Potassium Permanganate from the People's Republic of China; Five Year (''Sunset'') Review of Antidumping Duty Order: Final Results*, 70 FR 24520 (May 10, 2005).

[3] *See* Investigation No. 731-TA-125 (Second Review), 70 FR 32372 (June 2, 2005).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–122–838]**

### Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) has determined, pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), that Winton Global Lumber Ltd. (Winton Global) is the successor–in-interest to The Pas Lumber Company Ltd. (The Pas) and, as a result, should be accorded the same treatment previously accorded to The Pas in regard to the antidumping order on certain softwood lumber products from Canada as of the date of publication of this notice in the **Federal Register**.

**EFFECTIVE DATE:** June 21, 2005.

**FOR FURTHER INFORMATION CONTACT:** Daniel O'Brien or David Neubacher, at

(202) 482–1376 or (202) 482–5823, respectively; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**Background**

On April 21, 2005, Winton Global requested that the Department initiate and conduct an expedited changed circumstances review, in accordance with section 751(b) of the Act and sections 351.216(b) and 351.221(c)(3) (2003) of the Department's regulations, to confirm that Winton Global is the successor–in-interest to The Pas. On May 9, 2005, the Department initiated this review and simultaneously issued its preliminary results that Winton Global is the successor–in-interest to The Pas and should receive The Pas' cash deposit rate of 1.83 percent. *See Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review Antidumping Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 25812 (May 16, 2005) (*Preliminary Results*). In the *Preliminary Results*, we stated that interested parties could request a hearing or submit case briefs and/or written comments to the Department no later than 20 days after publication of the *Preliminary Results* notice in the **Federal Register**, and submit rebuttal briefs, limited to the issues raised in those case briefs, seven days subsequent to the due date of the case briefs. We did not receive any hearing requests or comments on the *Preliminary Results*.

**Scope of the Order**

The products covered by this order are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger–jointed, of a thickness exceeding six millimeters;

(2) coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger–jointed;

(3) other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded or finger–jointed; and

(4) coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger–jointed.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Softwood lumber products excluded from the scope:

- trusses and truss kits, properly classified under HTSUS 4418.90
- I–joist beams
- assembled box spring frames
- pallets and pallet kits, properly classified under HTSUS 4415.20
- garage doors
- edge–glued wood, properly classified under HTSUS 4421.90.97.40 (formerly HTSUS 4421.90.98.40)
- properly classified complete door frames
- properly classified complete window frames
- properly classified furniture

Softwood lumber products excluded from the scope only if they meet certain requirements:

- *Stringers* (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.97.40 (formerly HTSUS 4421.90.98.40)
- *Box–spring frame kits*: if they contain the following wooden pieces - two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius–cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box–spring frame, with no further processing required. None of the components exceeds 1'' in actual thickness or 83'' in length.
- *Radius–cut box–spring-frame components*, not exceeding 1'' in actual thickness or 83'' in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.
- *Fence pickets* requiring no further processing and properly classified under HTSUS 4421.90.70, 1'' or less in actual thickness, up to 8'' wide, 6' or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog–eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring 3/4 inch or more.
- *U.S. origin lumber* shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: 1) the processing occurring in Canada is limited to kiln–drying, planing to create smooth–to-size board, and sanding; and 2) if the importer establishes to U.S. Customs and Border Protections's (CBP) satisfaction that the lumber is of U.S. origin.
- *Softwood lumber products contained in single family home packages or kits*,[1] regardless of tariff classification, are excluded from the scope of this order if the following criteria are met:

(A) The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;

(B) The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, subfloor, sheathing, beams, posts, connectors and if included in purchase contract decking, trim, drywall and roof shingles specified in the plan, design or blueprint;

(C) Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and

[1] To ensure administrability, we clarified the language of this exclusion to require an importer certification and to permit single or multiple entries on multiple days. We also instructed importers to retain and make available for inspection specific documentation in support of each entry.

signed by a customer not affiliated with the importer;

(D) The whole package must be imported under a single consolidated entry when permitted by CBP, whether or not on a single or multiple trucks, rail cars or other vehicles, which shall be on the same day except when the home is over 2,000 square feet;

(E) The following documentation must be included with the entry documents:

- a copy of the appropriate home design, plan, or blueprint matching the entry;
- a purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;
- a listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;
- in the case of multiple shipments on the same contract, all items listed immediately above which are included in the present shipment shall be identified as well.

We have determined that the excluded products listed above are outside the scope of this order, provided the specified conditions are met. Lumber products that CBP may classify as stringers, radius cut box–spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this order and may be classified under HTSUS subheadings 4418.90.40.90, 4421.90.70.40, and 4421.90.98.40. Due to changes in the 2002 HTSUS whereby subheading 4418.90.40.90 and 4421.90.98.40 were changed to 4418.90.45.90 and 4421.90.97.40, respectively, we are adding these subheadings as well.

In addition, this scope language has been further clarified to now specify that all softwood lumber products entered from Canada claiming non–subject status based on U.S. country of origin will be treated as non–subject U.S.-origin merchandise under the countervailing duty order, provided that these softwood lumber products meet the following condition: upon entry, the importer, exporter, Canadian processor and/or original U.S. producer establish to CBP's satisfaction that the softwood lumber entered and documented as U.S.-origin softwood lumber was first produced in the United States as a lumber product satisfying the physical parameters of the softwood lumber scope.[2] The presumption of non–subject status can, however, be rebutted by evidence demonstrating that the merchandise was substantially transformed in Canada.

### Final Results of Changed Circumstances Review

Based on the information provided by Winton Global, and the fact that the Department did not receive any comments during the comment period following the preliminary results of this review, the Department hereby determines that Winton Global is the successor–in-interest to The Pas for antidumping duty cash deposit purposes.

### Instructions to the U.S. Customs and Border Protection

The Department will instruct CBP to suspend liquidation of all shipments of the subject merchandise produced and exported by Winton Global entered, or withdrawn from warehouse, for consumption, on or after the publication date of this notice at 1.83 percent (*i.e.* The Pas' cash deposit rate). This deposit rate shall remain in effect until publication of the final results of the ongoing administrative review, in which Winton Global/The Pas is participating.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is in accordance with sections 751(b) and 777(i)(1) of the Act, and section 351.216(e) of the Department's regulations.

Dated: June 15, 2005.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E5–3212 Filed 6–20–05; 8:45 am]

**BILLING CODE: 3510–DS–S**

[2] *See* the scope clarification message (3034202), dated February 3, 2003, to CBP, regarding treatment of U.S.-origin lumber on file in the Central Records Unit, Room B-099 of the main Commerce Building.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–122–838]**

### Initiation of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** June 21, 2005.

**SUMMARY:** In accordance with section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216(b) (2003), the Coalition for Fair Lumber Imports (the Coalition), a domestic interested party, filed a request for a changed circumstances review of the antidumping duty order on certain softwood lumber products from Canada, as described below. In response to this request, the Department of Commerce (the Department) is initiating the requested review.

**FOR FURTHER INFORMATION CONTACT:** Shane Subler or Constance Handley, at (202) 482–0189 or (202) 482–0631, respectively; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:** As a result of the first administrative review of the antidumping duty order on certain softwood lumber products from Canada, imports of softwood lumber from West Fraser Mills Ltd. (West Fraser) and Weldwood of Canada Limited (Weldwood) received company–specific cash–deposit rates (*see Notice of Amended Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 3358 (January 24, 2005)). Both companies are participating as separate companies in the ongoing second administrative review of this order, which covers the period May 1, 2003, through April 30, 2004. The Coalition has provided the Department with information indicating that as of January 1, 2005, Weldwood was amalgamated with West Fraser and ceased to exist as a separate corporate entity. As a result, the Coalition is requesting that the Department initiate a changed circumstances review to establish a new cash–deposit rate for the merged entity.

### SCOPE OF THE ORDER:

The products covered by this order are softwood lumber, flooring and

siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger–jointed, of a thickness exceeding six millimeters;

(2) coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger–jointed;

(3) other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded or finger–jointed; and

(4) coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger–jointed.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive. Preliminary scope exclusions and clarifications were published in three separate **Federal Register** notices.

Softwood lumber products excluded from the scope:

- trusses and truss kits, properly classified under HTSUS 4418.90
- I–joist beams
- assembled box spring frames
- pallets and pallet kits, properly classified under HTSUS 4415.20
- garage doors
- edge–glued wood, properly classified under HTSUS 4421.90.97.40 (formerly HTSUS 4421.90.98.40)
- properly classified complete door frames
- properly classified complete window frames
- properly classified furniture

Softwood lumber products excluded from the scope only if they meet certain requirements:

- *Stringers* (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.97.40 (formerly HTSUS 4421.90.98.40).
- *Box–spring frame kits*: if they contain the following wooden pieces - two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius–cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1'' in actual thickness or 83'' in length.
- *Radius–cut box–spring-frame components*, not exceeding 1'' in actual thickness or 83'' in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.
- *Fence pickets* requiring no further processing and properly classified under HTSUS 4421.90.70, 1'' or less in actual thickness, up to 8'' wide, 6' or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog–eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring 3/4 inch or more.
- *U.S. origin lumber* shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: 1) the processing occurring in Canada is limited to kiln–drying, planing to create smooth–to-size board, and sanding, and 2) the importer establishes to U.S. Customs and Border Protection's (CBP) satisfaction that the lumber is of U.S. origin.[1]
- *Softwood lumber products contained in single family home packages or kits*,[2] regardless of tariff classification, are excluded from the scope of the orders if the following criteria are met:

1. The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;
2. The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, subfloor, sheathing, beams, posts, connectors and, if included in purchase contract, decking, trim, drywall and roof shingles specified in the plan, design or blueprint;
3. Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;
4. The whole package must be imported under a single consolidated entry when permitted by CBP, whether or not on a single or multiple trucks, rail cars or other vehicles, which shall be on the same day except when the home is over 2,000 square feet;
5. The following documentation must be included with the entry documents:

- a copy of the appropriate home design, plan, or blueprint matching the entry;
- a purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;
- a listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;
- in the case of multiple shipments on the same contract, all items listed immediately above which are included in the present shipment shall be identified as well.

We have determined that the excluded products listed above are outside the scope of this order provided the specified conditions are met. Lumber products that CBP may classify as stringers, radius cut box–spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope

[1] For further clarification pertaining to this exclusion, *see* the additional language concluding the scope description below.

[2] To ensure administrability, we clarified the language of this exclusion to require an importer certification and to permit single or multiple entries on multiple days, as well as instructing importers to retain and make available for inspection specific documentation in support of each entry.

of this order and may be classified under HTSUS subheadings 4418.90.40.90, 4421.90.70.40, and 4421.90.98.40. Due to changes in the 2002 HTSUS whereby subheading 4418.90.40.90 and 4421.90.98.40 were changed to 4418.90.45.90 and 4421.90.97.40, respectively, we are adding these subheadings as well.

In addition, this scope language has been further clarified to now specify that all softwood lumber products entered from Canada claiming non–subject status based on U.S. country of origin will be treated as non–subject U.S.-origin merchandise under the antidumping and countervailing duty orders, provided that these softwood lumber products meet the following condition: upon entry, the importer, exporter, Canadian processor and/or original U.S. producer establish to CBP's satisfaction that the softwood lumber entered and documented as U.S.-origin softwood lumber was first produced in the United States as a lumber product satisfying the physical parameters of the softwood lumber scope.[3] The presumption of non–subject status can, however, be rebutted by evidence demonstrating that the merchandise was substantially transformed in Canada.

**INITIATION OF CHANGED CIRCUMSTANCES REVIEW:**

Pursuant to section 751(b)(1) of the Act, the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. The Coalition contends that West Fraser and Weldwood should have a combined cash–deposit rate because they are no longer separate companies. In accordance with 19 CFR 351.216(d), the Department finds there is sufficient information to warrant initiating a changed circumstances review. Therefore, pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(d), we are initiating a changed circumstances administrative review to determine the facts surrounding the merger and what cash–deposit rate should be applied to entries produced and exported by the merged entity.

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances antidumping duty administrative review in accordance with 19 CFR 351.221(b)(4) and 351.221(c)(3)(i), which will set forth the Department's preliminary factual and legal conclusions. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results. The Department will issue its final results of review in accordance with the time limits set forth in 19 CFR 351.216(e).

This notice is in accordance with section 751(b)(1) of the Act.

Dated: June 13, 2005.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E5–3215 Filed 6–20–05; 8:45 am]

**BILLING CODE 3510–DS–S**

[3] See the scope clarification message (3034202), dated February 3, 2003, to CBP, regarding treatment of U.S.-origin lumber on file in the Central Records Unit, Room B-099 of the main Commerce Building.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–475–821]**

### Certain Stainless Steel Wire Rod from Italy: Amended Final Countervailing Duty Determination in Accordance with Decision upon Remand

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** June 21, 2005.

**FOR FURTHER INFORMATION CONTACT:** Darla Brown, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2786.

**SUPPLEMENTARY INFORMATION:** Following publication of the *Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy*, 63 FR 40474 (July 29, 1998) (*Final Determination*), and *Notice of Countervailing Duty Order: Stainless Steel Wire Rod from Italy*, 63 FR 49334 (September 15, 1998) (*CVD Order*), AL Tech Specialty Steel Corp., Carpenter Technology Corp., Republic Engineered Steels, Talley Metals Technology, Inc. and United Steel Workers of America, AFL–CIO/CLC (collectively, AL Tech), the petitioners in this case, and the respondents, Acciaierie Valbruna S.r.l. and Acciaierie Di Bolzano S.p.A. (collectively, Valbruna/Bolzano), challenged the Department's *Final Determination* before the U.S. Court of International Trade (CIT).

The *Draft Final Results Pursuant to Remand* (*Draft Results*) were released to parties on October 18, 2004. On October 22, 2004, the Department received comments from respondents on the *Draft Results*. Petitioners did not submit comments on the *Draft Results*. There were no substantive changes made to the *Remand Results* as a result of comments received on the *Draft Results*. On October 27, 2004, the Department responded to the CIT's Order of Remand by filing the *Remand Results*. As a result of the remand redetermination, the net subsidy rate for Valbruna/Bolzano was revised from 1.28 to 0.65 percent *ad valorem*, which is *de minimis*.

On December 1, 2004, the CIT received comments from petitioners and respondents. On December 21, 2004, the Department responded to these comments. On March 9, 2005, the CIT affirmed the Department's findings in the *Remand Results*. *See AL Tech II*, Slip Op. 05–30 (CIT March 9, 2005).

**Amended Final Determination**

As a result, we have recalculated the *ad valorem* subsidy rate for stainless steel wire rod from Italy for the period January 1, 1996, through December 31, 1996, for Valbruna/Bolzano. The revised net subsidy rate is 0.65 percent *ad valorem*, which is *de minimis*.

The Department has been enjoined from issuing any liquidation instructions to the U.S. Customs and Border Protection (CBP) until the conclusion of litigation of this case. Litigation has been completed, and, therefore, the Department will now instruct CBP to liquidate all relevant entries from Acciaierie Valbruna S.r.l. (Valbruna) and Acciaierie Di Bolzano S.p.A. (Bolzano) without regard to countervailing duties. The Department will issue liquidation instructions directly to CBP.

This amendment to the final countervailing duty determination is in accordance with section 705(d) of the Tariff Act of 1930, as amended (19 U.S.C. 1671d(d)), and § 351.210(c) of the Department's regulations.

Dated: June 15, 2005.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E5–3214 Filed 6–20–05; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Timing of Assessment Instructions for Antidumping Duty Orders Involving Non–Market Economy Countries

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Request for comments.

**SUMMARY:** The Department of Commerce (''Department'') is requesting comments on the appropriate timing for the issuance of assessment instructions for antidumping duties involving orders on non–market economy countries (''NMEs'') when a review has been requested of certain entities. This notice describes the two approaches we have followed, and requests comments on these approaches.

**DUE DATE:** Comments must be submitted by July 15, 2005.

**FOR FURTHER INFORMATION CONTACT:** Nazak Nikakhtar, Special Assistant to Senior Enforcement Coordinator/ International Trade Analyst, or Maureen Flannery, Senior International Trade Analyst, Office of China/NME Enforcement, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC, 20230, 202–482–9079 or 202–482–3020, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

The United States applies a retrospective assessment system under which final liability for antidumping duties is determined after merchandise is imported. The amount of duties to be assessed is determined either through (1) a review of the order covering the period of review (''POR'') based on a request for review or, (2) if a review is not requested, at the cash deposit, or bond, rate applicable at the time the merchandise was entered during that period corresponding to the POR. Sections 736(a)(1) and 751(a)(2)(c) of the Tariff Act of 1930, as amended (''the Act'') provide for such assessments. Section 351.212 of the Department's regulations provides guidance regarding the assessment of duties:

(1) If the Secretary does not receive a timely request for an administrative review of an order (see paragraph (b)(1), (b)(2), or (b)(3) of § 351.213), the Secretary, without additional notice, will instruct the Customs Service to: (i) assess antidumping duties or countervailing duties, as the case may be, on the subject merchandise described in § 351.213(e) at rates equal to the cash deposit of, or bond for, estimated antidumping duties or countervailing duties required on that merchandise at the time of entry, or withdrawal from warehouse, for consumption; and (ii) to continue to collect the cash deposits previously ordered.

(2) If the Secretary receives a timely request for an administrative review of an order (*see* paragraph (b)(1), (b)(2), or (b)(3) of § 351.213), the Secretary will instruct the Customs Service to assess antidumping duties or countervailing duties, and to continue to collect cash deposits, on the merchandise not covered by the request in accordance with paragraph (c)(1) of this section.

(3) The automatic assessment provisions of paragraphs (c)(1) and (c)(2) of this section will not apply to subject merchandise that is the subject of a new shipper review (*see* § 351.214) or an expedited antidumping review (*see* § 351.215).[1]

*See* 19 CFR 351.212(c).

Where there has been no request for a review, the Department issues assessment instructions after the end of the anniversary month of the order for both market economy and NME antidumping duty orders. *See* 19 CFR 351.102(b) and 351.212(c)(1). If a review of certain entities has been requested, the Department, in market economy cases, sends out the assessment instructions for only those entities for which a review has not been requested shortly after the initiation notice is issued for the administrative review in accordance with 19 CFR 351.212(c)(2). In NME cases, the Department has followed two approaches for issuing assessment instructions for entries under the NME orders when a review has been requested of certain entities. One approach has been to issue assessment instructions at the completion of the review for all entries from entities for which a specific review had not been requested and which are subject to the NME–wide rate. The other approach has been to issue the assessment instructions at the beginning of the review, at the rate in effect on the date of entry, for all entries except those entries from the specific entities for which a review was requested and initiated.

## Proposal

The Department is seeking comments on whether (1) the Department should issue assessment instructions after the initiation of an administrative review for entries from foreign entities subject to the NME–wide rate and for which the Department did not receive a specific request for review or (2) the Department should issue assessment instructions at the conclusion of an administrative review both for entries for which a specific request was made and for entries from foreign entities subject to the NME–wide rate and for which the Department did not receive a specific request for review.

## Comments

Persons wishing to comment should file a signed original and six copies of each set of comments by the date specified above. The Department will consider all comments received by July 15, 2005. Consideration of comments received after July 15, 2005 cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in development of any changes to its practice. All comments responding to this notice will be a matter of public record and will be available for public inspection and copying at Import Administration's Central Records Unit, Room B–099, between the hours of 8:30 a.m. and 5 p.m. on business days. The Department requires that comments be submitted in written form. The Department recommends submission of comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted either by e–mail to the webmaster below or on CD–ROM as comments submitted on diskettes are likely to be damaged by postal radiation treatment.

Written comments (original and six copies) should be sent to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, U.S. Department of Commerce, Central Records Unit, Room 1870, 14th Street and Constitution Avenue, Washington, DC 20230. Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Internet at the Import Administration Web site at the following address: http://ia.ita.doc.gov/. Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at email address: webmaster–support@ita.doc.gov or by telephone at (202) 482–0866.

Dated: June 14, 2005.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E5–3213 Filed 6–20–05; 8:45 am]

**BILLING CODE: 3510–DS–S**

[1] For merchandise subject to a new shipper review, the Department will suspend liquidation of any unliquidated entries until the completion of the review. *See* 19 CFR 351.214(e).

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

**[Docket No.: 050527147–5147–01]**

### Notice of Intent To Enhance Library of Mass Spectra

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice and request for comments.

**SUMMARY:** The National Institute of Standards and Technology announces its intent to enhance its library of mass spectra. This will both expand the coverage of chemical substances in this data collection and add related reference data, including retention indices and mass spectra generated by tandem mass spectrometers. Interested parties are invited to submit comments to the address below.

**DATES:** Comments must be received by July 21, 2005.

**ADDRESSES:** Comments should be sent to the attention of Dr. Stephen E. Stein at the National Institute of Standards and Technology, 100 Bureau Drive, Stop 8380, Gaithersburg, MD 20899–8380.

**FOR FURTHER INFORMATION CONTACT:** Dr. Stephen E. Stein by writing to the above address or by e-mail at *stephen.stein@nist.gov* or by telephone at (301) 975–2444.

**SUPPLEMENTARY INFORMATION:** As part of its responsibilities under Title 15 U.S.C. 290 to collect, evaluate and publish high quality Standard Reference Data (SRD), NIST creates and maintains evaluated SRD databases. One such database is the Mass Spectral Library, which is an evaluated data collection containing electron ionization mass spectra for discrete chemical substances, as well as retention indices and a limited number of spectra generated by electrospray and related techniques. The database has been primarily used to aid in the identification of chemical compounds by providing a source for reference spectra for comparison to spectra acquired by commercial instruments, especially spectra generated by gas chromatography/mass spectrometry (GC/MS). For each spectrum, auxiliary information for chemical identification is provided, including chemical names, formulas, chemical structures and related information. It is proposed to expand this collection by adding both classical electron ionization spectra as well as related reference data, including gas chromatographic retention indices and mass spectra acquired by other instrument types, especially tandem mass spectrometers. The addition of new and replicate spectra of relevant compounds and derivatives will increase the likelihood of identifying unknown compounds, or ruling them out, in a chemical analysis. The addition of gas chromatographic retention indices will enable the more reliable identification of compounds by matching retention data as well as spectral data acquired in a GC/MS analysis. The addition of mass spectra generated by tandem mass spectrometers, including ion trap and collision cell instruments, with ions generated by electrospray ionization and MALDI (matrix-assisted laser induced dissociation), will broaden the scope of application of this library to other analytical methods and substances including metabolomics and proteomics. The net result of these enhancements will be to increase the reliability and utility of this library as an aid in the process of chemical identification. We invite comments concerning this update.

Dated: June 15, 2005.

**Hratch G. Semerjian,**

*Acting Director.*

[FR Doc. 05–12215 Filed 6–20–05; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 061505E]**

### Gulf of Mexico Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council will convene a joint meeting of the Standing, Special Mackerel, Special Reef Fish and Special Spiny Lobster Scientific and Statistical Committees (SSCs).

**DATES:** The meeting will begin at 1 p.m. on Tuesday, July 5, 2005, and conclude no later than 12 noon on Friday, July 8, 2005.

**ADDRESSES:** The meeting will be held at the Wyndham New Orleans at Canal Place, 100 Rue Iberville, New Orleans, LA 70130.

*Council address:* Gulf of Mexico Fishery Management Council, 3018 North U.S. Highway 301, Suite 1000, Tampa, FL 33619.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico Fishery Management Council (Council) will convene a joint meeting of the Standing, Special Reef Fish, Special Mackerel and Special Spiny Lobster Scientific and Statistical Committees (SSCs) to review stock assessments on red snapper, king mackerel and spiny lobster, plus amendments to the Reef Fish and Coastal Migratory Pelagics fishery management plans.

On Tuesday and Wednesday, July 5–6, 2005, the Standing and Special Reef Fish SSCs will review a stock assessment of red snapper prepared under the Southeast Data, Assessment and Review (SEDAR) process during workshops held between April 2004 and April 2005. The SSCs will review the workshop reports and provide the Council with a determination of whether the assessment reflects the best available scientific information. The SSCs will also review Draft Amendment 18A to the Reef Fish Fishery Management Plan (FMP). This amendment deals with enforcement and monitoring issues, including simultaneous commercial and recreational harvest on a vessel (to improve enforceability of prohibition on sale of recreationally caught reef fish), maximum crew size on a Coast Guard inspected vessel when fishing commercially (to resolve a conflict between NMFS maximum crew size and USCG minimum crew size regulations), use of reef fish for bait, and vessel monitoring system (VMS) requirements on commercial reef fish vessels. Amendment 18A also addresses administrative changes to the framework procedure for setting total allowable catch (TAC) of reef fish, and measures to reduce bycatch and bycatch mortality of endangered sea turtles and smalltooth sawfish taken inadvertently in the commercial and charter/headboat reef fish fishery.

The Standing, Special Reef Fish, and Special Mackerel SSCs will jointly review an amendment named Draft Amendment to the FMPs for Reef Fish (Amendment 25) and Coastal Migratory Pelagics (Amendment 17) for extending the Charter Vessel/Headboat Permit Moratorium. Amendments establishing the charter vessel/headboat permit moratorium for the CMP fishery and the Reef Fish fishery were approved by NOAA Fisheries on May 6, 2003, and implemented on June 16, 2003 (68 FR

26280). The intended effect of these Amendments was to cap the number of for-hire vessels operating in these two fisheries at the current level (as of March 29, 2001) while the Council evaluated whether limited access programs were needed to constrain effort. In this amendment, the Council is considering allowing the permit to expire on June 16, 2006 or extending the moratorium on for-hire Reef Fish and CMP permits for a finite period of time or indefinitely.

On Thursday and Friday, July 7–8, 2005, the Standing and Special Mackerel SSCs will review stock assessments on mackerel stocks that were developed as part of SEDAR workshops held between December 2003 and April 2004. The SSCs previously reviewed these reports at its September 1, 2004 meeting; however, there was no quorum. The SSCs will review the workshop reports and provide the Council with a determination of whether the assessment reflects the best available scientific information.

The Standing and Special Spiny Lobster SSCs will then review a spiny lobster stock assessment that was developed as part of SEDAR workshops held between January 2005 and May 2005. The SSCs will review the workshop reports and provide the Council with a determination of whether the assessment reflects the best available scientific information.

Copies of the Amendments, assessment workshop summaries and related materials can be obtained by calling the Council office at (813) 228–2815.

Although other non-emergency issues not on the agendas may come before the SSCs for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions of the SSCs will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council (see **ADDRESSES**) by April 20, 2005.

Dated: June 16, 2005.

**Emily Menashes,**

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

[FR Doc. E5–3207 Filed 6–21–05; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

## Patent and Trademark Office

## Representative and Address Provisions

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before August 22, 2005.

**ADDRESSES:** You may submit comments by any of the following methods:

- *E-mail: Susan.Brown@uspto.gov.* Include ''0651–0035 comment'' in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan Brown.
- *Mail:* Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Robert J. Spar, Director, Office of Patent Legal Administration, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–7700; or by e-mail at *Bob.Spar@uspto.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

Under 35 U.S.C. 2 and 37 CFR 1.31–1.36, a patent applicant or assignee of record may grant power of attorney to a person who is registered to practice before the United States Patent and Trademark Office (USPTO) to act for them in a patent or application. A power of attorney may also be revoked, and a registered practitioner may also withdraw as attorney or agent of record under 37 CFR 1.36. The rules of practice (37 CFR 1.33) also provide for the applicant, assignee, or practitioner of record to supply a correspondence address and daytime telephone number for receiving notices, official letters, and other communications from the USPTO. Further, the rules of practice (37 CFR 1.33(d) and 1.363) permit the applicant, assignee, or practitioner of record to specify a separate ''fee address'' for correspondence related to maintenance fees, which is covered under OMB Control Number 0651–0016 ''Rules for Patent Maintenance Fees.'' Maintaining a correct and updated correspondence address is necessary so that official correspondence from the USPTO related to a patent or application will be properly received by the applicant, assignee, or practitioner.

The USPTO's Customer Number practice permits applicants, assignees, and practitioners of record to change the correspondence address, fee address, or representatives of record for a number of patents or applications with one change request instead of filing separate requests for each patent or application. Customers may request a Customer Number from the USPTO and associate this Customer Number with a correspondence address or a list of registered practitioners. Customers may then use this Customer Number to designate or change the correspondence address, the fee address, or to grant power of attorney to the associated list of practitioners for any number of patents or applications. Any changes to the address or practitioner information associated with a Customer Number will be applied to all patents and applications associated with that Customer Number.

The Customer Number practice is optional, in that changes of correspondence address or power of attorney may be filed separately for each patent or application without using a Customer Number. However, a Customer Number associated with the correspondence address for a patent application is required in order to access private information about the application using the Patent Application Information Retrieval (PAIR) system, which is available through the USPTO Web site. The PAIR system allows authorized individuals secure access to application status information over the Internet, but only for patent applications that are linked to a Customer Number. Applicants must also use a Customer Number in order to grant power of attorney to more than ten practitioners or to establish a separate fee address that is different from the correspondence address for a patent or application.

In addition to the forms offered by the USPTO to assist customers with providing the information in this

collection, customers may also format requests using a Customer Number Upload Spreadsheet to designate or change the correspondence address or fee address for a list of patents or applications by associating them with a Customer Number. The Customer Number Upload Spreadsheet must be submitted to the USPTO on a computer-readable diskette or compact disc (CD), accompanied by a signed cover letter requesting entry of the address changes for the listed patents and applications. The spreadsheet and cover letter must be mailed to the USPTO and cannot be filed electronically over the Internet. Customers may download a Microsoft Excel template with instructions from the USPTO Web site to assist them in preparing the spreadsheet in the proper format. The Customer Number Upload Spreadsheet may not be used to change the power of attorney for patents or applications.

This information collection includes the information necessary to submit a request to grant or revoke power of attorney for a patent application and for a registered practitioner to withdraw as attorney or agent of record for a patent application. This collection also includes the information necessary to request a Customer Number and associate a correspondence address or list of practitioners with this Customer Number, to change the correspondence address or practitioners associated with a Customer Number, and to designate or change the correspondence address or fee address for one or more patents or applications by using a Customer Number.

The USPTO is adding one form, two petitions, and electronic power of attorney submissions to this information collection. The Authorization to Act in a Representative Capacity allows a practitioner to take certain actions in a patent application, such as conducting interviews, but does not grant power of attorney. The USPTO previously offered a sample format for an authorization document pursuant to 37 CFR 1.34, but the Authorization to Act in a Representative Capacity will now be provided as an official USPTO form (PTO/SB/84). The two petitions to grant or revoke power of attorney by fewer than all of the applicants are being added to this collection as existing petitions that were not previously covered. Lastly, customers may submit some power of attorney forms electronically using the USPTO's Electronic Filing System (EFS), which permits secure transmission of patent applications and related documents over the Internet. Using the free electronic filing software available at the USPTO Web site, customers may prepare electronic power of attorney forms or scan and attach electronic copies of paper forms for Internet submission.

This information collection was previously approved by OMB in November 2002. In November 2003, OMB approved a change worksheet for this collection that added the Power of Attorney to Prosecute Applications Before the USPTO (PTO/SB/80), deleted the Correspondence Address Indication Form (PTO/SB/121), and revised the Customer Number Upload Spreadsheet to remove the option to change the power of attorney. The Power of Attorney to Prosecute Applications Before the USPTO (PTO/SB/80) allows assignees to grant power of attorney in all of their applications at once using one form instead of individually signing separate power of attorney forms for each application. The Correspondence Address Indication Form (PTO/SB/121) was deleted because it duplicated information already collected on the forms for Change of Correspondence Address for Applications or Patents (PTO/SB/122 and PTO/SB/123) and was rarely used. The option to change the power of attorney was removed from the Customer Number Upload Spreadsheet because the USPTO discontinued the practice of allowing customers to use the batch update process via the spreadsheet to change the power of attorney for a list of patents or applications. Customers may still use the spreadsheet format for changing the correspondence address or fee address for a list of patents or applications. The instructions were also updated to allow customers to submit the spreadsheets on CD as well as on diskette.

**II. Method of Collection**

By mail, facsimile, hand delivery, or electronically over the Internet to the USPTO.

**III. Data**

*OMB Number:* 0651–0035.

*Form Number(s):* PTO/SB/80/81/82/83/84/122/123/124A/124B/125A/125B.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Individuals or households; businesses or other for-profits; not-for-profit institutions; farms; the Federal Government; and state, local or tribal governments.

*Estimated Number of Respondents:* 370,766 responses per year.

*Estimated Time Per Response:* The USPTO estimates that it will take the public approximately 3 to 12 minutes (0.05 to 0.20 hours) to complete the forms in this collection, including the time to gather the necessary information, prepare the appropriate form, and submit the completed request. The USPTO estimates it will take the public approximately 1 hour to prepare the petitions related to power of attorney. The USPTO estimates that it will take the public approximately 1 hour and 30 minutes to complete the Customer Number Upload Spreadsheet, including the time to prepare the spreadsheet file on diskette or CD and produce the signed cover letter.

*Estimated Total Annual Respondent Burden Hours:* 23,668 hours per year.

*Estimated Total Annual Respondent Cost Burden:* $1,937,198 per year. The USPTO expects that Requests for Withdrawal as Attorney or Agent and the petitions will be prepared by attorneys, while the other items in this collection will be prepared by paraprofessionals. Using the professional rate of $286 per hour for associate attorneys in private firms, the USPTO estimates that the respondent cost burden for submitting Requests for Withdrawal as Attorney or Agent and Change of Correspondence Address (PTO/SB/83) and the petitions will be $28,028 per year. Using the paraprofessional rate of $81 per hour, the USPTO estimates that the respondent cost burden for submitting the other items in this collection will be $1,909,170 per year. The estimated total respondent cost burden for this collection is $1,937,198 per year.

| Item | Estimated time for response | Estimated annual responses | Estimated annual burden hours |
|---|---|---|---|
| Power of Attorney to Prosecute Applications Before the USPTO (PTO/SB/80) | 3 minutes | 2,100 | 105 |
| Power of Attorney and Correspondence Address Indication Form (PTO/SB/81) | 3 minutes | 343,550 | 17,178 |
| Electronic Power of Attorney Forms (EFS) | 3 minutes | 2,488 | 124 |
| Revocation of Power of Attorney with New Powwer of Attorney and Change of Correspondence Address (PTO/SB/82). | 3 minutes | 650 | 33 |

| Item | Estimated time for response | Estimated annual responses | Estimated annual burden hours |
|---|---|---|---|
| Request for Withdrawal as Attorney or Agent and Change of Correspondence Address (PTO/SB/83). | 12 minutes | 475 | 95 |
| Authorization to Act in a Representative Capacity (PTO/SB/84) | 3 minutes | 800 | 40 |
| Petition Under 37 CFR 1.36(a) to Revoke Power of Attorney by Fewer than All the Applicants. | 1 hour | 2 | 2 |
| Petition to Waive 37 CFR 1.32(b)(4) and Grant Power of Attorney by Fewer than All the Applicants. | 1 hour | 1 | 1 |
| Change of Correspondence Address for Application or Patent (PTO/SB/122/123). | 3 minutes | 13,000 | 650 |
| Request for Customer Number Data Change (PTO/SB/125A/125B) | 12 minutes | 600 | 120 |
| Request for Customer Number (PTO/SB/125A/125B) | 12 minutes | 4,100 | 820 |
| Customer Number Upload Spreadsheet | 1 hour and 30 minutes | 3,000 | 4,500 |
| Total | | 370,766 | 23,668 |

*Estimated Total Annual Non-hour Respondent Cost Burden:* $188,838. There are no maintenance costs associated with this information collection. However, this collection does have annual (non-hour) cost burden in the form of filing fees, recordkeeping costs, capital start-up costs, and postage costs.

The two petitions being added into this collection have associated filing fees. The filing fee for the Petition Under 37 CFR 1.36(a) to Revoke Power of Attorney by Fewer than All the Applicants is currently $130 (37 CFR 1.17(h)). The USPTO has proposed to increase this fee to $400 (37 CFR 1.17(f)) as discussed in the notice of proposed rulemaking entitled ''Provisions for Persons Granted Limited Recognition to Prosecute Patent Applications and Other Miscellaneous Matters'' (RIN 0651–AB85), published in the **Federal Register** on April 7, 2005. This proposed fee coincides with the $400 fee (37 CFR 1.17(f)) for the Petition to Waive 37 CFR 1.32(b)(4) and Grant Power of Attorney by Fewer than All the Applicants. Using the $400 fee for these petitions, the USPTO estimates that the total filing fees for this collection would be $1,200 per year.

There are recordkeeping costs associated with submitting power of attorney forms electronically over the Internet using EFS. The USPTO recommends that customers print and retain a copy of the acknowledgment receipt that is displayed on the screen after a successful submission. The USPTO estimates that it will take 5 seconds (0.001 hours) to print a copy of the acknowledgment receipt and that approximately 2,488 power of attorney submissions per year will be completed via EFS, for a total of approximately 2 hours per year. The USPTO expects that these receipts will be printed by paraprofessionals at an estimated rate of $81 per hour, for a total recordkeeping cost of $162 per year.

This collection has capital start-up costs associated with the Customer Number Upload Spreadsheet, which must be submitted to the USPTO on a diskette or CD. This process requires additional supplies, including blank diskettes or recordable CD media and padded envelopes for shipping. The USPTO estimates that the cost of these supplies will be approximately $2 per submission, for a total capital start-up cost of $6,000 per year.

The public may incur postage costs when submitting the information in this collection to the USPTO by mail. The USPTO estimates that the first-class postage cost for a mailed submission will be 49 cents for all items in this collection except for the electronic power of attorney submissions and the Customer Number Upload Spreadsheet. There is no postage cost for electronic power of attorney submissions. Due to the additional materials required for Customer Number Upload Spreadsheet submissions, including the diskette or CD and cover letter, the USPTO estimates that the average first-class postage cost for a spreadsheet submission will be 83 cents. The total postage cost for this collection is $181,476 per year.

The total (non-hour) respondent cost burden for this collection in the form of filing fees, recordkeeping costs, capital start-up costs, and postage costs is estimated to be $188,838 per year.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 15, 2005.

**Susan K. Brown,**

*Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.*

[FR Doc. 05–12174 Filed 6–20–05; 8:45 am]

**BILLING CODE 3510–16–P**

## DEPARTMENT OF COMMERCE

## Patent and Trademark Office

## Public Key Infrastructure (PKI) Certificate Action Form

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before August 22, 2005.

**ADDRESSES:** You may submit comments by any of the following methods:

• E-mail: *Susan.Brown@uspto.gov.* Include ''0651–0045 comment'' in the subject line of the message.

• Fax: 571–273–0112, marked to the attention of Susan Brown.

• Mail: Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Chris Rutherford, Information Technology Security Program Office, U.S. Patent and Trademark Office, Madison Building West—Room 5A19, 600 Dulany Street, Alexandria, VA 22314; by telephone at 571–272–5357; or by e-mail at *Chris.Rutherford@uspto.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The Government Paperwork Elimination Act (GPEA) directs federal agencies to implement electronic commerce systems that enable the collection and dissemination of information while also ensuring the security and validity of the information that is transmitted. In support of the GPEA and its own electronic filing initiatives, the United States Patent and Trademark Office (USPTO) uses Public Key Infrastructure (PKI) technology to support electronic commerce between the USPTO and its customers. PKI is a set of hardware, software, policies, and procedures that provide several important security services for the electronic business activities of the USPTO, including protecting the confidentiality of unpublished patent applications in accordance with 35 U.S.C. 122 and international patent applications in accordance with Article 30 of the Patent Cooperation Treaty.

In order to provide the necessary security for its electronic commerce systems, the USPTO uses PKI technology to protect the integrity and confidentiality of information submitted to the USPTO. PKI employs public and private encryption keys to authenticate the customer's identity and support secure electronic communication between the customer and the USPTO. Customers may submit a request to the USPTO for a digital certificate, which enables the customer to create the encryption keys necessary for electronic identity verification and secure transactions with the USPTO. This digital certificate is required in order to access secure online systems that are provided by the USPTO for transactions such as electronic filing of patent applications and accessing confidential information about unpublished patent applications.

This information collection includes the Certificate Action Form (PTO–2042), which is available for download from the USPTO Web site. This form is used by the public to request a new digital certificate, the revocation of a current certificate, or the recovery of a lost or corrupted certificate. Customers may also change the name listed on the certificate or associate the certificate with one or more previously assigned Customer Numbers. A certificate request must include a notarized signature in order to verify the identity of the applicant. The Certificate Action Form also has an accompanying subscriber agreement to ensure that customers understand their obligations regarding the use of the digital certificates and cryptographic software.

The USPTO has revised the Certificate Action Form to accommodate its use by limited recognition practitioners who have been granted status to act as representatives in specific patent applications. The revised form allows customers to identify themselves as limited recognition practitioners when requesting a digital certificate. The USPTO is also upgrading its PKI software, which will enable customers to recover their own lost certificates instantly over the Internet without having to contact support staff at the USPTO Electronic Business Center. When generating a new certificate, the customer will have the option of providing additional information for a set of security questions and answers that will be invoked as part of the online verification process in the event the customer uses the certificate self-recovery feature. The electronic Certificate Self-Recovery Form is being added to this collection.

**II. Method of Collection**

The Certificate Action Form may be mailed or hand delivered to the USPTO. The Certificate Self-Recovery Form is submitted electronically over the Internet.

**III. Data**

*OMB Number:* 0651–0045.

*Form Number(s):* PTO–2042.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Individuals or households; businesses or other for-profits; not-for-profit institutions; farms; the Federal Government; and state, local or tribal governments.

*Estimated Number of Respondents:* 4,126 responses per year.

*Estimated Time Per Response:* The USPTO estimates that it will take the public approximately 30 minutes (0.5 hours) to read the instructions and subscriber agreement, gather the necessary information, prepare the Certificate Action Form (PTO–2042), and submit the completed request. The USPTO estimates that it will take the public approximately 25 minutes (0.42 hours) to complete and electronically submit the information required for Certificate Self-Recovery.

*Estimated Total Annual Respondent Burden Hours:* 1,898 hours per year.

*Estimated Total Annual Respondent Cost Burden:* $197,392 per year. For this information collection, the USPTO expects that 70% of the submissions will be prepared by paraprofessionals, 15% by attorneys, and 15% by independent inventors. Using those proportions and the estimated rates of $81 per hour for paraprofessionals, $286 per hour for associate attorneys in private firms, and $30 per hour for independent inventors, the USPTO estimates that the average hourly rate for all respondents will be approximately $104 per hour. Therefore, the estimated total respondent cost burden for this collection will be $197,392 per year.

| Item | Estimated time for response (minutes) | Estimated annual responses | Estimated annual burden hours |
|---|---|---|---|
| Certificate Action Form (including Subscriber Agreement) (PTO–2042) | 30 | 2,063 | 1,032 |
| Certificate Self-Recovery Form | 25 | 2,063 | 866 |
| Total | | 4,126 | 1,898 |

*Estimated Total Annual Non-hour Respondent Cost Burden:* $4,889. There are no capital start-up costs, maintenance costs, or filing fees associated with this information collection. Authorized users may

download the necessary cryptographic software from the USPTO at no cost. However, this collection does have annual (non-hour) cost burden in the form of recordkeeping costs and postage costs associated with the Certificate Action Form (PTO–2042).

This collection has recordkeeping costs due to the notarization requirement for authenticating the customer's signature on the Certificate Action Form. The USPTO estimates that the average fee for having a signature notarized is $2 and that 2,063 signed Certificate Action Forms will be submitted annually, for a total recordkeeping cost of $4,126 per year.

This collection also has postage costs for submitting the Certificate Action Form to the USPTO by mail. The Certificate Action Form cannot be submitted electronically because it requires an original notarized signature as verification of the customer's identity. The USPTO estimates that the first-class postage cost for a mailed Certificate Action Form will be 37 cents and that it will receive 2,063 Certificate Action Forms annually, for a total postage cost of $763 per year.

The total (non-hour) respondent cost burden for this collection in the form of recordkeeping costs and postage costs is estimated to be $4,889 per year.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 15, 2005.

**Susan K. Brown,**

*Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.*

[FR Doc. 05–12189 Filed 6–20–05; 8:45 am]

**BILLING CODE 3510–16–P**

## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities: Notification of Pending Legal Proceedings

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, 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 rule requiring notification of pending legal proceedings pursuant to 17 C.F.R. 1.60.

**DATES:** Comments must be submitted on or before August 22, 2005.

**ADDRESSES:** Comments may be mailed to Gail B. Scott, Office of the General Counsel, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581

**FOR FURTHER INFORMATION CONTACT:** Gail B. Scott, (202) 418–5139; FAX: (202) 418–5524; e-mail: *gscott@cftc.gov*.

**SUPPLEMENTARY INFORMATION:** Under the PRA, 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 C.F.R. 1320.3(c) and includes agency requests 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, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

**Notification of Pending Legal Proceedings Pursuant to 17 C.F.R. 1.60, OMB Control Number 3038–0033—Extension**

The rule is designed to assist the Commission in monitoring legal proceedings involving the responsibilities imposed on contract markets and their officials and futures commission merchants and their principals by the Commodity Exchange Act, or otherwise.

The rules require futures commission merchants and introducing brokers: (1) To provide their customers with standard risk disclosure statements concerning the risk of trading commodity interests; and (2) to retain all promotional material and the source of authority for information contained therein. The purpose of these rules is to ensure that customers are advised of the risks of trading commodity interests and to avoid fraud and misrepresentation. This information collection contains the recordkeeping and reporting requirements needed to ensure regulatory compliance with Commission rules relating to this issue.

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

| 17 CFR section | Annual number of respondents | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|
| 1.60 | 235 | 1 | .10 | .10 |

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: June 15, 2005.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 05–12216 Filed 6–20–05; 8:45 am]

**BILLING CODE 6351–01–M**

## DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

### Notice of the Defense Base Closure and Realignment Commission—Open Meeting

**AGENCY:** Defense Base Closure and Realignment Commission.

**ACTION:** Notice; Defense Base Closure and Realignment Commission—open meeting (Atlanta, GA).

**SUMMARY:** Notice is hereby given that a delegation of Commissioners of the Defense Base Closure and Realignment Commission will hold an open meeting on June 30, 2005 from 1:30 p.m. to 5:30 p.m. at the Georgia Tech Hotel and Conference Center, 800 Spring Street Northwest, Atlanta, Georgia 30308. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov,* for updates.

The Commission delegation will meet to receive comment from the Department of Homeland Security and the Governors and Adjutants General of various states on base realignment and closure actions recommended by the Department of Defense (DoD) that have an impact on the Department of Homeland Security and the militia of the various states. The purpose of this open meeting is to allow the Department of Homeland Security and representative Governors and Adjutants General, selected by the National Governors Association, an opportunity to voice their concerns, counter-arguments, and opinions in a live public forum. This meeting will be open to the public, subject to the availability of space. Sign language interpretation will be provided. The delegation will not render decisions regarding the DoD recommendations at this meeting, but will gather information for later deliberations by the Commission as a whole.

**DATES:** June 30, 2005 from 1:30 p.m. to 5:30 p.m.

**ADDRESSES:** Georgia Tech Hotel and Conference Center, 800 Spring Street Northwest, Atlanta, Georgia 30308.

**FOR FURTHER INFORMATION CONTACT:** Please see the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov.* The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's Web site or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990,* as amended, available on the Commission Web site. Sections 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at 703–699–2950 or 2708.

Dated: June 13, 2005.

**Jeannette Owings-Ballard,**

*Administrative Support Officer.*

[FR Doc. 05–12084 Filed 6–20–05; 8:45 am]

**BILLING CODE 5001–06–P**

## DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

### Notice of the Defense Base Closure and Realignment Commission—Open Meeting (Boston, MA)

**AGENCY:** Defense Base Closure and Realignment Commission.

**ACTION:** Notice; Defense Base Closure and Realignment Commission—open meeting (Boston, MA).

**SUMMARY:** Notice is hereby given that a delegation of Commissioners of the 2005 Defense Base Closure and Realignment Commission will hold an open meeting on July 6, 2005 from 8:30 a.m. to 5 p.m. at the Boston Convention and Exhibition Center, 415 Summer Street, Boston, Massachusetts 02210. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov,* for updates.

The delegation will meet to receive comment from Federal, state and local government representatives and the general public on base realignment and closure actions in Connecticut, Maine, Massachusetts, New Hampshire and Rhode Island that have been recommended by the Department of Defense (DoD). The purpose of this regional meeting is to allow communities experiencing a base closure or major realignment action (defined as loss of 300 civilian positions or 400 military and civilian positions) an opportunity to voice their concerns, counter-arguments, and opinions in a live public forum. This meeting will be open to the public, subject to the availability of space. Sign language interpretation will be provided. The delegation will not render decisions regarding the DoD recommendations at this meeting, but will gather information for later deliberations by the Commission as a whole.

**DATES:** July 6, 2005 from 8:30 a.m. to 5 p.m.

**ADDRESSES:** Boston Convention and Exhibition Center, 415 Summer Street, Boston, Massachusetts 02210.

**FOR FURTHER INFORMATION CONTACT:** Please see the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov.* The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's website or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990,* as amended, available on the Commission website. Sections 2912 through 2914 of that Act describe the criteria and many

of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at 703–699–2950 or 2708.

Dated: June 14, 2005.

**Jeannette Owings-Ballard,**

*Administrative Support Officer.*

[FR Doc. 05–12086 Filed 6–20–05; 8:45 am]

**BILLING CODE 5001–06–P**

## DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

### Notice of the Defense Base Closure and Realignment Commission—Change to the Agenda of a Previously Announced Open Meeting (Clovis, NM); Correction

**AGENCY:** Defense Base Closure and Realignment Commission.

**ACTION:** Notice of the Defense Base Closure and Realignment Commission—Change to the Agenda of a Previously Announced Open Meeting (Clovis, NM); Correction.

**SUMMARY:** The Defense Base Closure and Realignment Commission published a document in the **Federal Register** of June 7, 2005, concerning an open meeting to receive comments from Federal, state and local government representatives and the general public on base realignment and closure actions in New Mexico that have been recommended by the Department of Defense (DoD). The agenda for this meeting has changed.

The delay of this change notice resulted from recent requests from representatives of communities in Arizona and Nevada to accommodate delegations from those communities and the short time-frame established by statute for the operations of the Defense Base Closure and Realignment Commission. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov, for updates.*

**FOR FURTHER INFORMATION CONTACT:** Please see the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov.* The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's website or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990,* as amended, available on the Commission website. Sections 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at 703–699–2950 or 2708.

**Correction**

In the **Federal Register** of June 7, 2005, in FR Doc. 05–11235, on page 33127, in the second and third columns, correct the ''Summary'' caption to read:

**SUMMARY:** A delegation of Commissioners of the Defense Base Closure and Realignment Commission will meet on June 24, 2005 from 8:30 a.m. to 12 p.m. at the Marshall Junior High School, 100 Commerce Way, Clovis, New Mexico 88101, to receive comments from Federal, state and local government representatives and the general public on base realignment and closure actions in Arizona, Nevada and New Mexico that have been recommended by the Department of Defense (DoD).

The purpose of this regional meeting is to allow communities experiencing a base closure or major realignment action (defined as loss of 300 civilian positions or 400 military and civilian positions) an opportunity to voice their concerns, counter-arguments, and opinions in a live public forum. This meeting will be open to the public, subject to the availability of space. Sign language interpretation will be provided. The delegation will not render decisions regarding the DoD recommendations at this meeting, but will gather information for later deliberations by the Commission as a whole.

Dated: June 14, 2005.

**Jeannette Owings-Ballard,**

*Administrative Support Officer.*

[FR Doc. 05–12083 Filed 6–20–05; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0068]**

### Federal Acquisition Regulation;Submission for OMB Review; Economic Price Adjustment

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning economic price adjustment. A request for public comments was published in the **Federal Register** at 70 FR 24773 on May 11, 2005. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before July 21, 2005.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Jerry Zaffos, Contract Policy Division, GSA, at (202) 208–6091.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

A fixed-price contract with economic price adjustment provides for upward and downward revision of the stated contract price upon occurrence of specified contingencies. In order for the contracting officer to be aware of price changes, the firm must provide pertinent information to the Government. The information is used to determine the proper amount of price adjustments required under the contract.

**B. Annual Reporting Burden**

*Respondents:* 5,346
*Responses Per Respondent:* 1.
*Annual Responses:*5,346.
*Hours Per Response:*.25.
*Total Burden Hours:* 1,337.

**OBTAINING COPIES OF PROPOSALS:** Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0068, Economic Price Adjustment, in all correspondence.

Dated: June 10, 2005

**Julia B. Wise**

*Director,Contract Policy Division.*

[FR Doc. 05–12181 Filed 6–20–05; 8:45 am]

**BILLING CODE 6820–EP–S**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0108]**

### Federal Acquisition Regulation; Submission for OMB Review; Bankruptcy

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning bankruptcy. A request for public comments was published in the **Federal Register** at 70 FR 24403, May 9, 2005. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before July 21, 2005.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No.9000–0108, Bankruptcy, in all correspondence.

**FOR FURTHER INFORMATION CONTACT:** Jeritta Parnell, Contract Policy Division, GSA (202) 501–4082.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

Under statute, contractors may enter into bankruptcy which may have a significant impact on the contractor's ability to perform it's Government contract. The Government often does not receive adequate and timely notice of this event. The clause at 52.242–13 requires contractors to notify the contracting officer within 5 days after the contractor enters into bankruptcy.

**B. Annual Reporting Burden**

*Respondents:* 1,000.
*Responses Per Respondent:* 1.
*Annual Responses:*1,000.
*Hours Per Response:* 1.
*Total Burden Hours*: 1,000.

**C. Annual Recordkeeping Burden**

*Recordkeepers:* 1,000.
*Hours Per Recordkeeper*: .25.
*Total Burden Hours:* 250.
*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0108, Bankruptcy, in all correspondence.

Dated: June 10, 2005

**Julia B. Wise**

*Director,Contract Policy Division.*

[FR Doc. 05–12182 Filed 6–20–05; 8:45 am]

**BILLING CODE 6820–EP–S**

## DEPARTMENT OF EDUCATION

### Office of Innovation and Improvement; Overview Information, Presidential Academies for American History and Civics Education, Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.215A.

*Dates:*

*Applications Available:* June 21, 2005. Deadline for Notice of Intent to Apply: July 21, 2005 Deadline for Transmittal of Applications: August 5, 2005. Deadline for Intergovernmental Review: September 9, 2005.

*Eligible Applicants:* Institutions of higher education (IHEs), museums, libraries, and other public and private agencies, organizations, and institutions (including for-profit organizations) or a consortium of such agencies, organizations, and institutions.

Applicants are required to submit in their applications evidence of their organization's demonstrated expertise in historical methodology or the teaching of history.

**Note:** If more than one eligible entity wishes to form a consortium and jointly submit a single application, they must follow the procedures for group applications described in 34 CFR 75.127 through 34 CFR 75.129 of the Education Department General Administrative Regulations (EDGAR).

*Estimated Available Funds:* $700,000.

*Estimated Range of Awards:* $300,000 to $600,000 for each budget period (up to 5 budget periods). Funding for subsequent years is subject to the availability of funds and the approval of continuation awards (see 34 CFR 75.253).

*Estimated Number of Awards:* 1–2.

The number of awards made under this competition will depend upon the quality of the applications received. The size of the awards will depend upon the scope of the projects proposed. Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2006 from the list of unfunded applications from this competition.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months. Grantees that propose a 60-month

project period will be required to supplement the annual performance report with an interim evaluation of the project near the end of the third budget period. The Department, at its discretion, will use the evaluation results along with the annual performance report to determine whether to continue the grant (See 34 CFR 75.250 through 75.253).

*Budget Period:* 12 months. (The first budget period is the first 12 months of the project period; subsequent budget periods commence on the first day following the previous budget period.)

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Program:* This program supports the establishment of Presidential Academies for the Teaching of American History and Civics that offer workshops for both veteran and new teachers of American history and civics to strengthen their knowledge and preparation for teaching these subjects (Presidential Academies).

*Priorities:* This competition contains one absolute priority and one invitational priority. We are establishing the absolute priority in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA).

*Absolute Priority:* For FY 2005 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this absolute priority.

This priority is:

*Absolute Priority—Presidential Academies for New and Veteran Teachers of American History and Civics*

An applicant for a Presidential Academy must:

(a) Propose a project that would serve both new and veteran middle and/or high school teachers of American history and civics.

(b) Propose a project that provides for a summer residential academy of at least two weeks that focuses on helping teachers acquire a deeper understanding and knowledge of American history and civics. The academy must not replace a current, established project.

(c) Describe, in its application, how the professional development provided by the experience in the academy will improve student achievement in history and civics.

(d) Demonstrate, in its application, how specific civics and traditional American history content will be covered by the project, including the following:

(1) *Civics content:* An understanding of the development and function of local, State and Federal Government and citizens' responsibilities with respect to these institutions.

(2) *Traditional American history content:*

(i) Significant issues, episodes and turning points in the history of the United States.

(ii) How the words and deeds of individuals have determined the course of the Nation.

(iii) How the principles of freedom and democracy articulated in the founding documents of this nation have shaped the United States' struggles and achievements as well as its social, political, and legal institutions and relations.

(e) Propose an evaluation on the success of the project in achieving project objectives that will (1) provide quality data related to the performance measure for this program listed in Section VI, 4 of this notice; and (2) provide the Department an interim evaluation report near the end of the third budget period. The Department, at its discretion, will use the evaluation results along with the annual performance report to determine whether to continue the grant (*See* 34 CFR 75.250 through 34 CFR 75.253).

The evaluation plan must be designed to shape the development of the project from the beginning of the project period. The plan must include benchmarks that monitor progress toward specific project objectives and performance measures to assess the impact on teaching, learning, and other important outcomes for project participants. More specifically, the plan must identify the individual(s) and/or organization(s) that will evaluate the project and describe their qualifications. The plan must describe the evaluation design, indicating: (1) What types of data will be collected; (2) when various types of data will be collected; (3) what methods of evaluation will be used; (4) what instruments will be developed and when; (5) how the data will be analyzed; (6) when reports of results and outcomes will be available; and (7) how the applicant will use the evaluation to monitor progress of the project and to provide accountability information both about success at the initial site and effective strategies for replication of the academy in other settings. Applicants are encouraged to devote an appropriate level of resources to the project evaluation.

*Invitational Priority:* Within the absolute priority, we are particularly interested in applications that address the following invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

*Invitational Priority—Schools in High-Need Local Educational Agencies (LEAs)*

The proposed project will include a significant proportion of project participants from schools in high-need local educational agencies (LEAs). As defined in section 2102(3) of the Elementary and Secondary Education Act of 1965, as amended, a ''high-need''—LEA is an LEA

(a)(1) That serves not fewer than 10,000 children from families with incomes below the poverty line, or (2) for which not less than 20 percent of the children served by the LEA are from families with incomes below the poverty line; or

(b) For which there is (1) a high percentage of teachers not teaching in the academic subjects or grade levels the teachers were trained to teach, or (2) a high percentage of teachers with emergency, provisional, or temporary certification or licensing.

*Waiver of Proposed Rulemaking:* Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities, selection criteria, and eligibility requirements. Section 437(d)(1) of GEPA (20 U.S.C. 1232(d)(1)), however, allows the Secretary to exempt from rulemaking requirements, regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program under the American History and Civics Education Act of 2004 and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forego public comment on the absolute priorities, selection criteria, and non-statutory application requirements in this notice under Section 437(d)(1) of GEPA. These absolute priorities, selection criteria, and eligibility requirements will apply to the FY 2005 grant competition and any subsequent year in which we make awards based on the list of unfunded applicants from this competition.

**Program Authority:** P.L. 108–474; 118 Stat. 3898.

*Applicable Regulations:* EDGAR in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only.

**Note:** The regulations in 34 CFR part 99 apply to an educational agency or institution.

## II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* $700,000.

*Estimated Range of Awards:* $300,000 to $600,000 for each budget period (up to 5 budget periods). Funding for subsequent years is subject to the availability of funds and the approval of continuation awards (see 34 CFR 75.253).

*Estimated Number of Awards:* 1–2.

The number of awards made under this competition will depend upon the quality of the applications received. The size of the awards will depend upon the scope of the projects proposed. Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2006 from the list of unfunded applications from this competition.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months. Grantees that propose a 60-month project period will be required to supplement the annual performance report with an interim evaluation of the project near the end of the third budget period. The Department, at its discretion, will use the evaluation results along with the annual performance report to determine whether to continue the grant (See 34 CFR 75.250 through 75.253).

*Budget Period:* 12 months. (The first budget period is the first 12 months of the project period; subsequent budget periods commence on the first day following the previous budget period.)

## III. Eligibility Information

1. *Eligible Applicants:* IHEs, museums, libraries, and other public and private agencies, organizations and institutions (including for-profit organizations) or a consortium of such agencies, organizations, and institutions.

Applicants are required to submit in their application evidence of their organization's demonstrated expertise in historical methodology or the teaching of history.

**Note:** If more than one eligible entity wishes to form a consortium and jointly submit a single application, they must follow the procedures for group applications described in 34 CFR 75.127 through 34 CFR 75.129 of the Education Department General Administrative Regulations (EDGAR).

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

## IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.215A.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in Section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent to Apply: The Department is requesting those entities that are considering submitting an application to indicate their intent in a letter, addressed to the contact person listed in Section VII of this notice. The letter of intent should include the name of the organization that will be submitting the application(s).

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. *All of the information addressing the selection criteria and the priorities must be included in the narrative section of the application.* It is strongly suggested that you limit the narrative of your application to the equivalent of no more than 25 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The suggested page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the evidence of eligibility, or the letters of support.

3. *Submission Dates and Times:*

Applications Available: June 21, 2005.

Deadline for Notice of Intent to Apply: July 21, 2005.

Deadline for Transmittal of Applications: August 5, 2005.

Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-Grants system. For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: September 9, 2005.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically, unless you qualify for an exception to this requirement in accordance with the instructions in this section.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks

before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

a. *Electronic Submission of Applications.*

Applications for grants under the Presidential Academies for Teaching of American History and Civics—CFDA Number 84.215A must be submitted electronically using e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this competition after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Any narrative sections of your application must be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

(1) Print ED 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

*Application Deadline Date Extension in Case of e-Application System Unavailability:* If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of the Department's e-Application system.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the e-Application system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Department's e-Application system;

*and*

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Neil Danberg, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W324, Washington, DC 20202–5960. FAX: (202) 401–8466.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

*By mail through the U.S. Postal Service:* U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.215A), 400 Maryland Avenue, SW., Washington, DC 20202–4260, or

*By mail through a commercial carrier:* U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.215A), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.215A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

*Note for Mail or Hand Delivery of Paper Applications:* If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

## V. Application Review Information

1. *Selection Criteria:* We will use the following selection criteria to evaluate applications under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

a. *Quality of the project design* (25 points). In determining the quality of the design of the proposed project, the Secretary considers the extent to which the proposed project represents an exceptional approach to the priorities established for the competition.

b. *Significance* (40 points). In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The demonstrated expertise and experience of the organization in history or civics or the teaching of history or civics.

(ii) The format in which the project will deliver the history and civics content, including but not limited to, the reading list and syllabus for the academy.

(iii) The quality of the staff and consultants responsible for conducting project activities, emphasizing, where relevant, their teaching experience and scholarship in subject areas relevant to the teaching of traditional American history. The applicant should include the curriculum vitae for these individuals in appendices to the grant application.

c. *Quality of Management Plan* (15 points). In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

d. *Quality of Project Evaluation* (20 points). In determining the quality of the evaluation, the Secretary considers the extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118. For specific requirements on grantee reporting, please go to: *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

Funded projects requesting a 60-month project period, must submit an interim evaluation of the project near the end of the third budget period. The Department, at its discretion, may continue the grant for an additional two years based on the results of this evaluation (see 34 CFR 75.250 through 75.253).

4. *Performance Measures:*

*Indicator:* Teachers will demonstrate through pre- and post-assessments an increased understanding of American history and civics that can be directly linked to their participation in the Presidential Academy. *Measure:* The average percentage gain on a teacher assessment after participation in the Presidential Academy.

## VII. Agency Contact

*For Further Information Contact:* Neil Danberg, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W324, Washington, DC 20202–5960. Telephone: (202) 205–3385 or by e-mail: *Academies@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 program contact person listed in this section.

**VIII. Other Information**

*Electronic Access to This Document:* You may view this document, as well as all other documents of this Department 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.*

Dated: June 16, 2005.

**Nina Shokraii Rees,**

*Assistant Deputy Secretary for Innovation and Improvement.*

[FR Doc. 05–12227 Filed 6–20–05; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

## Office of Safe and Drug-Free Schools; Overview Information, Emergency Response and Crisis Management Grant Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.184E.

*Dates*

*Applications Available:* June 21, 2005.

*Deadline for Transmittal of Applications:* July 29, 2005.

*Deadline for Intergovernmental Review:* August 29, 2005.

*Eligible Applicants:* Local educational agencies (LEAs).

*Estimated Available Funds:* $27,000,000. Contingent upon the availability of funds, the Secretary may make additional awards in FY 2006 from the rank-ordered list of unfunded applicants from this competition.

*Estimated Range of Awards:* $100,000–$500,000.

*Estimated Average Size of Awards:* $100,000 for small districts (1–20 school facilities); $250,000 for medium-sized districts (21–75 school facilities); and $500,000 for large districts (76 or more school facilities).

*Estimated Number of Awards:* 104.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 18 months.

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Program:* The Emergency Response and Crisis Management grant program supports efforts by LEAs to improve and strengthen their school emergency response and crisis management plans, including training school personnel and students in emergency response procedures; communicating emergency plans and procedures with parents; and coordinating with local law enforcement, public safety, public health, and mental health agencies.

*Priority:* This priority is from the notice of final priority and other application requirements for this program, published elsewhere in this issue of the **Federal Register.**

*Absolute Priority:* For FY 2005 and any subsequent year in which we make awards based on the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority supports local educational agency (LEA) projects to improve and strengthen emergency response and crisis management plans, at the district and school-building level, addressing the four phases of crisis planning: Prevention/Mitigation, Preparedness, Response, and Recovery. Plans must include: (1) Training for school personnel and students in emergency response procedures; (2) coordination with local law enforcement, public safety, public health, and mental health agencies; and (3) a method for communicating school emergency response policies and reunification procedures to parents and guardians.

*Other Application Requirements:*

1. *Partner Agreements.* To be considered for a grant award, an applicant must include in its application an agreement that details the participation of each of the following five community-based partners: Law enforcement, public safety, public health, mental health, and the head of the applicant's local government (for example the mayor, city manager, or county executive). The agreement must include a description of each partner's roles and responsibilities in improving and strengthening emergency response plans at the district and school-building level, and an authorized signature representing the LEA and each partner acknowledging the agreement. If one or more of the five partners listed is not present in the applicant's community, or cannot feasibly participate, the agreement must explain the absence of each missing partner. To be considered eligible for funding, however, an application must include a signed agreement between the LEA, a law enforcement partner, and at least one of the other required partners (public safety, public health, mental health, or head of local government).

Applications that fail to include the required agreement, including information on partners' roles and responsibilities and on their commitment to continuation and continuous improvement (with signatures and explanations for missing signatures as specified above), will not be read.

Although this program requires partnerships with other parties, administrative direction and fiscal control for the project must remain with the LEA.

2. *Coordination with State or Local Homeland Security Plan.* All emergency response and crisis management plans must be coordinated with the Homeland Security Plan of the State or locality in which the LEA is located. All States submitted such a plan to the Department of Homeland Security on January 30, 2004. To ensure that emergency services are coordinated, and to avoid duplication of effort within States and localities, applicants must include in their applications an assurance that the LEA will coordinate with, and follow the requirements of, their State or local Homeland Security Plan for emergency services and initiatives.

3. *Support of the National Incident Management System.* Applicants also must agree to support the implementation of the National Incident Management System (NIMS). In accordance with Homeland Security Presidential Directive/HSPD–5, the NIMS provides a consistent approach for Federal, State, and local governments to work effectively and efficiently together to prepare for, prevent, respond to, and recover from domestic incidents, regardless of cause, size, or complexity. LEAs, working in collaboration with State and local resources, are encouraged to achieve full NIMS implementation by September 30, 2005. To the extent that full compliance is not possible by September 30, 2005, LEAs, working in coordination with State and local resources, should leverage federal preparedness assistance

to complete NIMS implementation by September 30, 2006. To be considered eligible for funding, an application must include an assurance that the LEA has completed, or will complete by September 30, 2006, the following steps to support NIMS implementation:

- Administer the NIMS Awareness Course: ''National Incident Management System (NIMS), An Introduction'' (IS 700) to key district and school staff. This independent study course, developed by the Emergency Management Institute (EMI), explains the purpose, principles, key components, and benefits of the NIMS. The course is available online and will take between forty-five minutes to three hours to complete. The course is available on the EMI Web site at: *http://training.fema.gov/EMIWeb/IS/is700.asp.*
- Formally recognize the NIMS and adopt NIMS principles and policies. Districts and/or their local government should establish an executive order, resolution, or ordinance to formally adopt the NIMS.
- Establish a NIMS baseline to determine which NIMS requirements have been met by the LEA. Districts should coordinate with their community partners to assess the district's overall compliance with the NIMS, and determine gaps in compliance that need to be closed in order to reach full implementation of the NIMS.
- Establish a timeframe and strategy for full NIMS implementation.
- Establish the use of the Incident Command System (ICS). The ICS has been established by the NIMS as the standardized incident organizational structure for the management of all incidents. Districts should coordinate with community partners listed above in institutionalizing the use of the ICS in a manner that is consistent with the concepts and principles in the NIMS.

**Note:** Since LEAs are integral to local governments, an LEA's NIMS compliance must be achieved in close coordination with the local government and with recognition of the first responder capabilities held by the LEA and the local government. As LEAs are not traditional response organizations, first responder services will typically be provided to LEAs by local fire and rescue departments, emergency medical service providers, and law enforcement agencies. This traditional relationship must be acknowledged in achieving NIMS compliance in an integrated NIMS compliance plan for the local government and the LEA. LEA participation in the NIMS preparedness program of the local government is essential to ensure that first responder services are delivered to schools in a timely and effective manner. Additional information about NIMS implementation is available at *http://www.fema.gov/nims.*

4. *Individuals with Disabilities.* The applicant's plan must demonstrate that the applicant has taken into consideration the communication, transportation, and medical needs of individuals with disabilities within the school district.

*Program Authority:* 20 U.S.C. 7131.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, 99, and 299. (b) The notice of final priority and other application requirements published elsewhere in this issue of the **Federal Register**.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except Federally recognized Indian tribes.

## II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* $27,000,000. Contingent upon the availability of funds, the Secretary may make additional awards in FY 2006 from the list of unfunded applicants from this competition.

*Estimated Range of Awards:* $100,000–$500,000.

*Estimated Average Size of Awards:* $100,000 for small districts (1–20 school facilities); $250,000 for medium-sized districts (21–75 school facilities); and $500,000 for large districts (76 or more school facilities).

*Estimated Number of Awards:* 104.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 18 months.

## III. Eligibility Information

1. *Eligible Applicants:* LEAs. Other eligibility requirements are listed in the *Other Application Requirements* elsewhere in this notice.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

3. *Other:*

(a) *Equitable Participation by Private School Children and Teachers.*

Section 9501 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), requires that SEAs, LEAs or other entities receiving funds under the Safe and Drug-Free Schools and Communities Act are required to provide for the equitable participation of private school children, their teachers, and other educational personnel in private schools located in areas served by the grant recipient. In order to ensure that activities under this grant program address the needs of private school children, LEAs must engage in timely and meaningful consultation with private school officials during the design and development of the program. This consultation must take place before any decision is made that affects the opportunities of eligible private school children, teachers, and other educational personnel to participate.

In order to ensure equitable participation of private school children, teachers, and other educational personnel, an LEA must consult with private school officials on issues such as: hazards/vulnerabilities unique to private schools in the LEA's service area, training needs, and existing emergency management plans and crisis response resources already available at private schools.

(b) *Maintenance of Effort.*

Section 9521 of the ESEA requires that LEAs may receive a grant only if the SEA finds that the combined fiscal effort per student or the aggregate expenditures of the LEA and the State with respect to the provision of free public education by the LEA for the preceding fiscal year was not less than 90 percent of the combined effort or aggregate expenditures for the second preceding fiscal year.

## IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.184E.

You may also download the application from the Department of Education's Web site at: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

The public can also obtain applications directly from the program office: Sara Strizzi, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E320, Washington, DC 20202–

6450. Telephone: (202) 708–4850 or by e-mail: *sara.strizzi@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.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

3. *Submission Dates and Times:*

Applications Available: June 21, 2005.

*Deadline for Transmittal of Applications:* July 29, 2005.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants system, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements. Deadline for Intergovernmental Review: August 29, 2005.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

If you choose to submit your application to us electronically, you must use e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- Your participation in e-Application is voluntary.
- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this competition after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Any narrative sections of your application must be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgement that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

(1) Print ED 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

*Application Deadline Date Extension in Case of System Unavailability:* If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of the Department's e-Application system. If the e-Application system is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgement of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

*By mail through the U.S. Postal Service:* U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.184E), 400 Maryland Avenue, SW., Washington, DC 20202–4260.

or

*By mail through a commercial carrier:* U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.184E),

7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.184E), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

*Note for Mail or Hand Delivery of Paper Applications:* If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

## V. Application Review Information

*Selection Criteria:* The selection criteria for this competition are in the application package.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. You must also submit a progress report nine months after the award date. This report should provide the most current performance and financial expenditure information, including baseline data.

4. *Performance Measures:* The Secretary has established the following performance measures for assessing the effectiveness of the Emergency Response and Crisis Management Grant Program:

- Demonstration of increased number of hazards addressed by the improved school emergency response plan as compared to the baseline plan;
- Demonstration of improved response time and quality of response to practice drills and simulated crises; and
- A plan for and commitment to the sustainability and continuous improvement of the school emergency response plan by the district and community partners beyond the period of Federal financial assistance.

These three measures constitute the Department's indicators of success for this program. Consequently, applicants for a grant under this program are advised to give careful consideration to these three measures in conceptualizing the approach and evaluation of their proposed project. If funded, applicants will be asked to collect and report data in their performance and final reports about progress toward these measures.

## VII. Agency Contact

**FOR FURTHER INFORMATION CONTACT:** Sara Strizzi, U.S. Department of Education, 400 Maryland Ave., SW., Room 3E320, Washington, DC 20202–6450. Telephone: (202) 708–4850 or by email: *sara.strizzi@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 program contact person listed in this section.

## VIII. Other Information

*Electronic Access to This Document:* You may view this document, as well as all other documents of this Department 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*.

Dated: June 16, 2005.

**Deborah A. Price,**

*Assistant Deputy Secretary for Safe and Drug-Free Schools.*

[FR Doc. 05–12224 Filed 6–20–05; 8:45 am]

**BILLING CODE 4000–01–P**

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## DEPARTMENT OF EDUCATION

### Safe and Drug-Free Schools Programs, Final Priority and Other Application Requirements

**AGENCY:** Office of Safe and Drug-Free Schools, Department of Education.

**ACTION:** Notice of final priority and other application requirements.

**SUMMARY:** The Assistant Deputy Secretary for Safe and Drug-Free Schools announces a priority and other application requirements under the Emergency Response and Crisis Management Grants program. We may use this priority and these application requirements for competitions in fiscal

year (FY) 2005 and later years. We take this action to focus Federal financial assistance on an identified national need. We intend the priority to support grants to local educational agencies (LEAs) to improve and strengthen emergency response and crisis management plans.

**EFFECTIVE DATE:** The priority and other application requirements are effective July 21, 2005.

**FOR FURTHER INFORMATION CONTACT:** Sara Strizzi, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E320, Washington, DC 20202. Telephone: (202) 708–4850 or via Internet: *sara.strizzi@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:** The events of September 11, 2001, made schools and communities aware that, in addition to planning for traditional crises and emergencies, schools must now plan to respond to possible terrorist attacks on campus or in the community. The purpose of this program is to support LEA projects to improve and strengthen emergency response and crisis management plans, at the district and school-building level, addressing the four phases of crisis planning: Prevention/Mitigation, Preparedness, Response, and Recovery. Plans must include: (1) training for school personnel and students in emergency response procedures; (2) coordination with local law enforcement, public safety, public health, and mental health agencies; and (3) a method for communicating school emergency response policies and reunification procedures to parents and guardians.

We published a notice of proposed priority and other application requirements for this program in the **Federal Register** on April 14, 2005 (70 FR 19736).

**Analysis of Comments and Changes**

In response to our invitation in the notice of proposed priority and other application requirements, three parties submitted comments on the proposed priority and application requirements. An analysis of the comments and of any changes in the priority and other application requirements since publication of the notice of proposed priority and other application requirements follows.

Generally, we do not address technical and other minor changes and suggested changes the law does not authorize us to make under the applicable statutory authority.

*Comment:* One commenter requested clarification regarding the implementation date of September 30, 2005 for requirements under the National Incident Management System (NIMS). The commenter noted that the proposed July 29, 2005 application due date does not allow adequate time to complete implementation of the NIMS requirements by September 30, 2005.

*Discussion:* The Department of Homeland Security (DHS) has established minimum NIMS compliance activities and deadlines for the State, territorial, and local levels for FY 2005, which ends on September 30, 2005. The activities and deadlines listed in the notice of proposed priority and other application requirements reflected these requirements. However, as FY 2005 is a start-up year for NIMS implementation, full compliance with the NIMS is not a requirement to receive FY 2005 grant funds. LEAs that have not completed all FY 2005 NIMS requirements by September 30, 2005 should leverage preparedness assistance to complete NIMS implementation by September 30, 2006.

*Change:* We have revised the priority to clarify NIMS implementation deadlines. The priority now allows for LEAs that have not completed all FY 2005 NIMS requirements by September 30, 2005 to complete implementation of the requirements during FY 2006.

*Comment:* One commenter suggested substituting ''local public health agencies'' for ''local health agencies'' in the priority and application requirements.

*Discussion:* We agree that the priority and other application requirements would be clearer with the change recommended by the commenter. The term ''public health'' is used consistently at the Federal, State, and local levels to describe an agency or entity that performs essential functions including public health programs, activities, or services. Public health agencies are directly responsible for critical aspects related to emergency planning and response. According to DHS, public health agencies are the primary entities responsible for conducting one or more of the following functions or activities: monitoring health status to identify community health problems; diagnosing and investigating health problems and health hazards in the community; informing, educating and empowering people about health issues; mobilizing community partnerships to identify and solve health problems; developing policies and plans that support individual and community health efforts; enforcing laws and regulations that protect health and ensure safety; evaluating the effectiveness, accessibility, and quality of personal and population-based health services; and researching for new insights and innovative solutions to health problems. The term ''public health agencies'' more accurately reflects the role of the health care system in emergency planning and response.

*Change:* We have substituted ''local public health agencies'' for ''local health agencies'' in the priority and application requirements.

*Comment:* One commenter suggested that the priority allow for funding State educational agencies (SEAs) in order to encourage standardization and involvement at the State level as well as the local level.

*Discussion:* Generally, we believe that LEAs are better positioned to support the development of emergency response and crisis management plans that are specific to individual school sites—the primary focus of this grant program. LEAs must identify local first responders and mental health professionals to help schools respond to crises and to support students and their families and staff in the recovery process. LEAs also work with schools directly in developing plans that address unique local threats and conditions. While some issues associated with response and recovery lend themselves to a degree of standardization (for example selection of communication equipment and communication protocols), even standardized processes or plans must be modified to address unique local needs and issues. We believe that SEAs have a very significant and valuable role to play in the development of Statewide or regional protocols, practices, and templates related to crisis prevention, response and recovery, but that those plans must be adapted and practiced at the LEA and school building level if they are to provide school personnel and other first responders with the skills and confidence they need to effectively manage a crisis situation. We encourage SEAs to work in collaboration with individual districts and to provide guidance as needed.

*Change:* None.

**Note:** This notice does *not* solicit applications. In any year in which we choose to use this priority and other application

requirements, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

*Absolute priority:* Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

*Competitive preference priority:* Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

*Invitational priority:* Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

**Priority**

*Improvement and Strengthening of School Emergency Response and Crisis Management Plans*

The priority supports local educational agency (LEA) projects to improve and strengthen emergency response and crisis management plans, at the district and school-building level addressing the four phases of crisis planning: Prevention/Mitigation, Preparedness, Response, and Recovery. Plans must include: (1) Training for school personnel and students in emergency response procedures; (2) coordination with local law enforcement, public safety, public health, and mental health agencies; and (3) a method for communicating school emergency response policies and reunification procedures to parents and guardians.

**Other Application Requirements**

1. *Partner Agreements.* To be considered for a grant award, an applicant must include in its application an agreement that details the participation of each of the following five community-based partners: Law enforcement, public safety, public health, mental health, and the head of the applicant's local government (for example the mayor, city manager, or county executive). The agreement must include a description of each partner's roles and responsibilities in improving and strengthening emergency response plans at the district and school-building level, a description of each partner's commitment to the continuation and continuous improvement of emergency response plans at the district and school-building level, and an authorized signature representing the LEA and each partner acknowledging the agreement. If one or more of the five partners listed is not present in the applicant's community, or cannot feasibly participate, the agreement must explain the absence of each missing partner. To be considered eligible for funding, however, an application must include a signed agreement between the LEA, a law enforcement partner, and at least one of the other required partners (public safety, public health, mental health, or head of local government).

Applications that fail to include the required agreement, including information on partners' roles and responsibilities and on their commitment to continuation and continuous improvement (with signatures and explanations for missing signatures as specified above), will not be read.

Although this program requires partnerships with other parties, administrative direction and fiscal control for the project must remain with the LEA.

2. *Coordination with State or Local Homeland Security Plan.* All emergency response and crisis management plans must be coordinated with the Homeland Security Plan of the State or locality in which the LEA is located. All States submitted such a plan to the Department of Homeland Security on January 30, 2004. To ensure that emergency services are coordinated, and to avoid duplication of effort within States and localities, applicants must include in their applications an assurance that the LEA will coordinate with, and follow, the requirements of their State or local Homeland Security Plan for emergency services and initiatives.

3. *Support of the National Incident Management System.* Applicants also must agree to support the implementation of the National Incident Management System (NIMS). In accordance with Homeland Security Presidential Directive/HSPD–5, the NIMS provides a consistent approach for Federal, State, and local governments to work effectively and efficiently together to prepare for, prevent, respond to, and recover from domestic incidents, regardless of cause, size, or complexity.

LEAs, working in collaboration with State and local resources, are encouraged to achieve full NIMS implementation by September 30, 2005. To the extent that full compliance is not possible by September 30, 2005, LEAs, working in coordination with State and local resources, should leverage federal preparedness assistance to complete NIMS implementation by September 30, 2006. To be considered eligible for funding, an application must include an assurance that the LEA has completed, or will complete by September 30, 2006, the following steps to support NIMS implementation:

- Administer the NIMS Awareness Course: ''National Incident Management System (NIMS), An Introduction'' (IS 700) to key district and school staff. This independent study course, developed by the Emergency Management Institute (EMI), explains the purpose, principles, key components, and benefits of the NIMS. The course is available online and will take between forty-five minutes to three hours to complete. The course is available on the EMI Web site at: *http://training.fema.gov/EMIWeb/IS/is700.asp*
- Formally recognize the NIMS and adopt NIMS principles and policies. Districts and/or their local government should establish an executive order, resolution, or ordinance to formally adopt the NIMS.
- Establish a NIMS baseline to determine which NIMS requirements have been met by the LEA. Districts should coordinate with their community partners to assess the district's overall compliance with the NIMS, and determine gaps in compliance that need to be closed in order to reach full implementation of the NIMS.
- Establish a timeframe and strategy for full NIMS implementation.
- Establish the use of the Incident Command System (ICS). The ICS has been established by the NIMS as the standardized incident organizational structure for the management of all incidents. Districts should coordinate with community partners listed above in institutionalizing the use of the ICS in a manner that is consistent with the concepts and principles in the NIMS.

**Note:** Since LEAs are integral to local governments, an LEA's NIMS compliance must be achieved in close coordination with the local government and with recognition of the first responder capabilities held by the LEA and the local government. As LEAs are not traditional response organizations, first responder services will typically be provided to LEAs by local fire and rescue departments, emergency medical service providers, and law enforcement agencies. This traditional relationship must be acknowledged in achieving NIMS compliance in an integrated NIMS compliance plan for the local government and the LEA. LEA participation in the NIMS preparedness program of the local government is essential to ensure that first responder services are delivered to

schools in a timely and effective manner. Additional information about NIMS implementation is available at *http://www.fema.gov/nims.*

4. *Individuals with Disabilities.* The applicant's plan must demonstrate that the applicant has taken into consideration the communication, transportation, and medical needs of individuals with disabilities within the school district.

*Executive Order 12866*

This notice of final priority and other application requirements has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of final priority are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of final priority and other application requirements, we have determined that the benefits of the final priority and other application requirements justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the costs and benefits in the notice of proposed priority and other application requirements.

*Intergovernmental Review*

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

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You may also view this document in text or PDF at the following sites: *http://www.ed.gov/emergencyplan, http://www.ed.gov/programs/dvpemergencyresponse/index.html.*

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(Catalog of Federal Domestic Assistance Number 84.184.E-Emergency Response and Crisis Management Grant program.)

**Program Authority:** 20 U.S.C. 7131.

Dated: June 16, 2005.

**Deborah A. Price,**

*Asistant Deputy Secretary for Safe and Drug-Free Schools.*

[FR Doc. 05–12225 Filed 6–20–05; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Notice of Final Extension of Project Period and Waiver for the Spinal Cord Injury Model Systems Centers

**AGENCY:** National Institute on Disability and Rehabilitation Research (NIDRR), Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice of final extension of project period and waiver for the Spinal Cord Injury Model Systems Centers (SCIMS).

**SUMMARY:** The Secretary waives the requirements in Education Department General Administrative Regulations (EDGAR), in 34 CFR 75.250 and 75.261(c)(2), respectively, that generally prohibit project periods exceeding five years and project period extensions involving the obligation of additional Federal funds. This extension of project period and waiver enables the current SCIMS (a total of 16), which provide assistance to establish innovative projects for the delivery, demonstration, and evaluation of comprehensive medical, vocational, and other rehabilitation services to meet the wide range of needs of individuals with Spinal Cord Injury (SCI), to receive an additional 12-month Federal funding period ranging from September 1, 2005, until December 1, 2006, a period exceeding the original project period of five years.

**DATES:** *Effective Date:* This priority is effective June 21, 2005.

**FOR FURTHER INFORMATION CONTACT:** Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *donna.nangle@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:** On April 25, 2005, we published a notice in the **Federal Register** (70 FR 21188) proposing an extension of project period and waiver in order to—

(1) Enable the Secretary to provide additional funds to the currently funded centers for an additional 12-month period ranging from September 1, 2005, until December 1, 2006; and

(2) Request comments on the proposed extension and waiver.

There are no substantive differences between the notice of proposed extension of project period and waiver and this notice of final extension of project period and waiver.

**Public Comment**

In the notice of proposed extension of project period and waiver, we invited comments. One party submitted a comment agreeing with the proposal to extend the grant period of the current grantees. We did not receive any comments opposing the proposed extension of project period and waiver. Generally, we do not address technical and other minor changes, as well as suggested changes the law does not authorize us to make.

**Waiver of Delayed Effective Date**

The Administrative Procedure Act requires that a substantive rule shall be published at least 30 days before its effective date, except as otherwise provided for good cause (5 U.S.C. 553(d)(3)). During the 30-day public comment period on the notice of proposed extension of project period and waiver, one party submitted a comment in support of the proposed extension and waiver. There were no objections received on the proposed extension and waiver, and therefore, no substantive changes have been made. In addition, given the fact that the additional period of funding is only for a 12-month period, and in order to make

timely continuation grants to the 16 entities affected, the Secretary has determined that a delayed effective date is unnecessary and contrary to the public interest.

**Background**

NIDRR supports the goals of the President's New Freedom Initiative (NFI) and the National Institute on Disability and Rehabilitation Research Long-Range Plan (Plan), which are designed to help improve rehabilitation research and outcomes for individuals with disabilities.

**Note:** The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/infocus/newfreedom.*

The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/rschstat/research/pubs/index.html.*

In accordance with the goals of the NFI and the Plan, and as authorized under section 204(a)(1) of the Rehabilitation Act of 1973, as amended, through NIDRR, the Department provides funding for projects to improve research and outcomes for individuals with disabilities. The Conference Report accompanying the 2005 Appropriations Act noted that NIDRR received additional funding for the SCIMS program and stated that the conferees intended that the additional funds should be used to support investments that could facilitate multi-center research on therapies, interventions, and the use of technology. NIDRR is conducting background work to inform the competition and plans to defer new awards, formerly scheduled for 2005, until 2006 in order to use the background information to guide development of competition priorities, allow applicants sufficient time to prepare proposals, and place all SCIMS grants on the same funding schedule.

The grants for 16 SCIMS at University of Alabama/Birmingham, Santa Clara Valley Medical Center, Los Amigos Research and Education Institute, Inc., Craig Hospital, University of Miami, Shepherd Center, Inc., Boston University Medical Center Hospital, University of Michigan, University of Missouri/Columbia, Kessler Medical Rehabilitation Research and Education Corporation, Mount Sinai School of Medicine, Thomas Jefferson University Hospital, University of Pittsburgh, The Institute for Rehabilitation and Research, Virginia Commonwealth University, and the University of Washington are scheduled to expire on various dates between August 31, 2005, and November 30, 2005. It would be contrary to the public interest, however, to have a lapse in these SCI research activities before the new awards are made in FY 2006.

To avoid a lapse in research and related activities, the Secretary will fund each of these projects for an additional 12 months. Accordingly, the Secretary waives the requirements in 34 CFR 75.250 and 75.261(c)(2), which prohibit project periods exceeding five years and extensions of project periods that involve the obligation of additional Federal funds.

**Regulatory Flexibility Act Certification**

The Secretary certifies that the final extension of the project period and waiver would not have a significant economic impact on a substantial number of small entities. The only entities that would be affected are the 16 SCIMS.

**Paperwork Reduction Act of 1995**

This final extension of project period and waiver does not contain any information collection requirements.

**Intergovernmental Review**

This program is not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

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Dated: June 15, 2005.

**John H. Hager,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 05–12223 Filed 6–20–05; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Privacy Act of 1974; System of Records—Impact Evaluation of Academic Instruction for After-School Programs

**AGENCY:** Institute of Education Sciences, Department of Education.

**ACTION:** Notice of a new system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department) publishes this notice of a new system of records entitled ''Impact Evaluation of Academic Instruction for After-School Programs'' (18–13–13).

The National Center for Education Evaluation and Regional Assistance at the Department's Institute of Education Sciences (IES) commissioned this evaluation. It will address the following two questions:

(1) What is the effectiveness of offering intensive research-based reading support in an after-school program?

(2) Is it more effective than offering more general academic support such as homework help?

The system will contain information about approximately 4,000 elementary school students and their teachers (approximately 600 teachers—12 teachers in each of the studied centers) in 40 to 50 after-school centers in 20 to 25 school districts yet to be determined. One quarter of these students will be participants using a mathematics curriculum, one quarter will be participants using a reading curriculum, and half will be in a control group. The system will include these students' names and demographic information, such as race/ethnicity, age, gender, and educational background, their results on reading or math assessments, and some of their school records data such as attendance and academic history. The system will also include responses to student and teacher surveys.

**DATES:** The Department seeks comment on this new system of records described in this notice, in accordance with the requirements of the Privacy Act. We must receive your comments on the proposed routine uses for the system of records described in this notice on or before July 21, 2005.

The Department filed a report describing the new system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Government Reform, and the

Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on June 16, 2005. This system of records will become effective at the later date of—(1) the expiration of the 40 day period for OMB review on July 26, 2005 or (2) July 21, 2005, unless the system of records needs to be changed as a result of public comment or OMB review.

**ADDRESSES:** Address all comments about the proposed routine uses the system or records described in this notice to Dr. Ricky Takai, Associate Commissioner, Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue, NW., room 502D, Washington, DC 20208. Telephone: (202) 208–7083. If you prefer to send comments through the Internet, use the following address: *comments@ed.gov.*

You must include the term ''After-School Interventions'' in the subject line of the electronic message.

During and after the comment period, you may inspect all comments about this notice in room 502D, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8:00 a.m. and 4:30 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 supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

**FOR FURTHER INFORMATION CONTACT:** Dr. Ricky Takai. Telephone: (202) 208–7083. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

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

**SUPPLEMENTARY INFORMATION:**

**Introduction**

The Privacy Act (5 U.S.C. 552a) requires the Department to publish in the **Federal Register** this notice of a new system of records maintained by the Department. The Department's regulations implementing the Act are contained in the Code of Federal Regulations (CFR) in 34 CFR part 5b.

The Privacy Act applies to information about individuals that contains individually identifiable information and that is retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a ''record,'' and the system, whether manual or computer-based, is called a ''system of records.'' The Privacy Act requires each agency to publish notices of new or altered systems of records in the **Federal Register** and to submit reports to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), the Chair of the Senate Committee on Homeland Security and Governmental Affairs, and the Chair of the House Committee on Government Reform.

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Dated: June 16, 2005.

**Grover Whitehurst,**

*Director, Institute of Education Sciences.*

For the reasons discussed in the preamble, the Director of the Institute of Education Sciences, U.S. Department of Education, publishes a notice of a new system of records to read as follows:

**18–13–13**

**SYSTEM NAME:**

Impact Evaluation of Academic Instruction For After-School Programs.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

(1) Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue, NW., room 502D, Washington, DC 20208.

(2) MDRC, 16 East 34th Street, New York, NY 10016.

(3) Private/Public Ventures (P/PV), 2000 Market Street, Suite 600, Philadelphia, PA 19103.

(4) Survey Research Management, 1495 Yarmouth Avenue, Suite A, Boulder, Colorado 80304.

The impact evaluation is being conducted by MDRC in collaboration with the Bloom Associates, P/PV, and Survey Research Management. Bloom Associates will not maintain records from this system of records.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

The system will contain information about approximately 4,000 elementary school students and their teachers (approximately 600 teachers—12 teachers in each of the studied centers) in 40 to 50 after-school centers in 20 to 25 school districts yet to be determined. One quarter of these students will be participants using a mathematics curriculum, one quarter will be participants using a reading curriculum, and half will be in a control group. Participation in the study is voluntary. The goal of this study is to establish and evaluate the effects of two supplemental academic programs (a reading program developed by Success For All and a mathematics program developed by Harcourt Publishers) for students with reading and math skills below grade level who participate in after-school programs. Study sites will include, but not be limited to, after-school programs funded by the 21st Century Community Learning Centers program.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system will include the students' names, demographic information such as race/ethnicity, age, gender, and educational background, their results on standardized achievement tests, and some of their school records data, such as attendance and academic history. The system will also include responses to survey questions from the students and from the teachers of these students. These surveys will request information about the teachers' backgrounds, professional experience, and training, as well as information about the academic interventions. The student surveys will request information about the students' participation in after-school activities

and other supplemental reading and mathematics activities.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

The evaluation being conducted is authorized under: (1) Sections 171(b) and 173 of the Education Sciences Reform Act of 2002 (ESRA) (20 U.S.C. 9561(b) and 9563); and (2) section 4202(a)(2) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB) (20 U.S.C. 7172(a)(2)).

**PURPOSE(S):**

The information in this system will be used for the following purpose: to test innovative instructional strategies to be implemented in the after-school programs selected for the study. In particular, this system is necessary to provide information for analyses of the effectiveness of specific reading and mathematics interventions on elementary school students who participate in after-school programs.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement. Any disclosure of individually identifiable information from a record in this system must also comply with the requirements of section 183 of the ESRA (20 U.S.C. 9573) providing for confidentiality standards that apply to all collections, reporting, and publication of data by IES.

(1) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the U.S. Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(2) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department requires the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(3) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher must maintain Privacy Act safeguards with respect to the disclosed records.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Not applicable to this system notice.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

The Department maintains records on CD–ROM, and the contractor and subcontractors maintain data for this system on computers and in hard copy.

**RETRIEVABILITY:**

Records in this system are indexed by a number assigned to each individual that is cross-referenced by the individual's name on a separate list.

**SAFEGUARDS:**

All physical access to the Department's site and to the sites of the Department's contractor and subcontractors, where this system of records is maintained, is controlled and monitored by security personnel. The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This computer system permits data access to Department and contract staff only on a ''need-to-know'' basis and controls individual users'' ability to access and alter records within the system. The contractor, MDRC, and its subcontractors, P/PV, and Survey Research Management, have established similar sets of procedures at their sites to ensure confidentiality of data. Their systems ensure that information identifying individuals is in files physically separated from other research data. They will maintain security of the complete set of all master data files and documentation. Access to individually identifiable data will be strictly controlled. At each site all data will be kept in locked file cabinets during nonworking hours, and work on hard-copy data will take place in a single room, except for data entry. Physical security of electronic data will also be maintained. Security features that protect project data include password-protected accounts that authorize users to use the MDRC, P/PV, or Survey Research Management system only to access specific network directories and network software; user rights and directory and file attributes that limit those who can use particular directories and files and determine how they can use them; e-mail passwords that authorize the user to access mail services; and additional security features that the network administrators establish for projects as needed. The contractor and subcontractor employees who maintain (collect, maintain, use, or disseminate) data in this system must comply with the requirements of the confidentiality standards in section 183 of the ESRA (20 U.S.C. 9573).

**RETENTION AND DISPOSAL:**

Records are maintained and disposed of in accordance with the Department of Education's Records Disposition Schedules, Part 3, Items 2b and 5a.

**SYSTEM MANAGER AND ADDRESS:**

Associate Commissioner, Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue, NW., room 502D, Washington, DC 20208.

**NOTIFICATION PROCEDURE:**

If you wish to determine whether a record exists regarding you in the system of records, contact the systems manager. Your request must meet the requirements of regulations at 34 CFR 5b.5, including proof of identity.

**RECORD ACCESS PROCEDURES:**

If you wish to gain access to your record in the system of records, contact the system manager. Your request must meet the requirements of regulations at 34 CFR 5b.5, including proof of identity.

**CONTESTING RECORD PROCEDURES:**

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of regulations at 34 CFR 5b.7, including proof of identity.

**RECORD SOURCE CATEGORIES:**

The system will include information obtained from the students, including names, demographic information such as race/ethnicity, age, gender, and educational background, and their

results on standardized achievement tests. The system will also include responses to survey questions from the students and from the teachers of these students. These surveys will request information about the teachers' backgrounds, professional experience, and training, as well as information about the academic interventions. The student surveys will request information about the students' participation in after-school activities and other supplemental reading and math activities. This system also consists of information obtained from the student's school, such as data about the student's attendance and academic history.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 05–12226 Filed 6–20–05; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services; List of Correspondence

**AGENCY:** Department of Education.

**ACTION:** List of Correspondence from January 2, 2005 through March 31, 2005.

**SUMMARY:** The Secretary is publishing the following list pursuant to section 607(d) of the Individuals with Disabilities Education Act, as amended (IDEA). Under section 607(d) of the IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education (Department) of the IDEA or the regulations that implement the IDEA.

**FOR FURTHER INFORMATION CONTACT:** Melisande Lee or JoLeta Reynolds. Telephone: (202) 245–7468.

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 a copy of this notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT.**

**SUPPLEMENTARY INFORMATION:** The following list identifies correspondence from the Department issued from January 2, 2005 through March 31, 2005.

Included on the list are those letters that contain interpretations of the requirements of the IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date of and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate. Pursuant to the effective dates set forth in section 302 of the Individuals with Disabilities Education Improvement Act of 2004 (the Act), which amended and reauthorized the IDEA, the changes in IDEA that were made by the Act, with certain enumerated exceptions, will take effect on July 1, 2005. Accordingly, statutory citations in this list, as well as those contained in the letters referenced in this list, refer to the provisions of the IDEA that were in effect at the time the letters were issued.

**Part B—Assistance for Education of All Children With Disabilities**

*Section 611—Authorization; Allotment; Use of Funds; Authorization of Appropriations*

Topic Addressed: Distribution of Funds

○ Office of Special Education Programs memorandum 05–07 dated March 9, 2005, regarding implementation of the funding formula under the IDEA, specifically the year of age cohorts for which a free appropriate public education (FAPE) is ensured.

*Section 612—State Eligibility*

Topic Addressed: Free Appropriate Public Education

○ Office of Special Education Programs memorandum 05–08 dated March 17, 2005, regarding the responsibilities under Part B of IDEA of State and local educational agencies and other public agencies in providing for the education of children with disabilities placed in or referred to private residential programs.

Topic Addressed: Confidentiality of Education Records

○ Letter dated March 3, 2005 to Austin Independent School District Superintendent Dr. Pascal D. Forgione, Jr. from Family Policy Compliance Office Director LeRoy S. Rooker, regarding provisions of the Family Educational Rights and Privacy Act relating to the designation of directory information and clarifying when parent consent is required for the disclosure to third parties of directory information on students with disabilities receiving services under IDEA.

Topic Addressed: Children In Private Schools

○ Letter dated February 17, 2005 to Maine Department of Education Office of Special Services Director David Noble Stockford, regarding the responsibility of Maine and its public agencies to ensure that FAPE is made available to students with disabilities who attend private schools because they reside in school districts that do not operate public high schools, and clarifying that IDEA gives Maine and its public agencies no authority to regulate private schools.

*Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements*

Topic Addressed: Individualized Education Programs

○ Letter dated February 28, 2005 to Massachusetts Advocate Kristen Serwecki, regarding the role of a parent who is the subject of a protective order in the individualized education program (IEP) process, including whether a parent representative can attend an IEP meeting as a member of the IEP team in this circumstance.

*Section 615—Procedural Safeguards*

Topic Addressed: Manifestation Determination Review

○ Letter dated March 18, 2005 to individual (personally identifiable information redacted), regarding the requirements of Part B of IDEA for conducting a manifestation determination review for children with disabilities in disciplinary situations.

*Other Letters That Do Not Interpret the Idea but May Be of Interest to Readers*

Topic Addressed: Extension of Liquidation Periods for Grantees Under State Administered Programs

○ Memorandum dated January 28, 2005 to Chief State School Officers, regarding guidance on general standards for evaluating requests to the Department for extensions of the 90-day liquidation period for obligating Federal funds and a process for handling these requests.

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(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: June 15, 2005.

**John H. Hager,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 05–12228 Filed 6–20–05; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Wednesday, July 13, 2005, 6 p.m.

**ADDRESSES:** DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee.

**FOR FURTHER INFORMATION CONTACT:** Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov* or check the Web site at *http://www.oakridge.doe.gov/em/ssab.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

*Tentative Agenda:* Status of Work in the Melton Valley, East Tennessee Technology Park, and Balance of Reservation Programs.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The DeputyDesignated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make a public comment will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m., Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC on June 15, 2005.

**R. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 05–12190 Filed 6–20–05; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### National Petroleum Council; Notice of Open Meeting; Correction

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting correction.

On June 8, 2005, the Department of Energy published a notice of open meeting announcing a meeting of the National Petroleum Council 70 FR 33464. In that notice, the meeting scheduled on June 22, 2005, was scheduled to start at 9 a.m. Today's notice is announcing that due to the exceptional circumstance of an unforeseen and unavoidable scheduling conflict the meeting will start at 7:30 a.m.

Issued in Washington, DC on June 17, 2005.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 05–12341 Filed 6–17–05; 2:27 pm]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IC05–539–000; FERC–539]**

### Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

June 14, 2005.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of proposed information collection and request for comments.

**SUMMARY:** In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

**DATES:** Comments on the collection of information are due August 26, 2005.

**ADDRESSES:** Copies of sample filings of the proposed collection of information can be obtained from the Commission's Web site (*http://www.ferc.gov/docs-filings/elibrary.asp*) or to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director Officer, ED–33, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC05–539–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing'', and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the eLibrary link. For user assistance, contact *FERCOlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by

telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

**SUPPLEMENTARY INFORMATION:** The information collected under the requirements of FERC–539 ''Gas Pipeline Certificates: Import/Export'' (OMB No. 1902–0062) is used by the Commission to implement the statutory provisions of section 3 of the Natural Gas Act (NGA), 15 U.S.C. 717–717w. Section 3 requires prior authorization before reporting or importing natural gas from or to the United States. Section 3 authorizes the Commission to grant an application, in whole or in part, with modifications and upon terms and conditions as the Commission may find necessary or appropriate. The 1992 amendments to section 3 of the NGA concern the importation or exportation from/to a nation which has a free trade agreement with the United States. With the passage of both the North American Free Trade Agreement and the Canadian Free Trade Agreement, the construction, operation and sitting of import or export facilities are also the subject of the Commission's regulatory focus.

In Order No. 608, the Commission created voluntary procedures whereby prospective applicants could use a collaborative process to resolve significant issues prior to filing an application. This collaborative process allows applicants and interested parties to come together and come to mutual agreements that may help to defuse some of the controversial issues which may otherwise arise once an application has been filed with the Commission.

The pre-filing consultation process combines efforts to address NGA issues with the National Environmental Policy Act (NEPA) review process into a single pre-filing collaborative process that also includes the administrative processes associated with the Clean Water Act, the National Historic Preservation Act, the Endangered Species Act and other relevant statutes. Combining the pre-filing consultation and environmental review into a single pre-filing process simplifies and expedites the authorization of gas facilities and services.

The Commission uses the information to determine the appropriateness of the proposed facilities and their location. The determination involves among other things, an examination of adequacy of design, cost, reliability, redundancy and environmental acceptability. This information is necessary for the Commission to make a determination that the facilities and location are consistent with the public interest. The Commission implements these filings requirements in the Code of Federal Regulations (CFR) under 18 CFR part 153.

*Action:* The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

*Burden Statement:* Public reporting burden for this collection is estimated as:

| Number of respondents annually | Number of responses per respondent | Average burden hours per response | Total annual burden hours |
|---|---|---|---|
| (1) | (2) | (3) | (1)×(2)×(3) |
| 12 | 1 | 241 | 2886 |

Estimated cost burden to respondents is $150,624. (2886 hours/2080 hours per year times $108,558 per year average per employee = $ 150,624). The cost per respondent is $12,552.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) 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) 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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E5–3188 Filed 6–20–05; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP05–368–000]**

## Gulfstream Natural Gas System, L.L.C.; Errata Notice

June 14, 2005.

On June 10, 2005, the Commission issued a Notice of Filing in the above-referenced proceeding and inadvertently omitted the comment date. By this Errata Notice the Commission states that the comment date for the June 10 Notice of Filing is: June 17, 2005.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E5–3186 Filed 6–20–05; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

June 14, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 516–409.

c. *Date Filed:* March 29, 2005.

d. *Applicant:* South Carolina Electric & Gas Company.

e. *Name of Project:* Saluda Hydroelectric Project.

f. *Location:* Lake Murray in Lexington County, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Randolph R. Mahan, Manager, Environmental Programs and Special Projects, SCANA Services, Inc., Columbia, SC, 29218; (803) 217–9538.

i. *FERC Contacts:* Any questions on this notice should be addressed to Mr. Steven Naugle at (202) 502–6061, or e-mail address: *steven.naugle@ferc.gov*.

j. *Deadline for filing comments and or motions:* July 15, 2005.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–516–409) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the e-Filing link. The Commission strongly encourages e-filings.

k. *Description of Proposal:* South Carolina Electric & Gas Company requests Commission authorization to permit Beau Ideal, LLC to use project lands and waters for the installation of a concrete boat ramp and a multi-use docking facility designed to accommodate 32 boats, and the excavation of 395 cubic yards of lakebed material. The proposed ramp and docking facility would provide recreational boating access to Lake Murray for homeowners in a new residential development to be known as Cherokee Shores. The new subdivision will be located off Old Cherokee Road in Lexington County, South Carolina.

l. *Location of the Applications:* The filings are available for review at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please call the Helpline at (866) 208–3676 or contact *FERCOnLineSupport@ferc.gov*. For TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E5–3187 Filed 6–20–05; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

June 15, 2005.

Take notice that the Commission received the following electric rate filings

*Docket Numbers:* ER00–2706–003.

*Applicants:* Foote Creek IV, LLC.

*Description:* Foote Creek IV, LLC submits its triennial updated market analysis in compliance with FERC's July 12, 2000 Order.

*Filed Date:* 06/09/2005.

*Accession Number:* 20050614–0090.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 30, 2005.

*Docket Numbers:* ER02–2551–002.

*Applicants:* Cargill Power Markets, LLC.

*Description:* Cargill Power Markets, LLC notifies FERC of a change in status with respect to its market-based rate authority under ER02–2551.

*Filed Date:* 06/09/2005.

*Accession Number:* 20050614–0091.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 30, 2005.

*Docket Numbers:* ER04–944–001.

*Applicants:* Reliant Energy Wholesale Generation, LLC.

*Description:* Reliant Energy Wholesale Generation, LLC submits revised tariff sheets to its FERC Electric Tariff, Third Revised Volume No. 1, in compliance with the Commission's order issued 5/5/2005, 111 FERC ¶ 61,159 (2005).

*Filed Date:* 06/07/2005.

*Accession Number:* 20050614–0097.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, June 28, 2005.

*Docket Numbers:* ER04–1087–003.

*Applicants:* California Independent System Operator Corporation.

*Description:* The California Independent System Operator Corporation submits tariff revisions in compliance with FERC's 5/9/05 Order, 111 FERC ¶ 61,193 (2005).

*Filed Date:* 06/08/2005.

*Accession Number:* 20050614–0085.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 29, 2005.

*Docket Numbers:* ER05–1091–000.

*Applicants:* Western Electricity Coordinating Council.

*Description:* Western Electricity Coordinating Councils (WECC) submits an amended version of its Rate Schedule FERC No. 1, reflecting changes to its bylaws adopted by vote of the WECC Membership and the WECC Board of Directors.

*Filed Date:* 06/08/2005.

*Accession Number:* 20050613–0102.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 29, 2005.

*Docket Numbers:* ER05–1092–000.

*Applicants:* Hess Energy Power & Gas Company, LLC.

*Description:* Hess Energy Power & Gas Co, LLC submits its Notice of Cancellation of its Rate Schedule FERC No. 1 to become effective 6/9/2005.

*Filed Date:* 06/09/2005.

*Accession Number:* 20050613–0012.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 30, 2005.

*Docket Numbers:* ER05–1094–000.

*Applicants:* MidAmerican Energy Company.

*Description:* MidAmerican Energy Company submits a notice of cancellation of the Interconnection Agreement with Omaha Public Service Company.

*Filed Date:* 06/08/2005.

*Accession Number:* 20050614–0087.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 29, 2005.

*Docket Numbers:* ER05–1095–000.

*Applicants:* Smarr EMC.

*Description:* Smarr EMC submits notice of termination of a long-term wholesale power purchase agreement designated as Supplement 11 to its Rate Schedule FERC 1 to be effective as of 2/3/2005.

*Filed Date:* 06/08/2005.

*Accession Number:* 20050614–0098.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 29, 2005.

*Docket Numbers:* ER05–1096–000.

*Applicants:* MidAmerican Energy Company.

*Description:* MidAmerican Energy Company submits First Revised Service Agreement No. 255, an amendment to the Network Integration Transmission Service Agreement and the Network Operating Agreement with Resale Power Group of Iowa, as agent for the City of Hudson, Iowa.

*Filed Date:* 06/09/2005.

*Accession Number:* 20050614–0094.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 30, 2005.

*Docket Numbers:* ER05–1097–000.

*Applicants:* BJ Energy LLC.

*Description:* BJ Energy LLC submits petition for acceptance of inital rate schedule, waviers & blanket authority under ER05–1097.

*Filed Date:* 06/09/2005.

*Accession Number:* 20050614–0093.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 30, 2005.

*Docket Numbers:* ER05–1098–000; EL05–125–000.

*Applicants:* New York Independent System Operator, Inc.

*Description:* The New York Independent System Operator, Inc. submits the proposed revisions to its Market Administration & Control Area Services Tariff to prospectively exempt Fixed Block Units that substantially achieve their scheduled output level from persistent undergeneration penalities and request for waiver of persistent undergeneration penalties to the extent they were or will be imposed on Fixed Block Units.

*Filed Date:* 06/08/2005.

*Accession Number:* 20050614–0089.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 29, 2005.

*Docket Numbers:* ER05–1099–000.

*Applicants:* E Minus Energy Corporation.

*Description:* Petition for acceptance of initial rate schedule, waivers and blanket authority re E Minus Energy Corporation.

*Filed Date:* 06/09/2005.

*Accession Number:* 20050614–0132.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 30, 2005.

*Docket Numbers:* ER05–1100–000.

*Applicants:* PJM Interconnection L.L.C.

*Description:* PJM Interconnection, LLC submits an executed interconnection service agreement and an executed construction service agreement with Wind Park Bear Creek, LLC and PPL Electric Utilities and a notice of cancellation of an interim interconnection service agreement that has been superseded.

*Filed Date:* 06/09/2005.

*Accession Number:* 20050614–0102.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 30, 2005.

*Docket Numbers:* ER05–399–002.

*Applicants:* Savannah Electric and Power Company.

*Description:* Southern Company Services Inc., as agent for Savannah Electric and Power Company and Georgia Power Company submits a letter reporting that Savannah is making no refund payment to Georgia Power because no revenues were collected prior to acceptance of the Transmission Facilities Agreement.

*Filed Date:* 06/09/2005.

*Accession Number:* 20050610–0003.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 30, 2005.

*Docket Numbers:* ER05–859–001.

*Applicants:* ATPower & Energy, LLC.

*Description:* ATPower & Energy, LLC submits an Amended Petition for Acceptance of Initial Rate Schedule, Waivers & Blanket Authority.

*Filed Date:* 06/09/2005.

*Accession Number:* 20050614–0096.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 30, 2005.

*Docket Numbers:* ER05–931–001.

*Applicants:* Florida Power Corporation.

*Description:* Florida Power Corporation dba Progress Energy Florida, Inc. submits revisions to its 5/3/05 annual cost factor updates for interchange service to the Florida wholesale customers under ER05–931.

*Filed Date:* 06/08/2005.

*Accession Number:* 20050614–0084.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 29, 2005.

*Docket Numbers:* ER05–982–001.

*Applicants:* Prime Power Sales I., L.L.C.

*Description:* Supplement to application of Prime Power Sales I, L.L.C. filed 5/18/2005 for an order accepting initial rate schedule for filing (Rate Schedule 1), waiving regulations and granting blanket approvals.

*Filed Date:* 06/09/2005.

*Accession Number:* 20050610–0057.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 30, 2005.

*Docket Numbers:* ER97–2801–006; ER03–478–005; EL05–95–000.

*Applicants:* PacifiCorp.

*Description:* PacifiCorp and PPM Energy, Inc. provide their first filing in compliance with FERC's 5/9/05 order, 111 FERC 61,205 (2005) .

*Filed Date:* 06/08/2005.

*Accession Number:* 20050614–0121.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 29, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Linda Mitry,**

*Deputy Secretary.*

[FR Doc. E5–3197 Filed 6–20–05; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EC05–94–000, et al.]**

## MidAmerican Energy Company, et al.; Electric Rate and Corporate Filings

June 14, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

### 1. MidAmerican Energy Company [Docket No. EC05–94–000]

Take notice that on June 10, 2005, MidAmerican Energy Company (MidAmerican), filed with the Commission an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby MidAmerican proposes to acquire by exchange from Central Iowa Power Cooperative (CIPCO), a nonjurisdictional electric generation and transmission cooperative, a switchyard and related facilities located in Scott County, Iowa that will be used in conjunction with the provision of retail electric service to one customer.

MidAmerican has served a copy of the filing on CIPCO, the Iowa Utilities Board, the Illinois Commerce Commission, and the South Dakota Public Utilities Commission.

*Comment date:* 5 p.m. Eastern Time on July 1, 2005.

### 2. California Independent System Operator

[Docket Nos. EL00–95–132 and EL00–98–119]

Take notice that on June 9, 2005, the California Independent System Operator (CAISO) tendered for filing an errata to the July 24, 2002 compliance filing made by the CAISO. The CAISO states that the purpose of this filing is to correct an incorrect reference to a bid price level in the clean sheet version of section 2.5.23.3.1 of the ISO Tariff, as included in the July 24, 2002 compliance filing.

*Comment date:* 5 p.m. Eastern Time on July 11, 2005.

### 3. New York Independent System Operator, Inc.

[Docket Nos. EL01–19–006 and EL02–16–006]

Take notice that on June 2, 2005, New York Independent System Operator, Inc. (NYISO) tendered for filing a refund report pursuant to the Commission's Order issued March 4, 2005 in Docket No. EL01–19–002, *et al.*, 110 FERC ¶ 61,243 (2005).

*Comment date:* 5 p.m. Eastern Time on June 23, 2005.

### 4. Reliant Energy Maryland Holdings, LLC and Reliant Energy New Jersey Holdings, LLC (ER00–1749–002); Reliant Energy Mid-Atlantic Power Holdings, LLC (ER00–2508–001); Reliant Energy New Jersey Holdings, LLC and Reliant Energy Services, Inc. (ER99–1801–007); Reliant Energy Seward, LLC (ER01–3035–005); Reliant Energy Solutions East, LLC (ER02–1762–003); Twelvepole Creek, LLC (ER01–852–004); Reliant Energy Coolwater, Inc. (ER02–2453–002); Reliant Energy Ellwood, Inc. (ER02–2451–002); Reliant Energy Etiwanda, Inc. (ER02–2450–002); Reliant Energy Mandalay, Inc. (ER02–2452–002); Reliant Energy Ormond Beach, Inc. (ER02–2449–002)

Take notice that on June 6, 2005, the above-captioned Reliant Companies (Reliant Companies) submitted a compliance filing pursuant to the Commission's order issued May 5, 2005 in *Reliant Energy Aurora, LP, et al.*, 111 FERC ¶ 61,159 (2005).

*Comment Date:* 5 p.m. on June 27, 2005.

### Standard Paragraph

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (19 CFR 385.211 and 385.214) on or before 5 pm Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to long on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protests to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available to review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TYY, call (202) 502–8659.

**Linda Mitry,**

*Deputy Secretary.*

[FR Doc. E5–3198 Filed 6–20–05; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #2

June 15, 2005.

Take notice that the Commission received the following electric rate filings

*Docket Numbers:* ER02–1081–003.
*Applicants:* Indeck-Oswego Limited Partnership.
*Description:* Indeck-Oswego Limited Partnership submits First Substitute Sheet No. 1B, to its FERC Electric Tariff, Original Volume No. 1 to be effective June 30, 2005.
*Filed Date:* 06/08/2005.
*Accession Number:* 20050614–0200.
*Comment Date:* 5 p.m. Eastern Time on Friday, June 24, 2005.

*Docket Numbers:* ER05–1093–000.
*Applicants:* Hermiston Power Partnership.
*Description:* Hermiston Power Partnership submits its Rate Schedule 2 for Reactive Power Supply and Voltage Control from Generation Sources Service in order to receive compensation for the reactive power service it provides Bonneville Power Administration from its generating plant near the City of Hermiston.
*Filed Date:* 06/10/2005.
*Accession Number:* 20050614–0103.
*Comment Date:* 5 p.m. Eastern Time on Friday, July 01, 2005.

*Docket Numbers:* ER05–1101–000.
*Applicants:* NorthWestern Energy.
*Description:* NorthWestern Corporation dba NorthWestern Energy submits First Revised Sheet 161–163 and 171–314 to its Open Access Transmission Tariff, FERC Electric Tariff, Fifth Revised Volume 5 in compliance with FERC Order No. 2003–B issued December 20, 2004.
*Filed Date:* 06/10/2005.
*Accession Number:* 20050614–0100.
*Comment Date:* 5 p.m. Eastern Time on Friday, July 01, 2005.

*Docket Numbers:* ER05–1102–000.
*Applicants:* Goldendale Energy Center, LLC.
*Description:* Goldendale Energy Center, LLC submits its FERC Rate Schedule 2 for Reactive Supply and Voltage Control from Generation Sources Service in order to begin receiving compensation for the reactive power service that it provides to Bonneville Power Administration from its Goldendale generating facility.
*Filed Date:* 06/10/2005.
*Accession Number:* 20050614–0101.
*Comment Date:* 5 p.m. Eastern Time on Friday, July 01, 2005.

*Docket Numbers:* ER05–1103–000.
*Applicants:* PJM Interconnection L.L.C.
*Description:* PJM Interconnection, LLC submits an unexecuted construction service agreement with Neptune Regional Transmission System, LLC, and Public Service Electric and Gas Company.
*Filed Date:* 06/10/2005.
*Accession Number:* 20050614–0092.
*Comment Date:* 5 p.m. Eastern Time on Friday, July 01, 2005.

*Docket Numbers:* ER05–1104–000.
*Applicants:* Central Vermont Public Service Corporation.
*Description:* Central Vermont Public Service Corporation submits a short-form market-based rate tariff, effective 6/10/05 and a request for a waiver of FERC's notice of filing requirements.
*Filed Date:* 06/09/2005.
*Accession Number:* 20050614–0192.
*Comment Date:* 5 p.m. Eastern Time on Thursday, June 30, 2005.

*Docket Numbers:* ER05–1105–000.
*Applicants:* LP and T Energy, LLC.
*Description:* LP and T Energy, LLC submits an application for acceptance of initial market-based rate tariff, waivers & blanket authority.
*Filed Date:* 06/10/2005.
*Accession Number:* 20050614–0193.
*Comment Date:* 5 p.m. Eastern Time on Friday, July 01, 2005.

*Docket Numbers:* ER05–1106–000.
*Applicants:* Arizona Public Service Company.
*Description:* Arizona Public Service Company submits construction agreements with PacifiCorp and one between Arizona Public Service Company and Western Area Power Administration.
*Filed Date:* 06/10/2005.
*Accession Number:* 20050614–0194.
*Comment Date:* 5 p.m. Eastern Time on Friday, July 01, 2005.

*Docket Numbers:* ER05–1107–000.
*Applicants:* California Independent System Operator Corporation.
*Description:* California Independent System Operator Corporation submits an informational filing pursuant to Article IX, section B of the Stipulation and Agreement approved by the Commission on 5/28/1999.
*Filed Date:* 06/10/2005.
*Accession Number:* 20050614–0209.
*Comment Date:* 5 p.m. Eastern Time on Friday, July 01, 2005.

*Docket Numbers:* ER05–661–002.
*Applicants:* Somerset Windpower LLC.
*Description:* Somerset Windpower, LLC submits supplement to the 2/28/05 request for authorization to amend its market-based rate tariff under ER05–661.
*Filed Date:* 06/10/2005.
*Accession Number:* 20050614–0198.
*Comment Date:* 5 p.m. Eastern Time on Friday, June 24, 2005.

*Docket Numbers:* ER05–742–001.
*Applicants:* Cambridge Electric Light Company and Commonwealth Electric Company.
*Description:* Cambridge Electric Light Company and Commonwealth Electric Company submits description of FERC's Accounts used in Revised Tariff in compliance with FERC's 5/25/05 Order. 111 FERC ¶ 61,246 (2005).
*Filed Date:* 06/10/2005.
*Accession Number:* 20050614–0191.
*Comment Date:* 5 p.m. Eastern Time on Friday, July 01, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that

enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Linda Mitry,**

*Deputy Secretary.*

[FR Doc. E5–3204 Filed 6–20–05; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7925–4]**

## Lead-Based Paint Activities; State of Washington Lead-Based Paint Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice; final approval of the State of Washington Lead-Based Paint Activities Program.

**SUMMARY:** On June 18, 2004, EPA received an application from the State of Washington requesting authorization to administer a Program in accordance with section 402 of the Toxic Substances Control Act (TSCA). Included in the application was a letter signed June 10, 2004, by the Governor of Washington, stating that the State's Lead-Based Paint Abatement Program is at least as protective of human health and the environment as the Federal program under TSCA section 402. Also, included was a letter from the Attorney General of Washington, certifying that the laws and regulations of the State provided adequate legal authority to administer and enforce TSCA section 402. Washington certifies that its program meets the requirements for approval of a State program under section 404 of TSCA and that Washington has the legal authority and ability to implement the appropriate elements necessary to enforce the program. Therefore, pursuant to section 404, the program is deemed authorized as of the date of submission. Today's notice announces the authorization of the State of Washington Lead-Based Paint Activities Program to apply in the State of Washington effective June 10, 2004.

**DATES:** The Lead-Based Paint Activities Program authorization was granted to the State of Washington on June 10, 2004.

**FOR FURTHER INFORMATION CONTACT:** Barbara Ross, Regional Lead Coordinator, Environmental Protection Agency, Region 10, AWT–128, 1200 Sixth Avenue, Seattle, WA 98101; telephone: (206) 553–1985; e-mail address: *ross.barbara@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General

*A. Does this Notice Apply to Me?*

This notice is directed to the public in general. This notice may, however, be of interest to firms and individuals engaged in lead-based paint activities in Washington. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by the notice. If you have any questions regarding the applicability of this notice to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*B. Summary*

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102–550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. The Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681–92), titled ''Lead Exposure Reduction.''

Section 402 of TSCA (15 U.S.C. 2682) authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges and other structures. On August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). These regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards.

Under section 404 (15 U.S.C. 2684), a State or Indian Tribe may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. EPA will review those applications within 180 days of receipt of the complete application. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684 (b)).

EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA authorization.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA authorization, by submitting a letter signed by the Governor or the Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized until such time as EPA disapproves the program application or withdrawals the program authorization.

In accordance with 40 CFR 745.324(d), ''Program Certification,'' the Governor of Washington submitted a self-certification letter to the EPA Administrator on June 17, 2004, certifying that the State program meets the requirements contained in 40 CFR 745.324(e)(2)(i) and (e)(2)(ii). Included in the application was a letter from the Attorney General of Washington, certifying that the laws and regulations of the State provided adequate legal authority to administer and enforce TSCA section 402.

As determined by EPA's review and assessment, Washington's application successfully demonstrated that the State's Lead-Based Paint Activities Program achieves the protectiveness and enforcement criteria, as required for Federal authorization. Therefore, as of June 10, 2004 the State of Washington is authorized to administer and enforce the lead-based paint program under TSCA section 402.

### II. Federal Overfiling

TSCA section 404(b) (15 U.S.C. 2684(b)) makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

### III. Withdrawal of Authorization

Pursuant to TSCA section 404(c), the Administrator may withdraw a State or Tribal lead-based paint activities program authorization, after notice and opportunity for corrective action, if the program is not being administered or enforced in compliance with standards, regulations, and other requirements established under the authorization. The

procedures EPA will follow for the withdrawal of an authorization are found at 40 CFR 745.324(i).

### IV. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action 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 document in the **Federal Register**.

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

### List of Subjects

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

Dated: June 10, 2005.

**Julie Hagensen,**

*Acting Regional Administrator, Region 10.*

[FR Doc. 05–12202 Filed 6–20–05; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPT–2005–0032; FRL–7720–5]**

## TSCA Section 21 Petition; Notice of Receipt

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of a petition submitted by the Ecology Center, of Ann Arbor, Michigan, under section 21 of the Toxic Substances Control Act (TSCA), and requests comments on issues raised by the petition. The petitioner requests EPA to establish regulations to prohibit the manufacture, processing, distribution in commerce, use and improper disposal of lead used in wheel balancing weights. Under TSCA section 21, the Agency must either grant or deny the petition within 90 days. The Agency will therefore respond to the petition by August 10, 2005.

**DATES:** Comments, identified by docket identification (ID) number OPPT–2005–0032, must be received on or before July 6, 2005.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** *For general information contact:* Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1401; e-mail address: *TSCA-Hotline@epa.gov*.

*For technical information contact:* Dave Topping, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–1974; e-mail address: *topping.dave@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may potentially be affected by this action if you manufacture or import lead wheel weights or are an automobile tire retailer. 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 technical 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 an official public docket for this action under docket ID number OPPT–2005–0032. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

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/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in

EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

*C. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit confidential business information (CBI) or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2005–0032. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2005–0032. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2005–0032. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

*D. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, 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 CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any 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 and EPA's electronic docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

We invite you to provide your views on the relief sought by the petitioner, and any data or information that you would like the Agency to consider in developing its response to the petition. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. Background

*A. What is a TSCA Section 21 Petition?*

Section 21 of TSCA allows citizens to petition EPA to initiate a proceeding for the issuance, amendment, or repeal of a rule under TSCA section 4, 6, or 8 or an order under section 5(e) or 6(b)(2). A TSCA section 21 petition must set forth facts that the petitioner believes establish the need for the action requested. EPA is required to grant or deny the petition within 90 days of its filing. If EPA grants the petition, the Agency must promptly commence an appropriate proceeding. If EPA denies the petition, the Agency must publish

its reasons for the denial in the **Federal Register**. Within 60 days of denial, or the expiration of the 90–day period, if no action is taken, the petitioner may commence a civil action in a U.S. district court to compel initiation of the requested rulemaking proceeding.

*B. What Action is Requested Under this TSCA Section 21 Petition?*

On May 13, 2005, the Ecology Center of Ann Arbor, Michigan, petitioned EPA under section 21 of TSCA to establish regulations prohibiting the manufacture, processing, distribution in commerce, use, and improper disposal of lead wheel balancing weights.

The petition estimates that 70,000 tons per year of lead is used world-wide to manufacture wheel weights used to balance vehicle tires. It cites recent studies showing that lead deposition from wheel weights is responsible for a significant volume of lead in the environment, as the weights fall off vehicles and are gradually abraded into dust.

The petition notes that despite the shift towards unleaded gasoline and the largely successful effort to recycle car batteries, lead concentrations are disproportionately high around areas of high traffic volumes. The petition cites several studies linking high lead concentrations in urban soil or runoff to streets, parking lots, or vehicle service areas. Cited studies also show that lead concentrations in these areas can exceed standards for human and environmental health. While acknowledging that few studies have analyzed the contribution of lead wheel weights to these concentrations, the petition argues that it is reasonable to assume that wheel weights play a role in lead's persistence in highly trafficked areas.

The petition also cites lead wheel weights' contribution to the end-of-life vehicle recyclable stream and waste stream, including shredder waste. It references a report explaining that wheel weights are not removed from the waste stream because it is time-consuming to do so and the recovered lead has little value.

Alternative materials to lead in wheel weights, including tin, steel, plastic, and a zinc-based alloy, are available and are being used on some new car models, according to the petition. The petitioner argues, however, that without EPA action, U.S. vehicle manufacturers and tire dealers will continue to use lead wheel weights, both on new vehicles and in the aftermarket as tires are repaired or replaced.

The petitioner therefore asks EPA to establish regulations under TSCA that prohibit the manufacture, processing, distribution in commerce, use, and improper disposal of lead wheel balancing weights. EPA has commenced a review of this petition. Comments on the petition may be submitted by any of the methods identified in Unit I.C.

*C. EPA Seeks Additional Information*

In considering whether to grant or deny the petition, EPA seeks a better factual understanding of the potential risks to human health and the environment associated with lead tire weights. Therefore, EPA seeks data and information regarding the potential risks to human health and the environment associated with the potential release of contaminants from materials that may be used as substitutes for lead in tire weights, including zinc, tin, steel and polymeric materials.

Due to the time constraints of TSCA section 21, EPA will allow the public until July 6, 2005 to reply with any additional information relevant to what we are identifying below. In assisting the Agency by supplying this additional information, please follow the procedures identified in Unit I.C. concerning submitting comments.

In assessing the usability of any data or information that may be submitted, EPA plans to follow the guidelines noted in EPA's ''A Summary of General Assessment Factors for Evaluating the Quality of Scientific and Technical Information'' (EPA 100/B–03/001), referred to as the ''Assessment Factors Document.'' The document is available at the following website: *http://www.epa.gov/oei/qualityguidelines/af_home.htm.* The **Federal Register** notice for the document is available at the following website: *http://www.epa.gov/fedrgstr/EPA-GENERAL/2003/July/Day-01/g16328.htm.*

In particular, EPA seeks information on the following:

1. Quantitative information, data and/or case examples (e.g., recent scientific and technical studies, including analytical data results, analyses of environmental impacts, and statistical analyses) associated with the potential environmental releases to the air, surface water, ground water, and soil (particularly regarding potential releases within 1 mile of roadways, and potential releases to particularly sensitive environments or human and ecological populations) from lead tire weights and the following possible alternatives to lead tire weights: Steel tire weights; ZAMA tire weights (a zinc-based alloy consisting of zinc, aluminum, and copper); plastic metal composite tire weights; and tin tire weights.

2. Quantitative information and data (scientific and technical studies, including analytical data results, analysis of environmental impacts, statistical analyses, etc.) associated with releases of lead to the air, surface water, ground water, and soil within 1 mile of roadways from tire weights and all other sources.

3. Information on whether the following potential exposure routes associated with releases from lead (and other alternative material) tire weights is complete or accurate, and whether other possible exposure routes associated with such releases should be assessed: Dust in and near roadways; dust from roadways migrating to residential front yards, being tracked into houses and inhaled and/or ingested by children; weights and/or particles swept up by municipal street cleaners being incinerated, leading to increased levels of lead in air; weights and/or particles swept up by municipal street cleaners and landfilled, leading to increased levels of lead in ground water; vapors from home smelting of used tire weights obtained by from gas stations and small tire retailers; weights left on cars that may be collected and burned in electric arc furnaces, releasing lead vapor and particulate matter to the air; releases associated with auto shredder activities (e.g., residues released to air or water); and releases from roadways to streams resulting in potential exposures to aquatic and terrestrial species.

**List of Subjects**

Environmental protection.

Dated: June 14, 2005.

**Wendy C. Hamnett,**

*Acting Director, Office of Pollution Prevention and Toxics.*

[FR Doc. 05–12195 Filed 6–20–05; 8:45 am]

**BILLING CODE 6560–50–S**

## Federal Reserve System

## Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 12:00 p.m., Monday, June 27, 2005.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions)

involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**FOR FURTHER INFORMATION CONTACT:** Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, June 17, 2005.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 05–12392 Filed 6–17–05; 4:00 pm]

**BILLING CODE 6210–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Incidence, Natural History, and Quality of Life of Diabetes in Youth, Request for Applications (RFA) DP–05–069

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

*Name:* Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Incidence, Natural History, and Quality of Life of Diabetes in Youth, Request for Applications (RFA) DP–05–069.

*Times and Dates:* 7 p.m.–9 p.m., July 21, 2005(Closed); 8:30 a.m.–1:30 p.m., July 22, 2005(Closed).

*Place:* Double Tree Hotel, Buckhead, 13342 Peachtree Road NE, Atlanta, GA 30326, Telephone Number 404.231.1234.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters To Be Discussed:* The meeting will include the review, discussion, and evaluation of applications received in response to Incidence, Natural History, and Quality of Life of Diabetes in Youth, Request for Applications (RFA) DP–05–069.

*Contact Person for More Information:* J. Felix Rogers, Ph.D.,M.P.H., Scientific Review Administrator, National Immunization Program, CDC, 1600 Clifton Road NE., Mailstop E–05, Atlanta, GA 30333, Telephone 404.639.6101.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 14, 2005.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 05–12186 Filed 6–20–05; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH & HUMAN SERVICES

### Administration for Children and Families

### Office of Planning, Research and Evaluation; Secondary Analysis of Data From the National Survey of Child Abuse and Neglect

*Funding Opportunity Title:* Secondary Analysis of Data from the National Survey of Child Abuse and Neglect (NSCAW).

*Announcement Type:* Initial.

*Funding Opportunity Number:* HHS–2005–ACF–OPRE–PH–0095.

*CFDA Number:* 93.647.

*Due Date For Letter of Intent or Preapplications:* Three weeks prior to due date.

*Due Date for Applications:* Application is due August 5, 2005.

*Executive Summary:* Funds are available to support grants for secondary analysis of data available from the National Survey on Child and Adolescent Well-Being (NSCAW). NSCAW provides longitudinal data from multiple informants on the functioning, well-being, and services provided to a national probability sample of children and families who come into contact with the child welfare system through an investigation of child maltreatment. Data are available through licensing agreements from the National Data Archive on Child Abuse and Neglect at Cornell University (*http://www.ndacan.cornell.edu*). Applicants' planned analyses should be designed to advance the state of knowledge in child maltreatment, child welfare services, child and family services, and/or child development for high risk children.

**I. Funding Opportunity Description**

*A. Purpose*

The purpose of this priority area is to announce the availability of funds to support grants for secondary analysis of data available from the National Survey on Child and Adolescent Well-Being. The planned analyses should be designed to advance the state of knowledge in child maltreatment, child welfare services, child and family services, and/or child development for high risk children.

*B. Background*

The National Survey of Child and Adolescent Well-Being, authorized under Section 429A of the Personal Responsibility and Work Opportunities Reconciliation Act, is the first nationally representative study that examines the functioning and well-being of children and families who come to the attention of the child welfare system. Although there has been an increasing emphasis on child well-being as a key outcome of child welfare services, and states are being held accountable for those outcomes, there has been little information, particularly on a national scale, to examine well-being within the context of the family and community environments and the service systems that are likely to affect children's functioning. NSCAW was designed to begin to address this gap.

Children in the core sample (n=5504) were selected from those investigated by Child Protective Services in 92 primary sampling units (PSUs) during a 15-month sampling period beginning in the fall of 1999. Children are included in the sample and followed up whether or not their investigation resulted in a case opening; thus, NSCAW includes children who remain at home without services; those who remain at home and receive child welfare services; and those who are placed out of home in foster, kinship, or group care. A supplemental sample (n=727) was selected from children who were reaching their first anniversary in foster care during the same sampling period. Extensive information on child and family characteristics, service needs, and service receipt was collected directly from the target children, their caregivers, their caseworkers, and their teachers at baseline, and follow-up data were collected from all respondents at 18 months and 36 months post-baseline. In addition, information about services was collected from caregivers and caseworkers at 12 months post-baseline. Baseline contextual data are available from state administrators and local child welfare administrators in the PSUs.

More information about NSCAW methodology and measures is available in the data file user's manual, available from the National Data Archive on Child Abuse and Neglect, at Cornell University (*http://www.ndacan.cornell.edu*) or from the ACF website at *http://www.acf.hhs.gov/programs/core/ongoing_research/*

The data were collected under a contract to Research Triangle International, with a subcontract to the University of North Carolina. Analyses sponsored by the government to date under that contract include a descriptive analysis of baseline data from the ''core'' and ''one-year-in-foster-care'' samples, as well as multivariate analyses, focusing on services and outcomes, of longitudinal data at the 18 and 36 month follow-up periods. For more information, please see *http://www.acf.dhhs.gov/programs/core/ongoing_research*. Other analytic activities are underway through a NIMH-funded consortium, the Caring for Children in Child Welfare group, headed by San Diego Children's Hospital, and are focused on mental health services utilization and children's service system organization. More information on that workgroup can be found at *http://www.casrc.org/projects/CCCW/*.

The NSCAW provides an exceptionally rich data source that can address any number of questions of interest in the fields of child maltreatment, child welfare, domestic violence, children's services, family support services, family stressors, and organization of services. The survey was designed from the outset to stimulate a broad array of research that would contribute to the knowledge base around high risk children, particularly those who have been abused or neglected, and the effectiveness of services to children and families. Data from the survey are archived at the National Data Archive on Child Abuse and Neglect, at Cornell University. Data from the baseline, 12-month, and 18-month, and 36-month follow-ups have been archived. This announcement is intended to encourage use of the data to address field-initiated questions that are of interest to the child welfare, child and family services, child maltreatment, and/or child development research, policy, and practice communities.

The data collected through NSCAW contain confidential and highly sensitive information, and release of the data is subject to certain restrictions. Three levels of release have been established. First, a general release data set is available that has deleted certain key variables that might be used in reidentifying participants; geographic information, in particular, is omitted from this data set. Access to this data set is subject to approval by an Institutional Review Board (IRB), and a nominal licensing fee is required. Second, restricted-use data sets are available from the NDACAN under a licensing arrangement that requires, among other things, approval by an IRB, a detailed data security plan, and an agreement to allow unannounced on-site inspections of data security procedures. There is a more substantial fee ($2,500) for the restricted release version, which covers the cost of security inspections. Further information on data licensing is available at *http://www.ndacan.cornell.edu*. Third, there are, in some cases, opportunities for linking NSCAW data with other data sets through an arrangement with the NSCAW contractor, RTI International. The matches are completed at RTI, and the data set is returned to the user with the matching completed on the requested variables, and identifying variables deleted. Such data linkages must be approved through the RTI International IRB as well as the grantee's IRB, and arrangements and fees must be negotiated directly with RTI International. Applications anticipating this type of data linkage should be accompanied by evidence of an agreement between the applicant's institution and RTI International. Budgets for all applications should include costs of obtaining data.

An important programmatic priority area for the Administration for Children and Families is to improve the well-being and safety of families and individuals, especially vulnerable populations, and to increase the percentage of children and youth living in permanent, safe environments. Data analysis from NSCAW can provide valuable information in moving toward those goals. Applicants are invited to submit proposals for secondary analysis of NSCAW data that will address questions of interest to the research, policy, and/or practice communities in the areas of child maltreatment, child welfare, child development, social and health services utilization, social work practice, family processes and functioning, risk behaviors, or other questions of relevance to the child services and research communities. Applications are encouraged from investigators who represent diverse disciplines, including, but not limited to, developmental psychology, epidemiology, sociology, social work, and pediatrics.

ACF will give priority to proposals focusing on the following areas of agency interest:

- Kinship care, including the characteristics, needs, experiences, and services received by children in kinship care both within and outside the foster care system;
- Resiliency, including the characteristics, needs, experiences and services received by children and families with positive outcomes;
- The characteristics, needs, experiences, and services received by children and families that were re-reported for abuse or neglect within the study period;
- Differences in characteristics, needs, experiences, and services received by children and families in different racial and ethnic groups; in rural versus urban areas; and across different ages at which children enter the child welfare system;
- Differences in characteristics, needs, experiences and services received by children who enter the child welfare system due to different types of abuse and neglect;
- Patterns of preventive services, including what types of children and families are likely to receive preventive services, and what outcomes these children and families experience;
- Characteristics, needs, experiences, and services received by children who enter the child welfare system as infants, including those who enter the system due to parental substance abuse;
- Analyses related to the outcomes measured in the Child and Family Services Reviews conducted by ACF;
- Characteristics, needs, experiences and services received by children with one or more unsubstantiated reports of maltreatment.

The agency expects to award a grant or contract that will provide for a conference of data users to present findings from their analyses. The grantee should plan to budget for one meeting in Washington DC in FY 2006.

There are specific procedures which must be followed in order to protect the privacy and ensure the confidentiality of the respondents in the NSCAW data set. Applicants are asked to describe their plans regarding an Institutional Review Board (IRB) review. Applicants must include a completed Form 310, Protection of Human Subjects, available at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.* For more information about use of human subjects and IRB's you can visit these web sites: *http://www.hhs.gov/ohrp/irb/irb_chapter2.htm#d2* and *http://www.hhs.gov/ohrp/humansubjects/guidance/ictips.htm*

**II. Award Information**

*Funding Instrument Type:* Grant.

*Anticipated Total Priority Area Funding:* $800,000.

*Anticipated Number of Awards:* 5–10.

*Ceiling on Amount of Individual Awards Per Budget Period:* $100,000.

*Average Projected Award Amount:* $75,000.

*Length of Project Periods:* 17 months.

**III. Eligibility Information**

*1. Eligible Applicants*

Unrestricted (*i.e.*, open to any type of entity subject to exceptions specified in Additional Information on Eligibility)

Additional Information on Eligibility

Applicants must be eligible to obtain licenses for NSCAW data, as described under the licensing agreements available at the National Data Archive on Child Abuse and Neglect (see *http://www.ndacan.cornell.edu*). Faith-based organizations are also eligible to apply if they meet the requirements of the NSCAW data licensing agreements.

*2. Cost Sharing/Matching*

None.

*3. Other*

Applicants must demonstrate their eligibility to access the NSCAW data sets that are the subject of the application. Access to all data sets is subject to approval by an Institutional Review Board (IRB), and a licensing fee is required. Restricted-use data sets are available under a licensing arrangement that requires, among other things, approval by an IRB, a detailed data security plan, and an agreement to allow unannounced on-site inspections of data security procedures. Further information on data licensing is available at *http://www.ndacan.cornell.edu.*

All Applicants must have a Dun & Bradstreet Number. On June 27, 2003 the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires Federal grant applicants to provide a Dun & Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

Non-profit organizations applying for funding are required to submit proof of their non-profit status.

Proof of non-profit status is any one of the following:

- A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code.
- A copy of a currently valid IRS tax exemption certificate.
- A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earning accrue to any private shareholders or individuals.
- A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.
- Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms,'' ''Survey for Private, Non-Profit Grant Applicants,'' titled, ''Survey on Ensuring Equal Opportunity for Applicants,'' at: *www.acf.hhs.gov/programs/ofs/forms.htm.*

Disqualification Factors

Applications that exceed the ceiling amount will be considered non-responsive and will not be considered for funding under this announcement.

Any application that fails to satisfy the deadline requirements referenced in Section IV.3 will be considered non-responsive and will not be considered for funding under this announcement.

**IV. Application and Submission Information**

*1. Address To Request Application Package*

Care of Xtria, LLC; ATTN: NSCAW Grant Review Team, 8045 Leesburg Pike, Suite 400, Vienna, VA 22182. Phone: 877–663–0250. Fax: 1–703–821–3989. E-mail: *opre@xtria.com.*

*2. Content and Form of Application Submission*

*Notice of Intent to Submit an Application:* If you plan to submit an application, it is encouraged that you notify us by fax or e-mail at least three weeks prior to the submission deadline date. This information will be used only to determine the number of expert reviewers needed to review the applications. Include only the following information in this fax or email: The number and title of this announcement; the name, address, telephone and fax number, e-mail address of the principal investigator(s), the fiscal agent (if known); and the name of the university or non-profit institution. Do not include a description of your proposed project. Send this information to ''The NSCAW Research Support Team'' at: Fax: 1–703–821–3989. E-mail: *opre@xtria.com.*

*Application Format and Organization.* Applicants must limit their application to 60 pages (beginning with the Table of Contents as described in the required format below), double-spaced, with standard one-inch margins and 12 point fonts. This page limit applies to both narrative text and supporting materials. In addition, applicants should number the pages of their application and include a table of contents.

Applicants are advised to include all required forms and materials and to organize these materials according to the format presented below:

a. Cover Letter
b. Contact information sheet
c. Standard Federal Forms
   - Standard Application for Federal Assistance (forms 424 and 424A)
   - Assurances: Non-construction Programs (form 424B)
   - Certifications regarding Lobbying
   - Disclosures of Lobbying Activities
   - Certification regarding Drug-free Workplace Requirements
   - Certification regarding Debarment, Suspension, and other Responsibility Matters
   - Protection of Human Subjects
   - Certification regarding Environmental Tobacco Smoke
d. Table of Contents
e. Project Narrative Statement
f. Appendix
   - Curriculum Vitae for Primary Investigators

You may submit your application to us in either electronic or paper format.To submit an application electronically, please use the *www.Grants.gov/Apply site.* If you use Grants.gov, you will be able to download a copy of the application package, complete it off-line, and then

upload and submit the application via the Grants.gov site. ACF will not accept grant applications via email or facsimile transmission.

Please note the following if you plan to submit your application electronically via Grants.gov.

- Electronic submission is voluntary, but strongly encouraged.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *www.Grants.gov*.
- You must search for the downloadable application package by the CFDA number.

Applicants that are submitting their application in paper format should submit an original and two copies of the complete application. An original and two copies of the complete application are required. The original and each of the two copies must include all required forms, certifications, assurances, and appendices, be signed by an authorized representative, have original signatures, and be submitted unbound.

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms,'' ''Survey for Private, Non-Profit Grant Applicants,'' titled, ''Survey on Ensuring Equal Opportunity for Applicants,'' at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Standard Forms and Certifications

The project description should include all the information requirements described in the specific evaluation criteria outlined in the program announcement under Section V Application Review Information. In addition to the project description, the applicant needs to complete all the standard forms required for making applications for awards under this announcement.

Applicants seeking financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF–424A, Budget Information—Non-Construction Programs; SF–424B, Assurances—Non-Construction Programs. The forms may be reproduced for use in submitting applications. Applicants must sign and return the standard forms with their application.

Applicants must furnish prior to award an executed copy of the Standard Form LLL, Certification Regarding Lobbying, when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicants must also understand they will be held accountable for the smoking prohibition included within Pub. L. 103–227, Title XII Environmental Tobacco Smoke (also known as the PRO-KIDS Act of 1994). A copy of the **Federal Register** notice which implements the smoking prohibition is included with forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification of their compliance with all Federal statutes relating to nondiscrimination. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification form. Complete the standard forms and the associated certifications and assurances based on the instructions on the forms. The forms and certifications may be found at: *http://www.acf.hhs.gov/programs/ofs/forms.htm*.

There are specific procedures which must be followed in order to protect the privacy and ensure the confidentiality of the respondents in the NSCAW data set. Applicants are asked to describe their plans regarding an Institutional Review Board (IRB) review, available at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.* Applicants must include a completed Form 310, Protection of Human Subjects. For more information about use of human subjects and IRB's you can visit these web sites: *http://www.hhs.gov/ohrp/irb/irb_chapter2.htm#d2* and *http://www.hhs.gov/ohrp/humansubjects/guidance/ictips.htm*

Please see Section V.1. Criteria, for instructions on preparing the full project description.

*3. Submission Dates and Times*

*Due Date for Letters of Intent:* Three weeks prior to due date.

*Due Date for Applications:* August 5, 2005.

Explanation of Due Dates

The closing time and date for receipt of applications is referenced above. Applications received after 4:30 p.m. eastern time on the closing date will be classified as late.

*Deadline:* Applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date referenced in Section IV.6. Applicants are responsible for ensuring applications are mailed or submitted electronically well in advance of the application due date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., eastern time, at the address referenced in Section IV.6., between Monday and Friday (excluding Federal holidays).

ACF cannot accommodate transmission of applications by facsimile. Therefore, applications transmitted to ACF by fax will not be accepted regardless of date or time of submission and time of receipt.

Receipt acknowledgement for application packages will be provided to applicants who submit their package via mail, courier services, or by hand delivery. However, applicants will receive an electronic acknowledgement for applications that are submitted via *http://www.Grants.gov*.

*Late Applications:* Applications that do not meet the criteria above are

considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Any application received after 4:30 p.m. eastern time on the deadline date will not be considered for competition.

Applicants using express/overnight mail services should allow two working days prior to the deadline date for receipt of applications. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

*Extension of deadlines:* ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service, or in other rare cases. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

Checklist

You may use the checklist below as a guide when preparing your application package.

| What to submit | Required content | Required form or format | When to submit |
|---|---|---|---|
| Table of Contents | See Section IV.2 | Described in Section V | By application due date. |
| Project Narrative | See Section IV.2 | Described in Section V | By application due date. |
| SF424 | See Section IV.2 | May be found at *http://acf.hhs.gov/programs/ofs/forms.htm*. | By application due date. |
| SF424A | See Section IV.2 | May be found at *http://acf.hhs.gov/programs/ofs/forms.htm*. | By application due date. |
| Assurances and Certifications | See Section IV.2 | May be found at *http://acf.hhs.gov/programs/ofs/forms.htm*. | By application due date. |
| Protection of Human Subjects | See Section | May be found at *http://acf.hhs.gov/programs/ofs/forms.htm*. | By application due date. |

Additional Forms

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms,'' ''Survey for Private, Non-Profit Grant Applicants,'' titled, ''Survey on Ensuring Equal Opportunity for Applicants,'' at: *http:www.acf.hhs.gov/programs/ofs/forms.htm*.

| What to submit | Required content | Location | When to submit |
|---|---|---|---|
| Survey for Private, Non-Profit Grant Applicants. | See form | May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*. | By application due date. |

*4. Intergovernmental Review*

STATE SINGLE POINT OF CONTACT (SPOC)

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of October 1, 2004, the following jurisdictions have elected to participate in the Executive Order process: Arkansas, California, Delaware, District of Columbia, Florida, Georgia, Illinois, Iowa, Kentucky, Maine, Maryland, Michigan, Mississippi, Missouri, Nevada, New Hampshire, New Mexico, New York, North Dakota, Rhode Island, South Carolina, Texas, Utah, West Virginia, Wisconsin, American Samoa, Guam, North Mariana Islands, Puerto Rico, and Virgin Islands. As these jurisdictions have elected to participate in the Executive Order process, they have established SPOCs. Applicants from participating jurisdictions should contact their SPOC, as soon as possible, to alert them of prospective applications and receive instructions. Applicants must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2).

A SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade SW., 4th floor, Washington, DC 20447.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

Although the remaining jurisdictions have chosen not to participate in the process, entities that meet the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. Therefore, applicants from these jurisdictions, or for projects administered by federally-recognized Indian Tribes, need take no action in regard to E.O. 12372.

The official list, including addresses, of the jurisdictions that have elected to participate in E.O. 12372 can be found on the following URL: *http://www.whitehouse.gov/omb/grants/spoc.html*.

A list of Single Points of Contact for each State and Territory is included with the application materials for this announcement.

*5. Funding Restrictions*

Grant awards will not allow reimbursement of pre-award costs.

*6. Other Submission Requirements*

*Submission by Mail:* An applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The application must be

received at the address below by 4:30 p.m. eastern time on or before the closing date. Applications should be mailed to: Care of Xtria, LLC, ATTN: NSCAW Grant Review Team, 8045 Leesburg Pike, Suite 400, Vienna, VA 22182.

*Hand Delivery:* An applicant must provide an original application with all attachments signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern time on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m. eastern time, Monday through Friday. Applications should be delivered to: Care of Xtria, LLC, ATTN: NSCAW Grant Review Team, 8045 Leesburg Pike, Suite 400, Vienna, VA 22182.

*Electronic Submission: www.Grants.gov* Please see section IV.2 Content and Form of Application Submission, for guidelines and requirements when submitting applications electronically.

**V. Application Review Information**

*The Paperwork Reduction Act of 1995 (Pub. L. 104–13)*

Public reporting burden for this collection of information is estimated to average 40 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information.

The project description is approved under OMB control number 0970–0139 which expires 4/30/2007.

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.

1. Criteria

PURPOSE

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, information responsive to each of the requested evaluation criteria must be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application in a manner that is clear and complete.

GENERAL INSTRUCTIONS

ACF is particularly interested in specific project descriptions that focus on outcomes and convey strategies for achieving intended performance. Project descriptions are evaluated on the basis of substance and measurable outcomes, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix. Pages should be numbered and a table of contents should be included for easy reference.

INTRODUCTION

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions while being aware of the specified evaluation criteria. The text options give a broad overview of what your project description should include while the evaluation criteria identifies the measures that will be used to evaluate applications.

PROJECT SUMMARY/ABSTRACT

Provide a summary of the project description (a page or less) with reference to the funding request.

RESULTS OR BENEFITS EXPECTED

Identify the results and benefits to be derived.

APPROACH

Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished.

When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.''

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

STAFF AND POSITION DATA

Provide a biographical sketch and job description for each key person appointed. Job descriptions for each vacant key position should be included as well. As new key staff is appointed, biographical sketches will also be required.

ORGANIZATIONAL PROFILES

Provide information on the applicant organization(s) and cooperating partners, such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. If the applicant is a non-profit organization, submit proof of non-profit status in its application.

The non-profit agency can accomplish this by providing: (a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code; (b) a copy of a currently valid IRS tax exemption certificate, (c) a statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals; (d) a certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status, (e) any of the items immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

DISSEMINATION PLAN

Provide a plan for distributing reports and other project outputs to colleagues and the public. Applicants must provide a description of the kind, volume and timing of distribution.

THIRD-PARTY AGREEMENTS

Provide written and signed agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

BUDGET AND BUDGET JUSTIFICATION

Provide a budget with line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. Also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

GENERAL

Use the following guidelines for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. ''Federal resources'' refers only to the ACF grant for which you are applying. ''Non Federal resources'' are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: First column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

PERSONNEL

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

FRINGE BENEFITS

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

TRAVEL

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

EQUIPMENT

Description: ''Equipment'' means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (**Note:** Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

SUPPLIES

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

CONTRACTUAL

Description: Costs of all contracts for services and goods except for those that belong under other categories such as equipment, supplies, construction, etc. Include third party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant.

Justification: Demonstrate that all procurement transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000).

Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

**Note:** Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

OTHER

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

INDIRECT CHARGES

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, upon notification

that an award will be made, it should immediately develop a tentative indirect cost rate proposal based on its most recently completed fiscal year, in accordance with the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. When an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

NONFEDERAL RESOURCES

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application so the applicant is given credit in the review process. A detailed budget must be prepared for each funding source.

Evaluation Criteria

The following evaluation criteria appear in weighted descending order. The corresponding score values indicate the relative importance that ACF places on each evaluation criterion; however, applicants need not develop their applications precisely according to the order presented. Application components may be organized such that a reviewer will be able to follow a seamless and logical flow of information (*e.g.* from a broad overview of the project to more detailed information about how it will be conducted).

In considering how applicants will carry out the responsibilities addressed under this announcement, competing applications for financial assistance will be reviewed and evaluated against the following criteria:

APPROACH 45 Points

- The extent to which the research design is appropriate and sufficient for addressing the questions of the study.
- The extent to which the planned variables measures to be used are appropriate and sufficient for the questions of the study and the population to be studied.
- The extent to which the planned analyses both reflect knowledge and use of state-of-the-art analytic techniques, and advance the state of the art.
- The extent to which the analytic techniques are appropriate for the questions under consideration.
- The extent to which the proposed sample size is sufficient for the analysis, including the size of particular subgroups of interest.
- The extent to which the scope of the project is reasonable for the funds available for these grants.
- The extent to which the budget and budget justification are appropriate for carrying out the proposed project.
- The extent to which the applicant demonstrates understanding of the confidentiality issues in using NSCAW data, and the adequacy of the plan for maintaining confidentiality of the data sets.

STAFF AND POSITION DATA 35 Points

- The extent to which the principal investigator and other key research staff possess the research expertise necessary to conduct the study as demonstrated in the application and information contained in their vitae.
- The extent to which the proposed staff reflect an understanding of and sensitivity to the issues of working with confidential data sets.
- The adequacy of the time devoted to this project by the principal investigator and other key staff in order to ensure a high level of professional input and attention.
- The extent to which the applicant demonstrates the capacity to use complex data sets such as NSCAW.

RESULTS OR BENEFITS EXPECTED 20 Points

- The research questions are clearly stated.
- The extent to which the questions are of importance and relevance for the field of child welfare, child maltreatment, child development, or children's services research.
- The extent to which the research study makes a significant contribution to the knowledge base.
- The extent to which the literature review is current and comprehensive and supports the questions to be addressed or the hypotheses to be tested.
- The extent to which the questions that will be addressed or the hypotheses that will be tested are sufficient for meeting the stated objectives.

The extent to which the proposal contains a dissemination plan that encompasses both professional and practitioner-oriented products.

2. Review and Selection Process

No grant award will be made under this announcement on the basis of an incomplete application. Timely applications from eligible applicants will be reviewed and scored competitively. Reviewers will use the evaluation criteria listed above to review and score the application.

On the basis of the review of an application, ACF will: (a) Approve the application for funding; or (b) disapprove the application; or (c) approve the application but not fund it for such reasons as a lack of funds or a need for further review.

Since ACF will be using non-Federal reviewers in the review process, applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget.

Approved But Unfunded Applications

Applications that are approved but unfunded may be held over for funding in the next funding cycle, pending the availability of funds, for a period not to exceed one year.

3. Anticipated Announcement and Award Dates

Grants to successful applications will be awarded by September 30, 2005.

*VI. Award Administration Information*

*1. Award Notices*

The successful applicants will be notified through the issuance of a Financial Assistance Award document which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided (if applicable), and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer and transmitted via postal mail.

Organizations whose applications will not be funded will be notified in writing.

*2. Administrative and National Policy Requirements*

Grantees are subject to the requirements in 45 CFR Part 74 (non-governmental) or 45 CFR Part 92 (governmental).

Direct Federal grants, subaward funds, or contracts under this Program shall not be used to support inherently religious activities such as religious instruction, worship, or proselytization. Therefore, organizations must take steps to separate, in time or location, their inherently religious activities from the services funded under this Program. Regulations pertaining to the prohibition of Federal funds for

inherently religious activities can be found on the HHS Web site at: *http://www.os.dhhs.gov/fbci/waisgate21.pdf*

*3. Reporting Requirements*

Program Progress Reports Semi-Annually

Financial Reports: Semi-Annually

Grantees will be required to submit program progress and financial reports (SF 269) throughout the project period. Program progress and financial reports are due 30 days after the reporting period. In addition, final programmatic and financial reports are due 90 days after the close of the project period.

**VII. Agency Contacts**

*Program Office Contact*

Attn: Mary Bruce Webb, ACF, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, Washington, DC 20447. Phone: 202–205–8628. E-mail: *mbwebb@acf.hhs.gov.*

*Grants Management Office Contact*

Attn: Sylvia Johnson, ACF, Division of Discretionary Grants, 370 L'Enfant Promenade, Washington, DC 20447. Phone: 202–260–7622. E-mail: *sjohnson@acf.hhs.gov.*

**VIII. Other Information**

**Notice:** Beginning with FY 2006, the Administration for Children and Families (ACF) will no longer publish grant announcements in the **Federal Register**. Beginning October 1, 2005 applicants will be able to find a synopsis of all ACF grant opportunities and apply electronically for opportunities via: *www.Grants.gov.* Applicants will also be able to find the complete text of all ACF grant announcements on the ACF Web site located at: *http://www.acf.hhs.gov/grants/index.html.*

Please reference Section IV.3 for details about acknowledgement of received applications.

Dated: June 14, 2005.

**Mary Bruce Webb,**

*Senior Research Analyst, ACF/OPRE.*

[FR Doc. 05–12157 Filed 6–20–05; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2005N–0190]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Export of Food and Drug Administration Regulated Products—Export Certificates

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) 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 information collection requirements imposed on firms that intend to export to countries that require an export certificate as a condition of entry for FDA regulated products, pharmaceuticals, biologics, and devices as indicated in the Federal Food, Drug, and Cosmetic Act (the act), as amended.

**DATES:** Submit written or electronic comments on the collection of information by August 22, 2005.

**ADDRESSES:** Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

**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 requests 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, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Export of FDA Regulated Products—Export Certificates (OMB Control Number 0910–0498)**

In April 1996 a law entitled ''The FDA Export Reform and Enhancement Act of 1996'' amended sections 801(e) and 802 of the act (21 U.S.C. 381(e) and 382). It was designed to ease restrictions on exportation of unapproved pharmaceuticals, biologics, and devices regulated by FDA. Section 801(e)(4) of the act provides that persons exporting certain FDA-regulated products may request that FDA certify that the products meet the requirements of sections 801(e) or 802 or other requirements of the act. This section of the law requires that FDA issue certification within 20 days of receipt of the request and charge firms up to $175 for the certifications.

This new section of the act authorizes FDA to issue export certificates for regulated pharmaceuticals, biologics, and devices that are legally marketed in the United States, as well as for pharmaceuticals, biologics, and devices that are not legally marketed, but are acceptable to the importing country as specified in sections 801(e) and 802 of the act. FDA has developed five types of certificates that satisfy the requirements of section 801(e)(4)(B) of the act: (1) Certificates to Foreign Governments, (2)

Certificates of Exportability, (3) Certificates of a Pharmaceutical Product, (4) Nonclinical Research Use Only Certificates, and (5) Certificates of Free Sale. Table 1 of this document lists the different certificates and details their uses:

TABLE 1.

| Type of Certificate | Use |
|---|---|
| ''Supplementary Information Certificate to Foreign Government Requests'' ''Exporter's Certification Statement Certificate to Foreign Government'' ''Exporter's Certification Statement Certificate to Foreign Government (For Human Tissue Intended for Transplantation)'' | For the export of products legally marketed in the United States. |
| ''Supplementary Information Certificate of Exportability Requests'' ''Exporter's Certification Statement Certificate of Exportability'' | For the export of products not approved for marketing in the United States (unapproved products) that meet the requirements of sections 801(e) or 802 of the act. |
| ''Supplementary Information Certificate of a Pharmaceutical Product'' ''Exporter's Certification Statement Certificate of a Pharmaceutical Product'' | Conforms to the format established by the World Health Organization and is intended for use by the importing country when the product in question is under consideration for a product license that will authorize its importation and sale or for renewal, extension, amendment, or review of a license. |
| ''Supplementary Information Nonclinical Research Use Only Certificate'' ''Exporter's Certification Statement Nonclinical Research Use Only'' | For the export of a nonclinical research use only product, material, or component that is not intended for human use which may be marketed in, and legally exported from the United States under the act. |
| Certificates of Free Sale | For food and cosmetic products and dietary supplements that may be legally marketed in the United States. |

FDA will continue to rely on self-certification by manufacturers for the first three types of certificates listed in the previous paragraph. Manufacturers are requested to self-certify that they are in compliance with all applicable requirements of the act, not only at the time that they submit their request to the appropriate center, but also at the time that they submit the certification to the foreign government.

The appropriate FDA centers will review product information submitted by firms in support of their certificate and any suspected case of fraud will be referred to FDA's Office of Criminal Investigations for followup. Firms making or submitting to FDA false statements on any documents may constitute violations of 18 U.S.C. 1001, with penalties including up to $250,000 in fines and up to 5 years imprisonment.

FDA estimates the burden of this collection of information as follows:

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| FDA Center | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| Center for Biologics Evaluation and Research | 1,501 | 1 | 1,501 | 1 | 1,501 |
| Center for Drug Evaluation and Research | 4,803 | 1 | 4,803 | 1 | 4,803 |
| Center for Devices and Radiological Health | 5,674 | 1 | 5,674 | 2[2] | 11,348 |
| Center for Veterinary Medicine | 664 | 1 | 664 | 1 | 664 |
| Total | 12,642 | | 12,642 | | 18,316 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Based on center policy that allows multiple devices to appear on one certificate.

Dated: June 14, 2005.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 05–12109 Filed 6–20–05; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2005N–0220]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components; and Requirements for Donor Testing, Donor Notification, and ''Lookback''

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) 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 contained in FDA's current good manufacturing practice (CGMP) and related regulations for blood and blood components; and requirements for donor testing, donor notification, and ''lookback''.

**DATES:** Submit written or electronic comments on the collection of information by August 22, 2005.

**ADDRESSES:** Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

**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 requests 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, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

#### Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components; and Requirements for Donor Testing, Donor Notification, and ''Lookback'' (OMB Control Number 0910–0116)—Extension

Under the statutory requirements contained in section 351 of the Public Health Service Act (PHS Act) (42 U.S.C. 262), no blood, blood component, or derivative may move in interstate commerce unless: (1) It is propagated or manufactured and prepared at an establishment holding an unsuspended and unrevoked license; (2) the product complies with regulatory standards designed to ensure safety, purity, and potency; and (3) it bears a label plainly marked with the product's proper name, manufacturer, and expiration date. In addition, under the biologics licensing and quarantine provisions in sections 351–361 of the PHS Act (42 U.S.C. 262–264) and the general administrative provisions under sections 501–503, 505–510, and 701–704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351–353, 355–360, and 371–374), FDA has the authority to issue and enforce regulations designed to protect the public from unsafe or ineffective biological products and to issue regulations necessary to prevent the introduction, transmission, or spread of communicable diseases between States or possession or from foreign countries into the States or possession. The CGMP and related regulations implement FDA's statutory authority to ensure the safety, purity, and potency of blood and blood components. The ''lookback'' requirements are intended to help ensure the continued safety of the blood supply by providing necessary information to users of blood and blood components and appropriate notification of recipients of transfusion who are at increased risk for transmitting human immunodeficiency virus (HIV) infection. The public health objective in testing human blood donors for evidence of infection due to communicable disease agents and in donor notification is to prevent the transmission of communicable disease.

The information collection requirements in the CGMP, donor testing, donor notification, and ''lookback'' regulations provide FDA with the necessary information to perform its duty to ensure the safety, purity, and potency of blood and blood components. These requirements establish accountability and traceability in the processing and handling of blood and blood components and enables FDA to conduct meaningful inspections. The recordkeeping requirements serve preventative and remedial purposes. The disclosure requirements identify the various blood and blood components and important properties of the product, demonstrate that the CGMP requirements have been met, and facilitate the tracing of a product back to its original source. The reporting requirements inform FDA of any deviations that occur and that may require immediate corrective action.

Under the reporting requirements, § 606.170(b) (21 CFR 606.170(b)) requires that fatal complications of blood collection and transfusions be reported to FDA as soon as possible and that a written report shall be submitted within 7 days. Section 610.40(c)(1)(ii) (21 CFR 610.40(c)(1)(ii)) requires each dedicated donation be labeled as required under 21 CFR 606.121 and with a label entitled ''INTENDED RECIPIENT INFORMATION LABEL'' containing the name and identifying information of the recipient. Section

610.40(g)(2) requires an establishment to obtain written approval from FDA to ship human blood or blood components for further manufacturing use prior to completion of testing. Section 610.40(h)(2)(ii)(A) requires an establishment to obtain written approval from FDA to use or ship human blood or blood components found to be reactive by a screening test for evidence of a communicable disease agent(s) or collect from a donor with a record of a reactive screening test. Sections 610.40(h)(2)(ii)(C) and (h)(2)(ii)(D) require an establishment to label reactive human blood and blood components with the appropriate screening test results, and, if they are intended for further manufacturing use into injectable products, with a statement indicating the exempted use specifically approved by FDA. Section 610.40(h)(2)(vi) requires each donation of human blood or blood component that tests reactive by a screening test for syphilis and is determined to be a biological false positive be labeled with both test results. Section 610.42(a) (21 CFR 610.42(a)) requires a warning statement, including the identity of the communicable disease agent, on medical devices containing human blood or blood components found to be reactive by a screening test for evidence of infection due to a communicable disease agent(s) or syphilis. Section 610.46(a) (21 CFR 610.46(a)) requires blood establishments to notify consignees, within 72 hours, of repeatedly reactive test results so that previously collected blood and blood components are appropriately quarantined. Section 610.46(b) requires blood establishments to notify consignees of licensed, more specific test results for HIV within 30 calendar days after the donors' repeatedly reactive test. Section 610.47(b) (21 CFR 610.47(b)) requires transfusion services not subject to the Centers for Medicare and Medicaid Services (CMS) regulations to notify physicians of prior donation recipients or to notify recipients themselves of the need for HIV testing and counseling. Section 630.6(a) (21 CFR 630.6(a)) requires an establishment to make reasonable attempts to notify any donor who has been deferred as required by § 610.41 (21 CFR 610.41), or who has been determined not to be eligible as a donor. Section 630.6(d)(1) requires an establishment to provide certain information to the referring physician of an autologous donor who is deferred based on the results of tests as described in § 610.41.

Under the recordkeeping requirements, section 606.100(b) (21 CFR 606.100(b)) requires that written standard operating procedures (SOPs) be maintained for the collection, processing, compatibility testing, storage, and distribution of blood and blood components used for transfusion and manufacturing purposes. Section 606.100(c) requires the review of all pertinent records to a lot or unit of blood prior to release. Any unexplained discrepancy or failure of a lot or unit of final product to meet any of its specifications must be thoroughly investigated, and the investigation, including conclusions and followup, must be recorded. Section 606.110(a) (21 CFR 606.110(a)) requires a physician to certify in writing that the donor's health permits plateletpheresis or leukapheresis if a variance from additional regulatory standards for a specific product is used when obtaining the product from a specific donor for a specific recipient. Section 606.110(b) requires establishments to request prior Center for Biologics Evaluation and Research (CBER) approval for plasmapheresis of donors who do not meet donor requirements. The information collection requirements for § 606.110(b) are reported and approved under OMB control number 0910–0338 which expires August 31, 2005. Section 606.151(e) (21 CFR 606.151(e)) requires that records of expedited transfusions in life-threatening emergencies be maintained. So that all steps in the collection, processing, compatibility testing, storage and distribution, quality control, and transfusion reaction reports and complaints for each unit of blood and blood components can be clearly traced, § 606.160 (21 CFR 606.160) requires that legible and indelible contemporaneous records of each significant step be made and maintained for no less than 5 years. Section 606.160(b)(1)(ix) requires a facility to maintain records of notification of donors deferred or determined not to be eligible for donation, including appropriate followup if the initial notification attempt fails. Section 606.160(b)(1)(xi) requires an establishment to maintain records of notification of the referring physician of a deferred autologous donor, including appropriate followup if the initial notification attempt fails. Section 606.165 (21 CFR 606.165) requires that distribution and receipt records be maintained to facilitate recalls, if necessary. Section 606.170(a) (21 CFR 606.170(a)) requires records to be maintained of any reports of complaints of adverse reactions as a result of blood collection or transfusion. Each such report must be thoroughly investigated, and a written report, including conclusions and followup, must be prepared and maintained. Section 610.40(g)(1) requires an establishment to appropriately document a medical emergency for the release of human blood or blood components prior to completion of required testing.

In addition to the CGMPs in part 606 (21 CFR part 606), there are regulations in part 640 (21 CFR part 640) that require additional standards for certain blood and blood components as follows: Sections 640.3(a)(1), (a)(2), and (f); 640.4(a)(1) and (a)(2); 640.25(b)(4) and (c)(1); 640.27(b); 640.31(b); 640.33(b); 640.51(b); 640.53(b) and (c); 640.56(b) and (d); 640.61; 640.63(b)(3), (e)(1), and (e)(3); 640.65(b)(2); 640.66; 640.71(b)(1); 640.72; 640.73; and 640.76(a) and (b). The information collection requirements and estimated burdens for these regulations are included in the part 606 burden estimates, as described in Tables 1 and 2 of this document.

Respondents to this collection of information are licensed and unlicensed blood establishments that collect blood and blood components, including Source Plasma and Source Leukocytes inspected by FDA, and other transfusion services inspected by CMS. Based on information received from CBER's database systems, there are approximately 81 licensed Source Plasma collection establishments with multiple locations and 1,628 registered Whole Blood collection establishments for a total of 1,709 establishments. There are approximately 2,156 registered blood establishments inspected by FDA. Of these establishments, approximately 773 perform plateletpheresis and leukopheresis. These establishments annually collect approximately 28 million units of Whole Blood, blood components including Source Plasma, and Source Leukocytes and are required to follow FDA ''lookback'' procedures, and approximately 134 are registered transfusion services that are not subject to CMS's ''lookback'' regulations. Based on CMS records, there are an estimated 4,980 transfusion services approved for Medicare reimbursement.

The following reporting and recordkeeping estimates are based on information provided by industry, CMS, and FDA experience. Based on information received from industry, we estimate that there are an average of 13 million donations of Source Plasma from approximately 2 million donors and 15 million donations of Whole Blood, including 300,000 (2 percent of 15 million) autologous, from approximately 8 million donors.

Assuming each autologous donor makes an average of 2 donations, FDA estimates that there are approximately 150,000 autologous donors.

FDA estimates that approximately 5 percent (12,000) of the 240,000 donations that are donated specifically for the use of an identified recipient would be tested under the dedicated donors testing provisions in § 610.40(c)(1)(ii).

Under § 610.40(g)(2) and (h)(2)(ii)(A), the only product currently shipped prior to completion of testing is a licensed product, Source Leukocytes, used in the manufacture of interferon, which requires rapid preparation from blood. Shipments of Source Leukocytes are preapproved under a biologics license application and each shipment does not have to be reported to the agency. Based on information from CBER's database system, FDA receives an estimated 1 application per year from manufacturers of Source Leukocytes.

Under § 610.40(h)(2)(ii)(C) and (h)(2)(ii)(D), FDA estimates that each manufacturer would ship an estimated 1 human blood or blood component per month (12 per year) that would require two labels; one as reactive for the appropriate screening test under § 610.40(h)(2)(ii)(C), and the other stating the exempted use specifically approved by FDA under § 610.40(h)(2)(ii)(D). According to CBER's database system, there are an estimated 40 licensed manufacturers that ship known reactive human blood or blood components.

Based on information we received from industry, we estimate that approximately 18,000 donations annually test reactive by a screening test for syphilis, and are determined to be biological false positives by additional testing and labeled accordingly (§ 610.40(h)(2)(vi)).

Human blood or a blood component with a reactive screening test, as a component of a medical device, is an integral part of the medical device, e.g., a positive control for an in vitro diagnostic testing kit. It is usual and customary business practice for manufacturers to include on the container label a warning statement that identifies the communicable disease agent. In addition, on the rare occasion when a human blood or blood component with a reactive screening test is the only component available for a medical device that does not require a reactive component, then a statement of warning is required to be affixed to the medical device. To account for this rare occasion under § 610.42(a), we estimate that the warning statement would be necessary no more than once a year.

Based on information received from industry, we estimate that there are approximately 4,424 repeat donors that will test reactive on a screening test for HIV with 159 confirmed positive. We estimate that each repeat donor has donated two previous times and an average of three components were made from each donation. Under § 610.46(a) and (b), this estimate results in 26,544 (4,424 x 2 x 3) notifications of the HIV screening test results to consignees by collecting establishments for the purpose of quarantining affected blood and blood components, and another 26,544 (4,424 x 2 x 3) notifications to consignees of subsequent test results.

Under § 610.47(b), based also on the information received from industry, we estimate that 80 percent of the 159 (127) confirmed HIV positive were from repeat donors of Whole Blood donations.

Industry estimates that approximately 13 percent of 10 million potential donors (1.3 million donors) who come to donate annually are determined not to be eligible for donation prior to collection because of failure to satisfy eligibility criteria. It is the usual and customary business practice of 1,709 collecting establishments to notify onsite and to explain the reason why the donor is determined not to be suitable for donating. Based on such available information, we estimate that two-thirds of the 1,709 collecting establishments provided onsite additional information and counseling to a donor determined not to be eligible for donation as usual and customary business practice. Consequently, we estimate that only one-third or 570 collection establishments would need to provide, under § 630.6(a), additional information and counseling onsite to the estimated 433,333 (one-third of 1.3 million) ineligible donors.

It is estimated that another 4.5 percent of 10 million donors (450,000 donors) are deferred annually based on test results. We estimate that currently 95 percent of the establishments that collect 98 percent of the blood and blood components notify donors who have reactive test results for HIV, Hepatitis B Virus (HBV), Hepatitis C Virus (HCV), Human T-Lymphotropic Virus (HTLV), and syphilis as usual and customary business practice. Consequently, 5 percent (85) of the industry (1,709) collecting 2 percent (9,000) of the deferred donors (450,000) would notify donor under § 630.6(a).

As part of usual and customary business practice, collecting establishments notify an autologous donor's referring physician of reactive test results obtained during the donation process required under § 630.6(d)(1). However, we estimate that 5 percent of the 1,628 blood collection establishments (81) may not notify the referring physicians of the estimated 2 percent of 150,000 autologous donors with reactive test results (3,000) as their usual and customary business practice.

The recordkeeping chart reflects the estimate that 95 percent of the recordkeepers, which collect 98 percent of the blood supply, had developed SOPs as part of their customary and usual business practice. Establishments may minimize burdens associated with CGMP and related regulations by using model SOPs developed by industries' accreditation organizations. These accreditation organizations represent almost all registered blood establishments.

Under § 606.160(b)(1)(ix), we estimate the total annual records based on the 1.3 million donors determined not to be eligible to donate and each of the 450,000 (1,300,000 + 450,000 = 1,750,000) donors deferred based on reactive test results for evidence of infection due to communicable disease agents. Under § 606.160(b)(1)(xi), only the 1,628 registered blood establishments collect autologous donations and, therefore, are required to notify referring physicians. We estimate that 4.5 percent of the 150,000 autologous donors (6,750) will be deferred under § 610.41 and thus result in the notification of their referring physicians.

FDA has concluded that the use of untested or incompletely tested but appropriately documented human blood or blood components in rare medical emergencies should not be prohibited. We estimate the recordkeeping under § 610.40(g)(1) to be minimal with one or less occurrence per year. The reporting of test results to the consignee in § 610.40(g) does not create a new burden for respondents because it is the usual and customary business practice or procedure to finish the testing and provide the results to the manufacturer responsible for labeling the blood products.

The hours per response and hours per record are based on estimates received from industry or FDA experience with similar recordkeeping or reporting requirements.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 CFR Section | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 606.170(b)[2] | 82 | 1 | 82 | 20 | 1,640 |
| 610.40(c)(1)(ii) | 1,628 | 8 | 12,000 | 0.08 | 960 |
| 610.40(g)(2) | 1 | 1 | 1 | 1 | 1 |
| 610.40(h)(2)(ii)(A) | 1 | 1 | 1 | 1 | 1 |
| 610.40(h)(2)(ii)(C) and (h)(2)(ii)(D) | 40 | 12 | 480 | 0.2 | 96 |
| 610.40(h)(2)(vi) | 1,628 | 11 | 18,000 | 0.08 | 1,440 |
| 610.42(a) | 1 | 1 | 1 | 1 | 1 |
| 610.46(a) | 1,709 | 16 | 26,544 | 0.17 | 4,512 |
| 610.46(b) | 1,709 | 16 | 26,544 | 0.17 | 4,512 |
| 610.47(b) | 134 | 1 | 134 | 1 | 134 |
| 630.6(a)[3] | 570 | 760 | 433,333 | 0.08 | 34,667 |
| 630.6(a)[4] | 85 | 106 | 9,000 | 1.5 | 13,500 |
| 630.6(d)(1) | 81 | 37 | 3,000 | 1 | 3,000 |
| Total | | | | | 64,464 |

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.
[2]The reporting requirement in § 640.73, which addresses the reporting of fatal donor reactions, is included in the estimate for § 606.170(b).
[3]Notification of donors determined not to be eligible for donation based on failure to satisfy eligibility criteria.
[4]Notification of donors deferred based on reactive test results for evidence of infection due to communicable disease agents.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

| 21 CFR Section | No. of Recordkeepers | Annual Frequency per Recordkeeping | Total Annual Records | Hours per Record | Total Hours |
|---|---|---|---|---|---|
| 606.100(b)[2] | 249[5] | 1 | 249 | 24 | 5,976 |
| 606.100(c) | 249[5] | 10 | 2,490 | 1 | 2,490 |
| 606.110(a)[3] | 39[6] | 1 | 39 | 0.5 | 20 |
| 606.151(e) | 249[5] | 12 | 2,988 | 0.083 | 248 |
| 606.160[4] | 249[5] | 1,928 | 480,000 | 0.75 | 360,000 |
| 606.160(b)(1)(ix) | 1,709 | 1,024 | 1,750,000 | 0.05 | 87,500 |
| 606.160(b)(1)(xi) | 1,628 | 4 | 6,750 | 0.05 | 338 |
| 606.165 | 249[5] | 1,928 | 480,000 | 0.083 | 39,840 |
| 606.170(a) | 249[5] | 12 | 2,988 | 1 | 2,988 |
| 610.40(g)(1) | 1,628 | 1 | 1,628 | 0.5 | 814 |
| Total | | | | | 500, 214 |

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.
[2]The recordkeeping requirements in §§ 640.3(a)(1), 640.4(a)(1), and 640.66, which address the maintenance of SOPs, are included in the estimate for § 606.100(b).
[3]The recordkeeping requirements in § 640.27(b), which address the maintenance of donor health records for the plateletpheresis, are included in the estimate for § 606.110(a).
[4]The recordkeeping requirements in §§ 640.3(a)(2) and (f); 640.4(a)(2); 640.25(b)(4) and (c)(1); 640.31(b); 640.33(b); 640.51(b); 640.53(b) and (c); 640.56(b) and (d); 640.61; 640.63(b)(3), (e)(1), and (e)(3); 640.65(b)(2); 640.71(b)(1); 640.72; and 640.76(a) and (b), which address the maintenance of various records are included in the estimate for § 606.160.
[5]Five percent of CMS transfusion services and FDA-registered blood establishments (0.05 X 4,980).
[6]Five percent of plateletpheresis and leukopheresis establishments (0.05 X 773).

Dated: June 14, 2005.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 05–12180 Filed 6–20–05; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2003P–0501]**

### Determination That PYRIDOSTIGMINE BROMIDE Tablets, 30 Milligrams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined that PYRIDOSTIGMINE BROMIDE tablets, 30 milligrams (mg), for the treatment of myasthenia gravis, were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for PYRIDOSTIGMINE BROMIDE tablets, 30 mg, for the treatment of myasthenia gravis.

**FOR FURTHER INFORMATION CONTACT:** S. Mitchell Weitzman, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5535.

**SUPPLEMENTARY INFORMATION:** In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is typically a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise

necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products with Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations in part 314 (21 CFR part 314), drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (§ 314.162).

Under § 314.161(a)(1), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

PYRIDOSTIGMINE BROMIDE (mestinon) tablets (NDA 009–829), 60 mg, were originally approved on April 6, 1955, to treat myasthenia gravis. They were deemed effective under the Drug Efficacy Study Implementation on November 4, 1970 (35 FR 16992).

A suitability petition was submitted under section 355(j)(2)(C) of the act and was approved for a change in strength for PYRIDOSTIGMINE BROMIDE (mestinon) tablets (i.e., from 60-mg tablets to 30-mg tablets) for the treatment of myasthenia gravis (*see* January 22, 1986, letter; Docket No. 1985P–0412). FDA approved ANDA 89–572, held by Solvay Pharmaceuticals, Inc., (Solvay), on November 27, 1990, for PYRIDOSTIGMINE BROMIDE tablets, 30 mg, for the treatment of myasthenia gravis. Solvay's PYRIDOSTIGMINE BROMIDE tablets, 30 mg, were discontinued from marketing on May 12, 1994, and at Solvay's request, approval of ANDA 89–572 was withdrawn effective August 11, 1994 (59 FR 35527, July 12, 1994).

On October 29, 2003, Lachman Consultant Services, Inc., submitted a citizen petition (Docket No. 2003P–0501) under 21 CFR 10.30 requesting that the agency determine whether PYRIDOSTIGMINE BROMIDE tablets, 30 mg, for the treatment of myasthenia gravis, were withdrawn from sale for reasons of safety or effectiveness.

The agency has determined that PYRIDOSTIGMINE BROMIDE tablets, 30 mg, for the treatment of myasthenia gravis, were not withdrawn from sale for reasons of safety or effectiveness. The original basis for approving the suitability petition has not changed. PYRIDOSTIGMINE BROMIDE (mestinon) tablets, 60 mg, currently appear in the active section of the Orange Book. The agency notes that PYRIDOSTIGMINE BROMIDE (mestinon) tablets, 60 mg, are still being marketed by several other manufacturers (e.g., Impax Labs, Corepharma, and Barr). PYRIDOSTIGMINE BROMIDE (mestinon) syrup (NDA 15–193), 60 mg/5 milliliters, also appears in the active section of the Orange Book. In approving the suitability petition, the agency noted that:

> [a]lthough the proposed strength is less than the currently approved product, the labeling of the currently approved products indicates that doses of 30 mg or even less may be utilized. Additionally, incremental doses are encouraged in approved labeling, especially ''for children and brittle myasthenic patients who require fractions of 60-mg doses''

(*see* Docket No. 1985P–0412). The currently available, relevant information does not call into question the agency's January 22, 1986, determination that ANDAs for PYRIDOSTIGMINE BROMIDE tablets, 30 mg, for the treatment of myasthenia gravis, are suitable for submission.

The agency notes that PYRIDOSTIGMINE BROMIDE tablets, 30 mg, are also indicated for prophylaxis against the lethal effects of soman nerve agent poisoning, and are the subject of NDA 20–414. The U.S. Army submitted NDA 20–414, which was approved on February 5, 2003, under subpart I of the new drug regulations (§§ 314.600 through 314.650). NDA 20–414 is displayed in the ''Discontinued Drug Product List'' section of the Orange Book. Drug products approved for the U.S. Army are displayed in the discontinued section of the Orange Book because they are not commercially available. The agency notes that NDA 20–414 is not the subject of this determination. The issue here is whether PYRIDOSTIGMINE BROMIDE tablets, 30 mg, for the treatment of myasthenia gravis (i.e., ANDA 89–572), were withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing agency records, FDA determines that, for the reasons stated in this document, PYRIDOSTIGMINE BROMIDE tablets, 30 mg, were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list PYRIDOSTIGMINE BROMIDE tablets, 30 mg, for the treatment of myasthenia gravis, in the ''Discontinued Drug Product List'' section of the Orange Book. ANDAs that refer to PYRIDOSTIGMINE BROMIDE tablets, 30 mg, for the treatment of myasthenia gravis, may be approved by the agency.

Dated: June 14, 2005.

**Jeffrey Shruen,**

*Assistant Commissioner for Policy.*

[FR Doc. 05–12108 Filed 6–20–05; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2005N–0227]**

### Update on Leukocyte Reduction of Blood and Blood Components; Public Workshop

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled ''Update on Leukocyte Reduction of Blood and Blood Components.'' The public workshop sponsors are FDA; the National Institutes of Health (NIH) National Heart, Lung, and Blood Institute (NHLBI); and the Office of Public Health and Science (OPHS) in the Department of Health and Human Services. The purpose of the public workshop is to address current issues related to leukocyte-reduced blood and blood components.

*Date and Time*: The public workshop will be held on July 20, 2005, from 8 a.m. to 5:30 p.m.

*Location*: The public workshop will be held at the National Institutes of Health, Lister Hill Center Auditorium, Bldg. 38A, 8600 Rockville Pike, Bethesda, MD 20894.

*Contact*: Rhonda Dawson, Center for Biologics Evaluation and Research (HFM–302), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3514, FAX: 301–827–2843, e-mail: *dawsonr@cber.fda.gov*.

*Registration*: Send registration information (including name, title, firm name, address, telephone, and fax number) to Rhonda Dawson (see *Contact*) by July 1, 2005. Because seating is limited, we recommend early registration. Registration at the site on the day of the public workshop will be

provided on a space available basis beginning at 7:15 a.m. There is no registration fee for the public workshop.

If you need special accommodations due to a disability, please contact Rhonda Dawson at least 7 days in advance.

**SUPPLEMENTARY INFORMATION:** FDA, NHLBI, and OPHS are sponsoring a public workshop entitled ''Update on Leukocyte Reduction of Blood and Blood Components.'' The workshop will include the following topics:

- Leukoreduction in targeted and non-targeted recipients;
- Current data on the potential advantages and hazards ofproviding leukocyte-reduced blood and blood components;
- A review of observed clinical adverse events and manufacturing failures associated with leukoreduction procedures;
- FDA's current considerations for regulatory standards for leukocyte-reduced components and approaches to quality control testing; and
- New scientific developments in filtration, including developing technologies for prion removal from blood components.

*Transcripts*: Transcripts of the public workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the public workshop at a cost of 10 cents per page. A transcript of the public workshop will be available on the Internet at *http://www.fda.gov/cber/minutes/workshop-min.htm*.

Dated: June 14, 2005.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 05–12185 Filed 6–20–05; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Submission for OMB Review; Comment Request; Prostate, Lung, Colorectal and Ovarian Cancer Screening Trial

**SUMMARY:** Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on January 24, 2005, page 3376 and allowed 60-days for public comment. Three requests for more information were received. Additional information on the proposed collection was sent to each requestor. The purpose of this notice is to allow an additional 30 days for public comment.

*5 CFR 1320.5 (General requirements) Reporting and Recordkeeping Requirements: Final Rule* requires that the agency inform the 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. This information is required to be stated in the 30-day **Federal Register** Notice.

*Proposed Collection: Title:* Prostate, Lung, Colorectal and Ovarian Cancer Screening Trial. *Type of Information Collection Request:* Revision, OMB control number 0925–0407, expiration date July 31, 2005. *Need and Use of Information Collection:* This trial is designed to determine if screening for prostate, lung, colorectal and ovarian cancer can reduce mortality from these cancers which currently cause an estimated 263,000 deaths annually in the U.S. The design is a two-armed randomized trial of men and women aged 55 to 74 at entry. The total sample size t is 154,938. The primary endpoint of the trial is cancer-specific mortality for each of the four cancer sites (prostate, lung, colorectum, and ovary). In addition, cancer incidence, stage shift, and case survival are to be monitored to help understand and explain results. Biologic prognostic characteristics of the cancers will be measured and correlated with mortality to determine the mortality predictive value of these intermediate endpoints. Basic demographic data, risk factor data for the four cancer sites and screening history data, as collected from all subjects at baseline, will be used to assure comparability between the screening and control groups and make appropriate adjustments in analysis. Further, demographic and risk factor information may be used to analyze the differential effectiveness of screening in high versus low risk individuals. *Frequency of Response:* On occasion. *Affected Public:* Individuals or households. *Type of Respondents:* Adult men and women. The annual reporting burden is as follows: *Estimated Number of Respondents:* 145,852; *Estimated Number of Responses Per Respondent:* 1.14; *Average Burden Hours Per Response:* 0.14; and *Estimated Total Annual Burden Hours Requested:* 23,278. The annualized cost to respondents is estimated at: $232,780. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

| Type of respondents | Estimated annual number of respondents | Estimated number of responses per respondent | Average burden hours per response | Estimated total annual burden hours requested |
|---|---|---|---|---|
| Adults | 145,852 | 1.14 | 0.14 | 23,278 |

*Request for Comments:* Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Direct Comments to OMB:* Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235,

Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Christine D. Berg, Chief, Early Detection Research Group, National Cancer Institute, NIH, EPN Building, Room 3070, 6130 Executive Boulevard, Bethesda, MD 20892, or call non-toll-free number 301–496–8544 or e-mail your request, including your address to: *Bergc@mail.nih.gov*.

*Comments Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: June 10, 2005.

**Rachelle Ragland-Greene,**

*NCI Project Clearance Liaison, National Institutes of Health.*

[FR Doc. 05–12128 Filed 6–20–05; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**Epitopes of Ebola Virus Glycoproteins Useful for Vaccine Development**

*Carolyn A. Wilson et al. (FDA)*

U.S. Provisional Application No. 60/532,677 filed 23 Dec 2003 (DHHS Reference No. E–271–2003/0–US–01); PCT Patent Application filed 23 Dec 2004 (DHHS Reference No. E–271–2003/1–PCT–01).

*Licensing Contact:* Susan Ano; 301/435–5515; *anos@mail.nih.gov.*

The current technology relates to the identification of two highly conserved linear domains of Ebola or Marburg envelope glycoprotein (GP) and of amino acid residues within these regions critical for virus infection. The identified domains could provide targets for rational design and development of broadly cross-protective antivirals and vaccines. There are currently no licensed vaccines against Ebola and Marburg. The linear domains (or portions) could potentially be used as immunogens in a vaccine. Mutations containing these epitopes have been identified to result in the formation of non-infectious Ebola viral particles, which could be useful for developing vaccines against Ebola virus, a category A biodefense agent. Vaccines utilizing these non-infectious particles may be safer than vaccines that use other common approaches, *e.g.* live-attenuated virus vaccines. This technology describes the polypeptides that form the non-infectious Ebola viral particles, the polynucleotide sequences encoding the polypeptides, vectors comprising the polynucleotides, host cells transformed with such vectors, vaccines and methods suitable for use in the prevention and/or treatment of hemorrhagic fever due to Ebola or Marburg, and a molecular decoy comprising the polynucleotides. These additional materials could also form the basis of an Ebola vaccine or antiviral therapy. Diagnostic applications involving the aforementioned materials are also described. Development of antiviral compounds and vaccines for treatment and prevention of Ebola and Marburg infections would be of tremendous benefit for biodefense and public health. However, the current Ebola vaccine technologies such as DNA-based vaccines and subunit vaccines either have safety risks or lack broad cross-protectivity. Therefore, the present technology could provide a promising technology to make safe and broad cross-reactive antivirals or vaccines against Ebola and Marburg viruses.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

**Detection and Identification of Mycobacterium Using SecA**

*Steven H. Fischer and Adrian M. Zelazny (CC)*

U.S. Provisional Application No. 60/548,371 filed 27 Feb 2004 (DHHS Ref. No. E–238–2003/0–US–01); PCT Application No. PCT/US05/06609 filed 28 Feb 2005 (DHHS Ref. No. E–238–2003/0–PCT–02).

*Licensing Contact:* Robert M. Joynes, J.D.; 301/594–6565; *joynesr@mail.nih.gov.*

This invention relates to a method of detecting a wide variety of Mycobacterium and Nocardia species in a sample. The method involves hybridizing an amplified Mycobacterium/Nocardia genus-specific secA nucleic acid to a Mycobacterium/Nocardia species-specific secA probe oligonucleotide, wherein the amplification utilizes at least two Mycobacterium/Nocardia genus-specific primers, and detecting hybridization of the Mycobacterium/Nocardia-specific secA nucleic acid. The Mycobacterium/Nocardia genus-specific primers bind within a conserved region of the nucleic acid sequence encoding a Mycobacterium/Nocardia bi-genus-specific secA protein, wherein the conserved region is in the 5' half of the Mycobacterium/Nocardia secA gene and includes a substrate specificity domain.

The approach for detection of Mycobacterium/Nocardia species in clinical materials could potentially be used as a universal system for detection of any member of the genus Mycobacterium and the genus Nocardia and identification at the species or complex level. The system currently identifies all mycobacteria tested to date. With a few modifications, we believe it will also detect all Nocardia species of clinical significance. Contrary to commercial methods based on 16S rRNA and ITS, the SecA method will detect both Mycobacterium and Nocardia species. The region targeted has sufficient sequence variation for discrimination at the species or complex level.

Based on the information available to date, the SecA approach could be potentially used to replace acid-fast smears (AFB) and modified acid-fast smears, could provide definitive detection and identification of a large variety of Mycobacterium and Nocardia species present in clinical materials, and could be used as a single confirmation and species identification system for suspected positive Mycobacterium or Nocardia cultures. The invention also contemplates devices, including arrays, and kits for

detecting Mycobacterium or Nocardia species in a sample.

This technology is related to Dr. Fischer's other technology, E–278–1999/0, ''Multiplex Hybridization System for the Identification of Pathogenic Mycobacterium and Method of Use'' (published in the **Federal Register** on September 7, 2002, 65 FR 54288). The distinguishing feature in the current invention that makes it a vast improvement over E–278–1999/0 is the ability to detect all 29 Mycobacterium species tested to date and potentially all Nocardia species in a clinical sample.

**Cloned Genomes of Infectious Hepatitis C Virus and Uses Thereof**

*Masayuki Yanagi, Jens Bukh, Suzanne U. Emerson, Robert H. Purcell (NIAID)*

U.S. Patent No. 6,153,421 issued on 28 Nov 2000 (DHHS Reference No. E–050–1998/0–US–01); U.S. Patent Application No. 09/662,454 filed 14 Sep 2000 (DHHS Reference No. E–050–1998/0–US–03); Canadian Application 2295552; Australian Application 84889/98; European Application 98935702.5.

*Licensing Contact:* Chekesha S. Clingman; 301/435–5018; *clingmac@mail.nih.gov.*

The current invention provides nucleic acid sequences comprising the genomes of infectious hepatitis C viruses (HCV) of genotype 1a and 1b. It covers the use of these sequences, and polypeptides encoded by all or part of the sequences, in the development of vaccines and diagnostic assays for HCV and the development of screening assays for the identification of antiviral agents for HCV.

Additional information can be found in: Yanagi *et al.*, ''Transcripts from a single full-length cDNA clone of hepatitis C virus are infectious when directly transfected into the liver of a chimpanzee,'' Proc. Natl. Acad. Sci. USA (1997 August) 94(16):8738–8743; and Yanagi *et al.*, ''Transcripts of a chimeric cDNA clone of hepatitis C virus genotype 1b are infectious in vivo,'' Virology (25 April 1998) 244(1):161–172.

Dated: June 6, 2005.

**Steven M. Ferguson,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 05–12130 Filed 6–20–05; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Environmental Health Sciences 2006 Strategic Plan

**AGENCY:** National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH), Department of Health and Human Services (DHHS).

**ACTION:** Request for comments and nominations.

**SUMMARY:** The NIEHS is updating its 2000 strategic plan entitled NIEHS Strategic Plan 2000—A Five-Year Program: New Opportunities in Environmental Health Research. To anticipate, meet, and set priorities for environmental health research, training, resources, and technologies, NIEHS requests input from scientists, members of the public, and all interested parties. The goal of this strategic planning process is to identify barriers to progress for future research and to define future needs and directions for environmental health. In addition, the NIEHS seeks the nomination of individuals qualified to participate in a workshop to discuss the plan in more detail. The existing NIEHS strategic plan can be viewed at *http://www.niehs.nih.gov/external/plan2000/home.htm*.

**DATES:** Submit responses to the NIEHS Office of Science Policy and Planning, (see below), on or before August 5, 2005.

**ADDRESSES:** The Office of Science Policy and Planning, NIEHS/NIH, PO Box 12233, Research Triangle Park, NC 27709, telephone (919) 541–3484, FAX (919) 541–1994, e-mail *niehs-plan2006@niehs.nih.gov*. Comments may be submitted electronically at the NIEHS Strategic Planning Web site: *http://www.niehs.nih.gov/external/plan2006/home.htm*. They can also be submitted by e-mail, mail or fax to the above address.

**SUPPLEMENTARY INFORMATION:**

**Background**

The mission of the NIEHS is to reduce the burden of environmentally-associated disease and dysfunction by defining three elements: (1) How environmental exposures affect our health, (2) how individuals differ in their susceptibility to these exposures, and (3) how these susceptibilities change over time.

The NIEHS achieves its mission through multidisciplinary biomedical research programs and prevention and intervention efforts. The NIEHS also focuses on communication strategies that encompass training, education, technology transfer, and community outreach. Research is required to disseminate evidence-based environmental health policies that prevent diseases.

**Request for Comments**

To ensure the continued relevance of its Strategic Plan, the NIEHS seeks input to the following questions relative to the issues described above:

(A) What are the disease processes and public health concerns that are relevant to environmental health sciences?

(B) How can environmental health sciences be used to understand how biological systems work, why some individuals are more susceptible to disease, or why individuals with the same disease may have very different clinical outcomes?

(C) What are the major opportunities and challenges in global environmental health?

(D) What are the environmental exposures that need further consideration?

(E) What are the critical needs for training the next generation of scientists in environmental health?

(F) What technology and infrastructural changes are needed to fundamentally advance environmental health science?

Individuals submitting public comments are asked to include relevant contact information [name, affiliation (if any), address, telephone, fax, e-mail, and sponsoring organization, if applicable].

**Request for Nomination of Planning Group Members**

The NIEHS solicits nominations for individuals to participate in a workshop to discuss the plan in more detail. Nominations should include the name, degree(s), position title, department, institution name and address, phone and fax numbers, e-mail address, and specific area of expertise. Information of nominated individuals should be sent by August 5, 2005 to the NIEHS office of Science Policy and Planning (contact information provided above).

Dated: June 8, 2005.

**David A. Schwartz,**

*Director, National Institute of Environmental Health Sciences.*

[FR Doc. 05–12129 Filed 6–20–05; 8:45 am]

**BILLING CODE 4167–01–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4978–N–05]**

### Notice of Proposed Information Collection for Public Comment; Mortgage Credit Analysis for Loan Guarantee Program and Transmittal for Payment of Loan Guarantee Fee

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due date:* August 22, 2005.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*.

**FOR FURTHER INFORMATION CONTACT:** Aneita Waites, (202) 708–0713, extension 4114, for copies of the proposed forms and other available documents. (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Mortgage Credit Analysis Worksheet for Native American Loan Guarantee Program and Transmittal for Loan Guarantee Fee.

*OMB Control Number:* 2577–0200.

*Description of the need for the information and proposed use:* The information is required by section 184 of the Housing and Community Development Act of 1994, as amended by section 701 of the Native American Housing Assistance and Self-Determination Act of 1996 and implementing regulations at 24 CFR section 1005. HUD has the authority to guarantee loans for the construction, acquisition, rehabilitation or refinance of 1- to 4-family homes to be owned by Native Americans in restricted Indian lands or service areas. Mortgage lenders approved by HUD provide borrower and lender information to HUD for guarantee of the loan. If the information were not provided on Forms HUD–53036 and HUD–53038, HUD would be unable to guarantee loans and as a result lenders would be unable to provide financing to Native Americans.

*Agency form number:* HUD–53036 and HUD–53038.

*Members of affected public:* Businesses or Other For-profit.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 2,000 responses ($1,000 \times 2$ forms), on occasion, fifteen minutes to prepare HUD–53036, five minutes to prepare HUD–53038, 334 hours total reporting burden.

*Status of the proposed information collection:* Extension of currently approved collection.

The information is currently collected manually in the Office of Loan Guarantee. Statutory mandates and Federal program requirements would not be met if the collection is not conducted, or is conducted less frequently.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 15, 2005.

**Paula O. Blunt,**

*General Deputy Assistant Secretary for Public and Indian Housing.*

[FR Doc. 05–12136 Filed 6–20–05; 8:45 am]

**BILLING CODE 4210–33–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4975–N–19]**

### Notice of Proposed Information Collection: Comment Request; Subterranean Termite Soil Treatment/ Builder's Guarantee & New Construction Treatment Record

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, 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:* August 22, 2005.

**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: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

**FOR FURTHER INFORMATION CONTACT:** Vance Morris, Director, Office of Single Family Program Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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 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:* Subterranean Termite Treatment Builder's Certification and Guarantee, and the New Construction Subterranean Termite Soil Treatment Record.

*OMB Control Number, if applicable:* 2502–0525.

*Description of the need for the information and proposed use:* HUD's collection of this information permits the NPCA–99–A to establish the builder's warranty against termites for a period of one year bringing it into conformance with other builder warranties HUD requires for newly constructed housing. The NPCA–99–B is submitted to the builder of new homes when the soil treatment method is used for termite prevention.

*Agency form numbers, if applicable:* HUD–NPCA–99–A, and HUD–NPCA–99–B.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The estimated number of respondents is 54,000 generating 54,000 annual responses, frequency of response is on occasion, the estimated time per response varies from approximately 5 minutes to 15 minutes, and the estimated annual burden hours requested is 8,910.

*Status of the proposed information collection:* Currently approved.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: June 3, 2005.

**Frank L. Davis,**

*General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.*

[FR Doc. E5–3217 Filed 6–20–05; 8:45 am]

**BILLING CODE 4210–27–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Endangered and Threatened Wildlife and Plants; 5-Year Review of 10 Southeastern Species

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces a 5-year review of the Key deer (*Odocoileus virginianus clavium*), St. Andrew beach mouse (*Peromyscus polionotus peninsularis*), Florida panther (*Puma (=Felis) concolor coryi*), Cape Sable seaside sparrow (*Ammodramus maritimus mirabilis*), Okaloosa darter (*Etheostoma okaloosae*), beach jacquemontia (*Jacquemontia reclinata*), deltoid spurge (*Chamaesysce deltoidea* ssp. *deltoidea*), fringed campion (*Silene polypetala*), Small's milkpea (*Galactia smallii*), and tiny polygala (*Polygala smallii*) under section 4(c)(2) of the Endangered Species Act of 1973, as amended (Act). The purpose of reviews conducted under this section of the Act is to ensure that the classification of species as threatened or endangered on the List of Endangered and Threatened Wildlife and Plants (50 CFR 17.11 and 17.12) is accurate. The 5-year review is an assessment of the best scientific and commercial data available at the time of the review.

**DATES:** To allow us adequate time to conduct this review, information submitted for our consideration must be received on or before August 22, 2005. However, we will continue to accept new information about any listed species at any time.

**ADDRESSES:** Information submitted on the St. Andrew beach mouse, Okaloosa darter, and fringed campion (a plant) should be sent to the Deputy Field Supervisor, Panama City Field Office, U.S. Fish and Wildlife Service, 1601 Balboa Avenue, Panama City, Florida 32405. Information about the remaining 7 species should be sent to the Field Supervisor, South Florida Field Office, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, Florida 32960. Information received in response to this notice of review will be available for public inspection by appointment, during normal business hours, at the same addresses.

**FOR FURTHER INFORMATION CONTACT:** Janet Mizzi at the Panama City, Florida, address above for the St. Andrew beach mouse, Okaloosa darter, and fringed campion (telephone, 850/769–0552, ext. 247), and Cindy Schulz at the above Vero Beach, Florida, address for the remaining 7 species (telephone, 772/562–3909, ext. 305).

**SUPPLEMENTARY INFORMATION:** Under the Act (16 U.S.C. 1533 *et seq.*), the Service maintains a list of endangered and threatened wildlife and plant species at 50 CFR 17.11 (for animals) and 17.12 (for plants) (collectively referred to as the List). Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. Then, on the basis of such reviews, under section 4(c)(2)(B), we determine whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened or from threatened to endangered. Delisting a species must be supported by the best scientific and commercial data available and only considered if such data substantiate that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process. The regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the following species that are currently federally listed as endangered: Key deer, St. Andrew beach mouse, Florida panther, Cape Sable seaside sparrow, Okaloosa darter, beach jacquemontia, deltoid spurge, fringed campion, Small's milkpea, and tiny polygala.

The List is found at 50 CFR 17.11 (wildlife) and 17.12 (plants) and is also available on our Internet site at *http://endangered.fws.gov/wildlife.html#Species.* Amendments to the List through final rules are published in the **Federal Register**.

#### What Information Is Considered in the Review?

A 5-year review considers all new information available at the time of the review. A 5-year review will consider the best scientific and commercial data that have become available since the current listing determination or most recent status review of each species, such as:

A. Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions, including but not limited to amount, distribution, and suitability;

C. Conservation measures that have been implemented to benefit the species;

D. Threat status and trends (see five factors under heading ''How do we determine whether a species is endangered or threatened?''); and

E. Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

**Specific Information Requested for the Florida Panther**

We are especially interested in obtaining estimates of the extent of habitat loss, degradation, and fragmentation within Charlotte, Collier, Desoto, Glades, Hendry, Highlands, Lee, Okeechobee, Osceola, Polk, and Sarasota Counties, Florida. We specifically request information regarding habitat alteration due to conversions to agricultural, residential, or urban uses or land use intensification, especially for uplands. We also seek information on nocturnal habitat use by panthers to determine differences from diurnal use.

**Specific Information Requested for the Key Deer**

We are especially interested in information on habitat relationships for the Key deer, including foraging ecology, fire ecology, and plant community dynamics. We also seek information on the Key deer population size, number of subpopulations, sex ratio, age structure, population viability, habitat condition and availability, dispersal, and level of threats to the Key deer on Big Pine and No Name Keys and other islands within its historic range.

**Specific Information Requested for the St. Andrew Beach Mouse**

We are especially interested in information on threats to the species, status of the species, genetics relative to subspecies status, and conservation measures. We specifically request any recent information regarding the status of the species post-Hurricane Ivan.

**Specific Information Requested for the Okaloosa Darter**

We are especially interested in information on the status of the Okaloosa darter in areas outside the boundaries of Eglin Air Force Base (EAFB), Florida. We specifically request any information on threats to the species and its habitat, including the areas in the Turkey Creek, Swift Creek, and East Turkey Creek watersheds not within the boundaries of EAFB. We are also interested in conservation measures in these same areas that may have benefited the Okaloosa darter.

**Specific Information Requested for the Beach Jacquemontia**

We are especially interested in information on management practices being implemented in Palm Beach, Broward, and Miami-Dade Counties for beach erosion. We specifically request any recent information regarding beach nourishment projects and dune stabilization. We are also interested in obtaining an estimate of the degree of beach erosion that occurred as a result of the 2004 hurricane season and any changes in management practices that were made as a result of the storms.

**Specific Information Requested for the Deltoid Spurge**

We are especially interested in information on the status of this species in pine rocklands of Miami-Dade County, Florida. We specifically request any recent information regarding its responses to prescribed fire, control of exotic pest plants, and other management actions on conservation lands.

**Specific Information Requested for the Small's Milkpea**

We are especially interested in information on the status of this species in pine rocklands of Miami-Dade County, Florida. We specifically request any recent information regarding the responses of this plant to prescribed fire and to methods used to control exotic pest plants and encroaching native hardwoods.

**Specific Information Requested for the Tiny Polygala**

We are especially interested in information on the status of this species in Miami-Dade, Broward, Palm Beach, and Martin Counties, Florida. We specifically request any recent information regarding its responses to prescribed fire, control of exotic pest plants, and other management actions on conservation lands.

**Definitions Related to This Notice**

The following definitions are provided to assist those persons who contemplate submitting information regarding the species being reviewed:

A. *Species* includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate which interbreeds when mature.

B. *Endangered* means any species that is in danger of extinction throughout all or a significant portion of its range.

C. *Threatened* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

**How Do We Determine Whether a Species Is Endangered or Threatened?**

Section 4(a)(1) of the Act establishes that we determine whether a species is endangered or threatened based on one or more of the following five factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence.

Section 4(a)(1) of the Act requires that our determination be made on the basis of the best scientific and commercial data available.

**What Could Happen as a Result of This Review?**

If we find that there is new information concerning any of these 10 species indicating that a change in classification may be warranted, we may propose a new rule that could do one of the following: (a) reclassify the species from endangered to threatened (downlist); (b) reclassify the species from threatened to endangered (uplist); or (c) delist the species. If we determine that a change in classification is not warranted, then these species will remain on the List under their current status.

**Public Solicitation of New Information**

We request any new information concerning the status of these 10 species. *See* ''What information is considered in the review?'' heading for specific criteria. Information submitted should be supported by documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home addresses from the supporting record, which we will honor to the extent allowable by law. There also may be circumstances in which we may withhold from the supporting 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. We will not consider anonymous comments, however. 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.

**Authority:** This document is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: May 26, 2005.

**Cynthia K. Dohner,**

*Acting Regional Director, Southeast Region.*

[FR Doc. 05–12187 Filed 6–20–05; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WO–310–1310–PB–24 1A; OMB Control Number 1004–0185]**

### Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On June 8, 2004, the BLM published a notice in the **Federal Register** (69 FR 32039) requesting comments on this proposed collection. The comment period ended on August 9, 2004. The BLM received no comments. You may obtain copies of the proposed collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0185), at OMB–OIRA via facsimile to (202) 395–6566 or e-mail to *OIRA_DOCKET@omb.eop.gov.* Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

*Nature of Comments:* We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

*Title:* Oil and Gas Exploration, Leasing, and Drainage Operations (43 CFR 3100, 3120, 3150, 3162).

*OMB Control Number:* 1004–0185.

*Bureau Form Number:* Nonform information.

*Abstract:* The Bureau of Land Management proposes to extend the currently approved collection of information to determine whether applicants are qualified to conduct oil and gas exploration and leasing activities. BLM will also determine if oil and gas lessees are ensuring that their leases are protected from drainage.

*Frequency:* On occasion.

*Description of Respondents:* Individuals, small businesses, and oil and gas exploration and drilling companies, lessees, and operators.

*Estimated Completion Time:*

| Information collection | Requirement | Number of responses | Reporting hours per respondent | Total hours |
|---|---|---|---|---|
| 3100.3–1 | Notice of option holdings | 30 | 1 | 30 |
| 3100.3–3 | Option statement | 50 | 1 | 50 |
| 3101.2–4(a) | Excess acreage petition | 10 | 1 | 10 |
| 3101.2–6 | Showing statement | 10 | 1.5 | 15 |
| 3101.3–1 | Joinder evidence statement | 50 | 1 | 50 |
| 3103.4–1 | Waiver, suspension, reduction of rental, etc | 20 | 2 | 40 |
| 3105.2 | Communization or drilling agreement | 150 | 2 | 300 |
| 3105.3 | Operating, drilling, development contracts interest statement | 50 | 2 | 100 |
| 3105.4 | Joint operations; transportation of oil applications | 20 | 1 | 20 |
| 3105.5 | Subsurface storage application | 50 | 1 | 50 |
| 3106.8–1 | Heirs and devisee statement | 40 | 1 | 40 |
| 3106.8–2 | Change of name report | 60 | 1 | 60 |
| 3106.8–3 | Corporate merger notice | 100 | 2 | 200 |
| 3107.8 | Lease renewal application | 30 | 1 | 30 |
| 3108.1 | Relinquishments | 150 | .5 | 75 |
| 3108.2 | Reinstatement petition | 500 | .5 | 250 |
| 3109.1 | Leasing under rights-of-way application | 20 | 1 | 20 |
| 3120.1–1(e) | Lands available for leasing | 280 | 2.5 | 700 |
| 3120.1–3 | Protests and appeals | 90 | 1.5 | 135 |
| 3152.1 | Oil and gas exploration in Alaska application | 20 | 1 | 20 |
| 3152.6 | Data collection | 20 | 1 | 20 |
| 3152.7 | Completion of operations report | 20 | 1 | 20 |
| Totals | | 1,770 | | 2,235 |

The table below summarizes the burden and cost estimates.

| Type of analysis | Number analyses | Hours | Cost |
|---|---|---|---|
| Preliminary | 1,000 | 2,000 | $60,000 |
| Detailed | 100 | 2,400 | 72,000 |
| Additional | 10 | 200 | 8,000 |

| Type of analysis | Number analyses | Hours | Cost |
|---|---|---|---|
| Total | 1,110 | 4,600 | 140,000 |

Respondents submitting the drainage determination analyses and results are individuals, oil companies, and small businesses who are familiar with the collection requirements.

*Annual Responses:* 2,880.

*Application Fee Per Response:* 0.

*Annual Burden Hours:* 6,835.

*Burden Clearance Officer:* Ian Senio, (202) 452–5033.

Dated: June 16, 2005.

**Ian Senio,**

*Bureau of Land Management, Information Collection Clearance Officer.*

[FR Doc. 05–12221 Filed 6–20–05; 8:45 am]

**BILLING CODE 4310–84–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WO–320–1330–PB–24 1A; OMB Control Number 1004–0169]**

### Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On June 25, 2004, the BLM published a notice in the **Federal Register** (69 FR 35674) requesting comments on this proposed collection. The comment period ended on August 24, 2004. The BLM received no comments. You may obtain copies of the proposed collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0169), at OMB–OIRA via facsimile to (202) 395–6566 or e-mail to *OIRA_DOCKET@omb.eop.gov.* Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd, Springfield, Virginia 22153.

*Nature of Comments:* We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

*Title:* Use and Occupancy (43 CFR 3715).

*OMB Control Number:* 1004–0169.

*Bureau Form Number:* Nonform information.

*Abstract:* The Bureau of Land Management proposes to extend the currently approved collection of information from mining claimants concerning use and occupancy of their mining claims on public lands. The nonform information authorizes BLM to manage the use and occupancy on public lands for developing the mining deposits by mining claimants.

*Frequency:* On occasion.

*Description of Respondents:* Mining claimants and operators of prospecting, exploration, mining, and processing operations.

*Estimated Completion Time:* 2 hours.

*Annual Responses:* 150

*Application Fee Per Response:* 0.

*Information Collection Cost Recovery Fee:* 0.

*Annual Burden Hours:* 300.

*Bureau Clearance Officer:* Ian Senio, (202) 452–5033.

Dated: April 26, 2005.

**Ian Senio,**

*Bureau of Land Management, Information Collection Clearance Officer.*

[FR Doc. 05–12222 Filed 6–20–05; 8:45 am]

**BILLING CODE 4310–84–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ID–220–5101–ER–D025; IDI–33676]**

### Notice of Availability, Cotterel Wind Power Project Draft Environmental Impact Statement/Resource Management Plan Amendment

**AGENCY:** Lead Agency—Bureau of Land Management, Interior. Cooperating Agencies—U.S. Fish and Wildlife Service, Interior; Bureau of Reclamation, Interior; Bonneville Power Administration; Idaho Department of Lands; Cassia County Commissioners. Participating Agency—Idaho Department of Fish and Game.

**ACTION:** Notice of availability of the Cotterel Wind Power Project Draft Environmental Impact Statement/ Resource Management Plan Amendment.

**SUMMARY:** In accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701), as amended; and the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Burley, Idaho Field Office of the Twin Falls District of the Bureau of Land Management (BLM), located in Cassia County, has prepared a draft environmental impact statement (DEIS)/ resource management plan amendment (DEIS/Amendment) to consider whether or not to grant a right-of-way and amend the 1985 Cassia Resource Management Plan (Cassia RMP).

**DATES:** Written comments will be accepted for 90 days following the date the Environmental Protection Agency publishes its Notice Availability in the **Federal Register**. The BLM intends to hold three public meetings during the 90-day comment period, one each in Boise, Burley, and Albion, Idaho. BLM will announce all public meeting times and locations at least 15 days in advance through public notices, media news releases, and/or newsletter mailings. In addition, information on public meetings may be posted on the Internet at *http://www.id.blm.gov/planning/cotterel.*

**ADDRESSES:** Copies of the DEIS/ Amendment are available upon request from the Burley Field Office, Twin Falls District, 15 East, 200 South, Burley,

Idaho, 83318, phone 208–677–6678, or by email to *scott_barker@blm.gov*. You may request either a hard copy or a computer disc (cd). A copy of the DEIS/Amendment may also be posted on the Internet at *http://www.id.blm.gov/planning/cotterel*.

To receive full consideration, comments must be postmarked no later than the last day of the written comment period. (The last day of the written comment period may be identified at the Internet address above, after publication of the EPA Notice of Availability in the **Federal Register**.)

You may submit comments on the DEIS/Amendment using any of the following methods:

- *Mail:* Scott Barker, Project Manager, Burley Field Office, Twin Falls District, Bureau of Land Management, 15 East, 200 South, Burley, Idaho 83318.
- *Fax:* 208–677–6699.
- *Email:* id_cotterelwind@blm.gov.
- *Hyperlink:* *id_cotterelwind@blm.gov*.

All public comments, including the names and mailing addresses of respondents, will be available for public review at the Burley Field Office in Burley, Idaho during regular business hours from 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the Final EIS/Amendment. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, please state this prominently at the beginning of your written correspondence. The BLM will honor such requests to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

**FOR FURTHER INFORMATION CONTACT:** Scott Barker, Project Manager, BLM Burley Field Office, 15 East, 200 South, Burley, Idaho 83318, phone 208–677–6678, fax (209) 677–6699; or email: *scott_barker@blm.gov*.

**SUPPLEMENTARY INFORMATION:** Windland, Inc., in partnership with Shell Wind Energy, Inc., a wholly owned subsidiary of the Royal Dutch/Shell Group of Companies, is proposing to construct, operate and maintain a wind-powered electric generation facility on the ridgeline of Cotterel Mountain, near the towns of Albion, Malta, and Burley, Idaho. The DEIS/Amendment analyzes and discloses the effects of four alternatives, including the Proposed Action and No Action. Alternative A, the No Action Alternative, reflects existing direction in the Cassia RMP. Alternative B is the proponent's proposed action, as submitted in their right-of-way application. Alternative C, the agency preferred alternative, is a modification of the proposed action that includes fewer but larger-output wind turbines, alternative access, alternative transmission line locations, and alternative turbine types. Alternative D is a modified version of Alternative C with a reduced number of wind turbines.

The proposed action is not consistent with the Cassia RMP, which does not allow for the granting of rights-of-ways in the proposed project area. Therefore, the proposed plan amendment would allow for the decision maker to grant a right-of-way should that person decide to do so.

Dated: May 5, 2005.

**Wendy Reynolds,**

*Burley Field Office Manager, Bureau of Land Management.*

[FR Doc. 05–12162 Filed 6–20–05; 8:45 am]

**BILLING CODE 4310–GG–P**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of extension of an information collection (1010–0151).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR 250, Subpart B ''Plans and Information, and related documents. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

**DATES:** Submit written comments by July 21, 2005.

**ADDRESSES:** You may submit comments on this information collection directly to the Office of Management and Budget (OMB) either by e-mail (*OIRA_DOCKET@omb.eop.gov*) or by fax (202) 395–6566, directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0151).

Submit a copy of your comments to the Department of the Interior, MMS, via:

- MMS's Public Connect on-line commenting system, *https://ocsconnect.mms.gov*. Follow the instructions on the website for submitting comments.
- Fax: 703–787–1093. Identify with Information Collection Number 1010–0151.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team (RPT); 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Information Collection 1010–0151'' in your comments.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Blundon, Rules Processing Team, (703) 787–1600. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations that require the subject collection of information.

**SUPPLEMENTARY INFORMATION:**

*Title:* 30 CFR part 250, Subpart B—Plans and Information.

*OMB Control Number:* 1010–0151.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. Sections 11 and 25 of the amended OCS Lands Act require the holders of OCS oil and gas or sulphur leases to submit exploration plans (EPs) or development and production plans (DPPs) to the Secretary for approval prior to commencing these activities.

Section 43 U.S.C. 1356 requires the issuance of ''* * * regulations which require that any vessel, rig, platform, or other vehicle or structure * * * (2) which is used for activities pursuant to this subchapter, comply * * * with such minimum standards of design, construction, alteration, and repair as the Secretary * * * establishes * * *.'' Section 43 U.S.C. 1332(6) also states, ''operations in the [O]uter Continental

Shelf should be conducted in a safe manner * * * to prevent or minimize the likelihood of * * * physical obstruction to other users of the water or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.'' These authorities and responsibilities are among those delegated to the Minerals Management Service (MMS) to ensure that operations in the OCS will meet statutory requirements; provide for safety and protection of the environment; and result in diligent exploration, development, and production of OCS leases.

MMS proposed a complete revision of the 30 CFR 250, subpart B regulations (67 FR 35372, May 17, 2002), and OMB approved the information collection requirements under control number 1010–0151, expiration June 2005. This submission is a renewal of the information requirements for the rulemaking and is required to prevent the expiration of OMB approval under 1010–0151; the ICR reflects what we expect to be in our final rulemaking, which is in surnaming.

Specifically, MMS uses the information to evaluate, analyze, determine, or ensure that:

- Ancillary activities comply with appropriate laws or regulations and are conducted safely, protect the environment, and do not interfere or conflict with the other uses of the OCS (i.e., military use, subsistence activity).
- Points of contact and responsible parties are designated for proposed activities.
- Surveying, monitoring, or other activities do not interfere or conflict with preexisting and other uses of the area.
- Plans or actions meet or implement lease stipulation requirements.
- Proposed exploration, drilling, production, and pipeline activities are conducted in a safe and acceptable manner for the location and water depth proposed and conserve reservoir energy to allow enhanced recovery operations in later stages of lease development.
- Unnecessary or incompatible facilities are not installed on the OCS.
- Shallow drilling hazards (such as shallow gas accumulations or mudslide areas) are avoided.
- Areas are properly classified for H2S, and appropriate procedures are in place.
- Appropriate oil spill planning measures and procedures are implemented.
- Expected meteorological conditions at the activity site are accommodated.
- Environmentally sensitive areas are identified, and the direct and cumulative effects of the activities are minimized.
- Offshore and onshore air quality is not significantly affected by the proposed activities.
- Waste disposal methods and pollution mitigation techniques are appropriate for local conditions.
- State CZM requirements have been met.
- Archaeological or cultural resources are identified and protected from unreasonable disturbances.
- Socioeconomic effects of the proposed project on the local community and associated services have been determined.
- Support infrastructures and associated traffic are adequately covered in plans.

The following forms used in the Gulf of Mexico Region (GOMR) are also submitted to MMS. With the exception of the last form, OMB approved these forms as part of the information collection for the current subpart B regulations.

- Form MMS–137 (Plan Information Form) is submitted to summarize plan information. MMS uses the information to assist in data entry and review of submitted OCS plans.
- Forms MMS–138 (GOM Air Emissions Calculations for Exploration Plans) and MMS–139 (GOM Air Emissions Calculations for Development Operations Coordination Documents (DOCDs)) are submitted to standardize the way potential air emissions are estimated and approved as part of the OCS plan. These forms are intended to be thorough but flexible to meet the needs of different operators. The data from these forms determine the air emissions on the environment.
- Form MMS–141 (ROV Survey Report) is submitted to report the observations and information recorded from two sets of ROV monitoring surveys to identify high-density biological communities that may occur on the seafloor in deep water. We use the information when such areas are found to help design mitigation measures to avoid these areas in the future. We also use the information to help assess the effectiveness of avoidance criteria and expand the knowledge base regarding the benthic habitats of the deep water seafloor.
- Form MMS–NEW (Environmental Impact Analysis Matrix) is a new fill in the blank matrix form proposed to be submitted to identify the environmental impact-producing factors (IPFs) for the listed environmental resources. We use the information to assess impact and determine compliance with the National Environmental Policy Act. A form number will be assigned when final regulations take effect.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR Part 2) and under regulations at 30 CFR 250.196, ''Data and information to be made available to the public''. No items of a sensitive nature are collected. Responses are mandatory.

*Frequency:* On occasion.

*Estimated Number and Description of Respondents:* Approximately 150 oil and gas or sulphur lessees.

*Estimated Reporting and Recordkeeping ''Hour'' Burden:* The estimated annual ''hour'' burden for this information collection is a total of 320,815 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

| Citation 30 CFR 250 subpart B | Reporting & recordkeeping requirement | Hour burden | Average No. annual responses | Annual burden hours |
|---|---|---|---|---|
| 200 through 206 | General requirements for plans and information | Burden included with specific requirements below | | 0 |
| 208 | Notify MMS and other users of the OCS before conducting ancillary activities. | 10 | 23 notices | 230 |
| 210(a) | Submit report summarizing & analyzingdata/information obtained or derived from ancillary activities. | 1 | 25 reports | 25 |
| 210(b) | Retain ancillary activities data/information | 2 | 150 recordkeepers | 300 |

| Citation 30 CFR 250 subpart B | Reporting & recordkeeping requirement | Hour burden | Average No. annual responses | Annual burden hours |
|---|---|---|---|---|
| 211 through 228 | Submit EP and accompanying information (including forms MMS–137, MMS 138, MMS–NEW used in GOMR) and provide notifications. | 640 | 200 plans | 128,000 |
| 232(d); 234; 235(a); 281(d)(3); 283; 284; 285. | Submit amended, modified, revised, or supplemental EP, or resubmit disapproved EP. | 120 | 224 changed plans | 26,880 |
| 241 through 262 | Submit DPP or DOCD and accompanying information (including forms MMS–137, MMS 139, MMS–NEW used in GOMR) and provide notifications. | 690 | 110 plans | 75,900 |
| 267(d); 272(a); 273, 283; 284; 285. | Submit amended, modified, revised, or supplemental DPP or DOCD, or resubmit disapproved DPP or DOCD. | GOM 95<br>Pacific 600 | 250 changed plans<br>1 changed plan | 23,750<br>600 |
| 269(b) | Submit information on preliminary plans for leases or units in vicinity of proposed development and production activities. | 2 | 1 response | 2 |
| 281(a) | Submit various applications | Burdens included under appropriate subpart or form (1010–0044; 1010–0059; 1010–0058; 1010–0050) | | 0 |
| 282 | Retain monitoring data/information | 2 | 313 records | 626 |
| | Submit monitoring plans | 1 | 30 plans | 30 |
| 282(b) | Submit monitoring reports and data (including form MMS–141 used in GOMR). | 2 | 2 each for 33 wells = 66. | 132 |
| 288 through 294 | Submit DWOP | 750 | 68 plans | 51,000 |
| 296 through 298 | Submit CID | 443 | 30 documents | 13,290 |
| 200 through 299 | General departure and alternative compliance requests not specifically covered elsewhere in subpart B regulations. | 2 | 25 requests | 50 |
| Total Burden | | | 1,516 | 320,815 |

*Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden:* We have identified no paperwork ''non-hour cost'' burdens associated with the collection of information.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

*Comments:* Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on December 17, 2004, we published a **Federal Register** notice (69 FR 75562) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control number for the information collection requirements imposed by the 30 CFR 250 regulations and forms. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by July 21, 2005.

*Public Comment Procedure:* MMS's practice is to make comments, including names and addresses of respondents, available for public review. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor the request to the extent allowable by the law; however, 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, will be made available for public inspection in their entirety.

*MMS Information Collection Clearance Officer:* Arlene Bajusz, (202) 208–7744.

Dated: Feburary 22, 2005.

**E.P. Danenberger,**

*Chief, Office of Offshore Regulatory Program.*

**Editorial Note:** This document was received in the Office of the Federal Register on June 15, 2005.

[FR Doc. 05–12133 Filed 6–20–05; 8:45 am]

**BILLING CODE 4310–MR–P**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of a revision of a currently approved information collection (OMB Control Number 1010–0107).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to the Office of Management and Budget (OMB) an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under

30 CFR part 218, subpart A—General Provisions; subpart B—Oil and Gas, General; and subpart E—Solid Minerals—General. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements. We changed the title of this ICR to clarify the regulatory language we are covering under 30 CFR part 218. The previous title of this ICR was ''30 CFR Part 218, Subpart B—Oil and Gas, General.'' The new title of this ICR is ''30 CFR Part 218, Subpart A—General Provisions, § 218.42 Cross-lease netting in calculation of late-payment interest; Subpart B—Oil and Gas, General, §§ 218.52 How does a lessee designate a Designee? (Form MMS–4425, Designation Form for Royalty Payment Responsibility) and 218.53 Recoupment of overpayments on Indian mineral leases; and Subpart E—Solid Minerals—General, § 218.203 Recoupment of overpayments on Indian mineral leases.''

**DATES:** Submit written comments on or before July 21, 2005.

**ADDRESSES:** Submit written comments by either FAX (202) 395–6566 or e-mail (*OIRA_Docket@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0107). Mail your comments to Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. If you use an overnight courier service or wish to hand-carry your comments, the address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov*. Include the title of the information collection and the OMB Control Number in the ''Attention'' line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

**FOR FURTHER INFORMATION CONTACT:** Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3781, e-mail *Sharron.Gebhardt@mms.gov*. You may also contact Sharron Gebhardt to obtain a copy, at no cost, of the form and regulations that require this collection of information.

**SUPPLEMENTARY INFORMATION:** Title: 30 CFR Part 218, Subpart A—General Provisions, § 218.42 Cross-lease netting in calculation of late-payment interest; Subpart B—Oil and Gas, General, §§ 218.52 How does a lessee designate a Designee? (Form MMS–4425, Designation Form for Royalty Payment Responsibility) and 218.53 Recoupment of overpayments on Indian mineral leases; and Subpart E—Solid Minerals—General, § 218.203 Recoupment of overpayments on Indian mineral leases.

*OMB Control Number:* 1010–0107.

*Bureau Form Number:* Form MMS–4425.

*Abstract:* The Secretary of the U.S. Department of the Interior is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary, under the Mineral Leasing Act (30 U.S.C. 1923) and the Outer Continental Shelf Lands Act (43 U.S.C. 1353), is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws.

The Secretary has a trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The MMS performs the royalty management functions and assists the Secretary in carrying out the Department's trust responsibility.

This ICR includes unique reporting circumstances including designation of designee, cross-lease netting in calculation of late-payment interest, and tribal permission for recoupment on Indian leases. Applicable citations of the laws pertaining to mineral leases include Public Law 97–451—Jan. 12, 1983 (Federal Oil and Gas Royalty Management Act of 1982 [FOGRMA]); Public Law 104–185—Aug. 13, 1996 (Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 [RSFA]), as corrected by Public Law 104–200—Sept. 22, 1996); and the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 *et seq.*). Public laws pertaining to mineral royalties are located on our Web site at *http://www.mrm.mms.gov/Laws_R_D/PublicLawsAMR.htm.*

**Designation of Designee**

The RSFA established that owners of, primarily, operating rights or, secondarily, lease record title (both referred to as ''lessees'') are responsible for making royalty and related payments on Federal oil and gas leases. These RSFA requirements were promulgated in regulations at 30 CFR 218.52. It is common, however, for a payor rather than a lessee to make these payments. When a payor makes payments on behalf of a lessee, RSFA section 6(g) requires that the lessee designate the payor as its designee and notify MMS of this arrangement in writing. The MMS designed Form MMS–4425, Designation Form for Royalty Payment Responsibility, to request all the information necessary for lessees to comply with these RSFA requirements when they choose to designate an agent to pay for them. The MMS requires this information to ensure proper mineral revenue collection.

**Cross-Lease Netting in Calculation of Late-Payment Interest**

Regulations at 30 CFR 218.54 require MMS to assess interest on unpaid or underpaid amounts. The MMS distributes these interest revenues to states, Indians, and the U.S. Treasury, based on financial lease distribution information. Current regulations at 30 CFR 218.42 provide that an overpayment on a lease or leases may be offset against an underpayment on a different lease or leases to determine the net payment subject to interest, when certain conditions are met. This is called cross-lease netting. However, RSFA sections 6(a), (b), and (c) require MMS to pay interest on lessees' Federal oil and gas overpayments made on or after February 13, 1997 (6 months after the August 13, 1996, enactment of RSFA). The MMS implemented this RSFA provision in 1997 and began calculating interest on both underpayments and overpayments for Federal oil and gas leases, making the cross-lease netting provisions at 30 CFR 218.42 no longer applicable for these leases. The MMS is currently developing regulations to amend 30 CFR 218.42 to limit its applicability to payments made under Indian tribal leases and Federal leases for minerals other than oil and gas. The MMS estimates that, in about seven cases per year, lessees must comply with the provisions of 30 CFR 218.42(b) and (c) for Indian tribal leases or Federal leases other than oil and gas, demonstrating that cross-lease netting is correct by submitting production reports, pipeline allocation reports, or other similar documentary evidence. This information is necessary for MMS to determine the correct amount of interest owed by the lessee and to ensure proper value is collected.

**Tribal Permission for Recoupment on Indian Leases**

In order to report cross-lease netting on Indian leases, lessees must also comply with regulations at 30 CFR 2l8.53(b) and 218.203(b), allowing only lessees with written permission from

the tribe to recoup overpayments on one lease against a different lease for which the tribe is the lessor. The payor must furnish MMS with a copy of the tribe's written permission. Generally, a payor may recoup an overpayment against the current month's royalties or other revenues owed on the same tribal lease. For any month, a payor may not recoup more than 50 percent of the royalties or other revenues owed in that month, under an individual allotted lease, or more than 100 percent of the royalties or other revenues owed in that month, under a tribal lease. Lessees use Form MMS–2014, Report of Sales and Royalty Remittance (burden hours covered under ICR 1010–0140, expires October 31, 2006), for oil and gas lease recoupments and Form MMS–4430, Solid Mineral Production and Royalty Report (burden hours covered under ICR 1010–0120, expires October 31, 2007), for solid mineral lease recoupments. The MMS requires tribal permission to ensure tribes and individual Indian mineral owners receive correct revenues from production on their leases.

The MMS is requesting OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge his/her duties and may also result in loss of royalty payments. Proprietary information submitted is protected, and there are no questions of a sensitive nature included in this information collection.

*Frequency:* On occasion.

*Estimated Number and Description of Respondents:* 1,613 Federal and Indian lessees.

*Estimated Annual Reporting and Recordkeeping ''Hour'' Burden:* 1,220 hours.

We have not included in our estimates certain requirements performed in the normal course of business and considered usual and customary. The following chart shows the estimated burden hours by CFR section and paragraph:

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

| Citation 30 CFR 218 | Reporting and recordkeeping requirement | Hour burden | Average number of annual responses | Annual burden Hours |
|---|---|---|---|---|
| **Subpart A—General Provisions—Cross-lease netting in calculation of late-payment interest.** | | | | |
| 218.42(b) and (c) ..... | Cross-lease netting in calculation of late-payment interest. (b) Royalties attributed to production from a lease or leases which should have been attributed to production from a different lease or leases may be offset * * * if * * * the payor submits production reports, pipeline allocation reports, or other similar documentary evidence pertaining to the specific production involved which verifies the correct production information * * *. (c) If MMS assesses late-payment interest and the payor asserts that some or all of the interest is not owed * * * the burden is on the payor to demonstrate that the exception applies * * . | 2 | 7 | 14 |
| **Subpart B—Oil and Gas, General—How does a lessee designate a Designee?** | | | | |
| 218.52 (a), (c), and (d) ..... | How does a lessee designate a Designee? (a) If you are a lessee under 30 U.S.C. 1701(7), and you want to designate a person to make all or part of the payments due under a lease on your behalf * * * you must notify MMS * * * in writing of such designation * * *. (c) If you want to terminate a designation * * * you must provide [the following] to MMS in writing * * *. (d) MMS may require you to provide notice when there is a change in the percentage of your record title or operating rights ownership.. The MMS currently uses Form MMS–4425, Designation Form for Royalty Payment Responsibility to collect this information. | 0.75 | 1,600 | 1,200 |
| **Subpart B—Oil and Gas, General—Recoupment of overpayments on Indian mineral leases.** | | | | |
| 218.53 ..... | (b)Recoupment of overpayments on Indian mineral leases. (b) With written permission authorized by tribal statute or resolution, a payor may recoup an overpayment against royalties or other revenues owed * * * under other leases * * *. A copy of the tribe's written permission must be furnished to MMS * * *. | 1 | 5 | 5 |
| **Subpart E—Solid Minerals—General—Recoupment of overpayments on Indian mineral leases.** | | | | |
| 218.203 (b) ..... | Recoupment of overpayments on Indian mineral leases. (b) With written permission authorized by tribal statute or resolution, a payor may recoup an overpayment against royalties or other revenues owed in that month under other leases for which that tribe is the lessor. A copy of the tribe's written permission must be furnished to MMS * * * [following] instructions * * *. | 1 | 1 | 1 |
| Total Burden ..... | | ..... | 1,613 | 1,220 |

We are revising this ICR to include regulations at 30 CFR 218.42(b) and (c) Cross-lease netting in calculation of late-payment interest and 30 CFR 218.203(b) Recoupment of overpayments on Indian mineral leases, which were not included in the previous renewal. Burden hours for 30 CFR 218.57, which were included in the previous renewal, are now

covered in ICR 1010–0120 (expires October 31, 2007).

*Estimated Annual Reporting and Recordkeeping ''Non-hour'' Cost Burden:* We have identified no ''non-hour'' cost burdens.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501 *et seq.*) provides that 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.

*Comments:* Section 3506(c)(2)(A) of the PRA requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on October 19, 2004 (69 FR 61519), announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments relevant to the **Federal Register** notice. If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by July 21, 2005.

*Public Comment Policy:* We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Upon request, we will withhold an individual respondent's home address from the public record, as allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state your request prominently at the beginning of your comment. However, we will not 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.

*MMS Information Collection Clearance Officer:* Arlene Bajusz (202) 208–7744.

Dated: April 14, 2005.

**Lucy Querques Denett,**

*Associate Director for Minerals Revenue Management.*

[FR Doc. 05–12134 Filed 6–20–05; 8:45 am]

**BILLING CODE 4310–MR–P**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of an extension of a currently approved information collection (OMB Control Number 1010–0122).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR 243. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements. We changed the title of this ICR to clarify the regulatory language we are covering under 30 CFR 243. The previous title of this ICR was ''30 CFR Part 243—Suspensions Pending Appeal and Bonding.'' The new title of this ICR is ''30 CFR 243—Suspensions Pending Appeal and Bonding—Minerals Revenue Management (Forms MMS–4435, Administrative Appeal Bond; MMS–4436, Letter of Credit; and MMS–4437, Assignment of Certificate of Deposit).''

**DATES:** Submit written comments on or before July 21, 2005.

**ADDRESSES:** Submit written comments by either FAX (202) 395–6566 or e-mail (*OIRA_Docket@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0122). Mail your comments to Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. If you use an overnight courier service or wish to hand-carry your comments, our address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov*. Include the title of the information collection and the OMB Control Number in the ''Attention'' line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

**FOR FURTHER INFORMATION CONTACT:** Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3781, e-mail *Sharron.Gebhardt@mms.gov*. You may also contact Sharron Gebhardt to obtain a copy at no cost of the forms and regulations that require the subject collection of information.

**SUPPLEMENTARY INFORMATION:**

*Title:* 30 CFR 243—Suspensions Pending Appeal and Bonding—Minerals Revenue Management (Forms MMS–4435, Administrative Appeal Bond; MMS–4436, Letter of Credit; and MMS–4437, Assignment of Certificate of Deposit).

*OMB Control Number:* 1010–0122.

*Bureau Form Number:* Forms MMS–4435, MMS–4436, and MMS–4437.

*Abstract:* The Secretary of the U.S. Department of the Interior is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary, under the Mineral Leasing Act of 1920 (30 U.S.C. 1923) and the Outer Continental Shelf Lands Act (43 U.S.C. 1353), is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The Secretary has a trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The MMS performs the royalty management functions for the Secretary and assists the Secretary in carrying out the Department's trust responsibility.

Additional applicable citations of the laws pertaining to mineral leases include Public Law 97–451—Jan. 12,

1983 (Federal Oil and Gas Royalty Management Act of 1982 [FOGRMA]); Public Law 104–185—Aug. 13, 1996 (Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 [RSFA]), as corrected by Public Law 104–200—Sept. 22, 1996; and Public Law 97–382—Dec. 22, 1982 (Indian Mineral Development Act of 1982). Public laws pertaining to mineral royalties are located on our Web site at *http://www.mrm.mms.gov/Laws_R_D/PublicLawsAMR.htm*. The RSFA Section 4(l), ''Stay of Payment Obligation Pending Review,'' requires MMS to evaluate any person, ordered by the Secretary or a delegated state to pay any obligation (other than an assessment) subject to RSFA, to determine whether that person is entitled to a stay of the order without bond or other surety instrument, pending an administrative or judicial proceeding, based on the financial solvency of that person.

Implementing regulations at 30 CFR 243 govern the suspension of orders or decisions pending administrative appeal for Federal leases. These regulations require the submission of information demonstrating financial solvency by the person who represents the appellant, requesting a suspension without the need to provide a surety. For those appellants who are not financially solvent or for appeals involving Indian leases, MMS requires that a surety instrument be posted to secure the financial interest of the public and Indian lessors during the entire administrative or judicial appeal process. This information collection request covers the burden hours associated with appellants submitting financial statements or surety instruments, subject to annual audit, required to stay an MMS order.

Minerals produced from Federal and Indian leases vary greatly in the nature of occurrence, production and processing methods, and markets served. When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share (royalty) of the value received from production from the leased lands. The lease creates a business relationship between the lessor and the lessee. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is similar to data reported to private and public mineral interest owners and is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling such minerals. The information collected includes data necessary to ensure that the royalties are paid appropriately.

Proprietary information submitted to MMS under this collection is protected, and no items of a sensitive nature are collected. A response is required to obtain the benefit of suspending compliance with an order pending appeal.

**Stay of Payment Pending Appeal**

Title 30 CFR 243.1 states that lessees or recipients of MMS Minerals Revenue Management (MRM) orders may suspend compliance with an order if they appeal in accordance with 30 CFR 290, Subpart B—Appeals of Royalty Management Program and Delegated States Orders (the Royalty Management Program is now known as Minerals Revenue Management). Pending appeal, MMS suspends the payment requirement if the appellant submits a formal agreement of payment in case of default, such as a bond or other surety, or demonstrate financial solvency. The MMS accepts the following surety types: Form MMS–4435, Administrative Appeal Bond; Form MMS–4436, Letter of Credit; Form MMS–4437, Assignment of Certificate of Deposit; Self-bonding; and U.S. Treasury Securities.

When one of the surety types is selected and put in place, appellants must maintain the surety until completion of the appeal. If the appeal is decided in favor of the appellant, MMS returns the surety to the appellant. If the appeal is decided in favor of MMS, then MMS will take action to collect full royalty payment or draw down on the surety. The MMS draws down on a surety if the appellant fails to comply with requirements relating to amount due, time frame, or surety submission or resubmission. Whenever MMS must draw down on a surety, the total amount due is defined as unpaid principal plus interest accrued to the projected receipt date of the surety payment. Appellants may refer to the Surety Instrument Posting Instructions for each of the five surety types to submit the respective information. The five surety types are discussed below.

**Form MMS–4435, Administrative Appeal Bond**

Appellants may file Form MMS–4435, Administrative Appeal Bond, which MMS uses to secure the financial interests of the public and Indian lessors during the entire administrative and judicial appeal process. Under 30 CFR 243.4, appellants are required to submit their contact and surety amount information on the bond to obtain the benefit of suspension of an obligation to comply with an order. The bond must be issued by a qualified surety company that is approved by the Department of the Treasury (see Department of the Treasury Circular No. 570, revised periodically in the **Federal Register**). The Associate Director for MRM (Associate Director) or the delegated bond-approving officer (officer) maintains these bonds in a secure facility. Once the appeal has concluded, MMS may release and return the bond to the appellant or collect royalty payment upon the bond. If collection is necessary for a remaining royalty payment balance, MMS will issue a demand for payment to the surety company with a notice to the appellant, including all interest accrued on the affected bill.

**Form MMS–4436, Letter of Credit**

Appellants may choose to file Form MMS–4436, Letter of Credit, with no modifications. Under 30 CFR 243.4, appellants are required to submit their contact and surety amount information on a surety instrument to obtain the benefit of suspension of an obligation to comply with an order. The Associate Director or officer maintains the Letter of Credit (LOC) in a secure facility. A bank must notarize and issue the LOC for appellants in which the bank has a minimum Fitch rating (formerly Bankwatch) of ''C'' for an LOC of less than $1 million, ''B/C'' for an LOC between $1 million and $10 million, or ''B'' for an LOC over $10 million. The LOC must have a minimum coverage period of 1 year and be automatically renewable for up to 5 years. The appellant is responsible for verifying that the bank provides a current rating to MMS. If the issuing bank's rating falls below the minimum acceptable level, a satisfactory replacement surety must be submitted within 14 days, or MMS will draw down the existing LOC. If the bank issuing the LOC chooses not to renew the existing LOC, it must provide MMS with a notice of its decision not to renew 30 days prior to expiration of the LOC. Once the appeal has been concluded, MMS may release and return the LOC to the appellant or collect royalty payment upon the LOC. If collection is necessary for a remaining royalty payment balance, MMS will issue a demand for payment, which includes all interest assessed on the affected bill, to the bank with a notice to the appellant.

**Form MMS–4437, Assignment of Certificate of Deposit**

Appellants may choose to secure their debts by requesting to use a Certificate of Deposit (CD) from their bank and

submitting Form MMS–4437, Assignment of Certificate of Deposit. Under 30 CFR 243.4, appellants are required to submit their contact and surety amount information on a surety instrument to obtain the benefit of suspension of an obligation to comply with an order. Appellants must file the request with MMS prior to the invoice due date. The MMS will accept a book-entry CD that explicitly assigns the CD to the Associate Director. A bank must issue the CD in which the bank has a minimum Fitch rating or is confirmed by a bank with an acceptable rating. The acceptable ratings for a CD are the same as for an LOC. If collection of the CD is necessary for a royalty payment balance, MMS will return unused CD funds to the appellant after total settlement of the appealed issues including applicable interest charges.

This information collection is currently approved by OMB. Form MMS–4437 is a new form for this ICR. Under 30 CFR 243.100(a), this form standardizes the information already collected. This form does not affect the burden hours.

**Self-bonding**

For Federal leases, RSFA Section 4(l), as promulgated at 30 CFR 243.201, provides that no surety instrument is required when a person representing the appellant periodically demonstrates, to the satisfaction of MMS, that guarantor or appellant is financially solvent or otherwise able to pay the obligation. Appellants must submit a written request to ''self-bond'' every time a new appeal is filed. To evaluate the financial solvency and exemption from requirements of appellants to maintain a surety related to an appeal, MMS requires appellants to submit a consolidated balance sheet, subject to annual audit. In some cases, MMS also requires copies of the most recent tax returns—up to 3 years—filed by appellants.

In addition, appellants must annually submit financial statements, subject to annual audit, to support their net worth. The MMS uses the consolidated balance sheet or business information supplied to evaluate the financial solvency of a lessee, designee, or payor seeking a stay of payment obligation pending review. If appellants do not have a consolidated balance sheet documenting their net worth, or if they do not meet the $300 million net worth requirement, MMS selects a business information or credit reporting service to provide information concerning an appellant's financial solvency. We charge the appellant a $50 fee each time we need to review data from a business information or credit reporting service. We need the fee to recover our costs to determine an appellant's financial solvency. The Associate Director or officer uses this information to determine the financial solvency of a lessee, designee, or payor on the basis of their net worth.

**U.S. Treasury Securities**

Appellants may choose to secure their debts by requesting to use a U.S. Treasury Security (TS). Appellants must file the letter of request with MMS prior to the invoice due date. The TS must be a U.S. Treasury note or bond with maturity equal to or greater than 1 year. The TS must equal 120 percent of the appealed amount plus 1 year of estimated interest (necessary to protect MMS against interest rate fluctuations). The MMS only accepts a book-entry TS.

The MMS is requesting OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge their duties and may also result in loss of royalty payments.

*Frequency:* Annually and on occasion.

*Estimated Number and Description of Respondents:* 300 Federal/Indian appellants.

*Estimated Annual Reporting and Recordkeeping ''Hour'' Burden:* 300 hours.

The following chart shows the breakdown of the estimated annual burden hours by CFR section and paragraph. We have not included in our estimates certain requirements performed in the normal course of business and considered usual and customary.

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

| Citation 30 CFR 243 | Reporting and recordkeeping requirement | Hour burden | Average number of annual responses | Annual burden hours |
|---|---|---|---|---|
| | **Subpart A—General Provisions** | | | |
| 243.4(a)(1) | How do I suspend compliance with an order? (a) If you timely appeal an order, and if that order or portion of that order: (1) Requires you to make a payment, and you want to suspend compliance with that order, you must post a bond or other surety instrument or demonstrate financial solvency * * *. | 1 | 200 surety instruments (including Forms MMS–4435, MMS–4436, and MMS–4437, or TS). | 200 |
| 243.6 | When must I or another person meet the bonding or financial solvency requirements under this part? If you must meet the bonding or financial solvency requirements under § 243.4(a)(1), or if another person is meeting your bonding or financial solvency requirements, then either you or the other person must post a bond or other surety instrument or demonstrate financial solvency within 60 days after you receive the order or the Notice of Order.. | Burden hours covered under § 243.4(a)(1). | | |
| 243.7(a) | What must a person do when posting a bond or other surety instrument or demonstrating financial solvency on behalf of an appellant? If you assume an appellant's responsibility to post a bond or other surety instrument or demonstrate financial solvency * * *: (a) Must notify MMS in writing * * * that you are assuming the appellant's responsibility * * *. | Burden hours covered under § 243.4(a)(1). | | |

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

| Citation 30 CFR 243 | Reporting and recordkeeping requirement | Hour burden | Average number of annual responses | Annual burden hours |
|---|---|---|---|---|
| 243.8(a)(2) and (b)(2) | When will MMS suspend my obligation to comply with an order?<br>(a) Federal leases. * * * (2) If the amount under appeal is $10,000 or more, MMS will suspend your obligation to comply with that order if you:.<br>(i) Submit an MMS-specified surety instrument under subpart B of this part within a time period MMS prescribes; or.<br>(ii) Demonstrate financial solvency under subpart C .....<br>(b) Indian leases. * * * (2) If the amount under appeal is $1,000 or more, MMS will suspend your obligation to comply with that order if you submit an MMS-specified surety instrument under subpart B of this part within a time period MMS prescribes. | Burden hours covered under § 243.4(a)(1). | | |
| **Subpart B—Bonding Requirements** | | | | |
| 243.101(b) ..... | How will MMS determine the amount of my bond or other surety instrument?<br>* * * (b) If your appeal is not decided within 1 year from the filing date, you must increase the surety amount to cover additional estimated interest for another 1-year period. You must continue to do this annually * * *. | Burden hours covered under § 243.4(a)(1). | | |
| **Subpart C—Financial Solvency Requirements** | | | | |
| 243.200(a) and (b) .... | How do I demonstrate financial solvency?<br>(a) To demonstrate financial solvency under this part, you must submit an audited consolidated balance sheet, and, if requested by the MMS bond-approving officer, up to 3 years of tax returns to the MMS, * * *.<br>(b) You must submit an audited consolidated balance sheet annually, and, if requested, additional annual tax returns on the date MMS first determined that you demonstrated financial solvency as long as you have active appeals, or whenever MMS requests. * * *. | 1 | 100 ..... self-bonding submissions (demonstration of financial solvency). | 100 |
| 243.201(c)(1), (c)(2)(i) and (c)(2)(ii) and 243.201(d)(2). | How will MMS determine if I am financially solvent?<br>* * * (c) If your net worth, minus the amount we would require as surety under subpart B for all orders you have appealed is less than $300 million, you must submit * * *:.<br>(1) A written request asking us to consult a business-information, or credit-reporting service or program to determine your financial solvency; and.<br>(2) A nonrefundable $50 processing fee: .....<br>(i) You must pay the processing fee * * *; .....<br>(ii) You must submit the fee with your request * * * and then annually on the date we first determined that you demonstrated financial solvency, as long as you are not able to demonstrate financial solvency * * * and you have active appeals..<br>(d)* * * (2) For us to consider you financially solvent, the business-information or credit—reporting service or program must demonstrate your degree of risk as low to moderate: * * *. | Burden hours covered under §§ 243.4(a)(1) and 243.200(a) and (b). | | |
| 243.202(c) ..... | When will MMS monitor my financial solvency?<br>* * * (c) If our bond-approving officer determines that you are no longer financially solvent, you must post a bond or other MMS-specified surety instrument under subpart B.. | Burden hours covered under § 243.4(a)(1). | | |
| Total Burden ..... | ..... | ..... | 300 ..... | 300 |

*Estimated Annual Reporting and Recordkeeping ''Non-hour'' Cost Burden:* There are no additional recordkeeping costs associated with this information collection. However, MMS estimates 15 appellants will pay MMS a $50 fee to obtain credit data from a business information or credit reporting service as a ''non-hour'' cost burden over the next three years, or 5 appellants per year.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501 *et seq.*) provides that 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.

*Comments:* Section 3506(c)(2)(A) of the PRA requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information

* * *.'' Agencies must specifically solicit comments to: (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on October 19, 2004 (69 FR 61522), announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to the notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by July 21, 2005.

*Public Comment Policy:* We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Upon request, we will withhold an individual respondent's home address from the public record, as allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state your request prominently at the beginning of your comment. However, we will not 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.

*MMS Information Collection Clearance Officer:* Arlene Bajusz (202) 208–7744.

Dated: March 14, 2005.

**Lucy Querques Denett,**

*Associate Director for Minerals Revenue Management.*

[FR Doc. 05–12135 Filed 6–20–05; 8:45 am]

**BILLING CODE 4310–MR–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### 60 Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

**AGENCY:** Department of the Interior, National Park Service.

**ACTION:** Notice and request for comments.

**SUMMARY:** The America the Beautiful Pass Study will provide the National Park Service (NPS), park managers, and interagency partners (Bureau of Land Management, Bureau of Reclamation, Fish and Wildlife Service, USDA-Forest Service) with critical public input regarding pricing and benefits associated with the new America the Beautiful (ATB) Pass. Specifically the study will use surveys of recreationists, visitors to units of the National Park System and other public lands, potential visitors to units of the National Park System and other public lands, and current National Parks Pass or other federal recreation area pass holders to elicit (1) information about how individuals currently use passes, (2) opinions on how the ATB pass should be priced, (3) opinions about the benefits that the pass should provide, and (4) the factors that might influence an individual's decision to purchase an ATB pass. In addition, socio-economic information regarding current and potential visitors and pass holders is needed.

| | Estimated numbers of | |
|---|---|---|
| | Burden | Responses hours |
| America the Beautiful Pass Study | 3,605 | 1,272 |

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Recordkeeping Requirements, the National Park Service invites comments on the need for gathering the information in the proposed survey.

*Comments are invited on:* (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology.

**DATES:** Public comments will be accepted on or before August 22, 2005.

*Send Comments to:* Ms. Jane Moore, Fee Program Manager, National Park Service, Fee Program, 1849 C Street, NW., (Mail Stop 2608) Washington, DC 20240–0001.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jane Moore, Fee Program Manager, National Park Service by telephone at 202–513–7132 or by electronic mail at *Jane_Moore@.nps.gov.*

**SUPPLEMENTARY INFORMATION:**

*Titles:* America the Beautiful Pass Study.

*Bureau Form Number:* None.

*OMB Number:* To be requested.

*Expiration Date:* To be requested.

*Type of request:* New Collection.

*Description of need:* The Federal Lands Recreation Enhancement Act authorized the issuance of a new federal recreation pass, the America the Beautiful (ATB) pass. The ATB pass will take the place of the existing Golden Eagle Pass and the National Parks Pass and will provide similar benefits. The existing Golden Age and Golden Access passes will be replaced by ATB-senior and ATB-access passes. The primary purpose of the ATB pass is to provide convenient access, at a fair price, to federal recreation sites that charge fees. A secondary purpose is to provide opportunities for education and support for public lands and develop partnerships with organizations that support recreation and stewardship. Information from the public is needed in order to assure that the new ATB Pass is administered in a convenient way and provided at a fair price. Prior to issuance of the ATB pass, a price has to be established. The price selected needs to make sense in economic terms and be defensible and understandable to decision makers and the public. In order to be defensible the particular price selected will need to be backed up by a set of analyses. The price of the ATB pass should at least allow the government to break even in the sense that, on average, the sale of an ATB pass does not result in a revenue loss relative to the revenue that would be received absent the ability to purchase an annual pass. The expected price should also take into account individuals' willingness to pay for the convenience of using a pass as well as any altruistic motives they may have.

The factors that play a role in an individual's decision to purchase a pass

include recreation patterns on public land, the relative price of the pass compared to purchasing daily (or weekly in some cases) entry, the benefits provided by the pass (*e.g.*, number of individuals covered by a pass, whether the pass is per vehicle or per person, etc.), household income and other socioeconomic factors, the availability and prices of potential recreation substitutes, and perhaps the strength of any altruistic motives that might cause an individual to purchase the pass even though it might only be used on a limited basis. The strength of any altruistic motives could potentially be impacted by the quantity and quality of marketing associated with the pass.

This study will include several focus groups and a survey of current and potential pass holders.

Focus groups will be administered to gather information from recreationists about current and potential pricing and pass use. The focus group respondents will include individuals that have purchased one or more of the existing passes, which include the Golden Eagle, Golden Age, Golden Access, Duck Stamp, and National Park Pass. The focus groups will elicit information about how individuals use passes, views on how the ATB pass should be priced, views about the benefits that the pass should provide, and the factors that might influence an individual's decision to purchase a pass. The focus groups will be held in selected locations across the country. It is estimated that up to seven focus groups will be conducted with approximately 15 respondents each. Focus group sessions will take approximately one hour for a total burden of 105 hours.

The survey of current and potential pass holders will be used to obtain information about their pass use, motives for purchasing, and socioeconomic characteristics. The survey will be designed to obtain information that will assist in determining the value (including, specifically, willingness to pay for the convenience value associated with using a pass) individuals place on the existing passes and in establishing a price for the new ATB pass. In addition, the survey will gather information concerning the factors that might influence an individual's decision to purchase a pass. The survey will elicit information about the incremental value individuals place on an annual pass that provides access to all federal recreation sites compared to access to only NPS sites. Surveys will be conducted with approximately 3,500 individuals. The survey is estimated to take approximately 20 minutes per respondent for a total burden of 1,167 hours.

The combined burden for this study is estimated to be 1,272 hours.

Automated data collection: Data collection from respondents to the survey of pass users will include an automated option. It is estimated that up to half of the 3,500 respondents will chose the automated option. The focus groups will require face-to-face contact thus no automated data collection will take place in that portion of the study.

*Description of respondents:* Recreationists, visitors to units of the National Park System and other public lands, potential visitors to units of the National Park System and other public lands, and current National Parks Pass or other federal recreation area pass holders.

*Estimated average number of respondents:* 3,605 (105 for focus groups; 3,500 for survey).

*Estimated average number of responses:* 3,605 (105 for focus groups; 3,500 for survey).

*Estimated average burden hours per response:* One hour for focus group respondents; 1/3 hour for survey respondents.

*Frequency of Response:* 1 time per respondent.

*Estimated annual reporting burden:* 1,272 hours.

**Leonard E. Stowe,**

*National Park Service Information Collection Clearance Officer.*

[FR Doc. 05–12208 Filed 6–20–05; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Availability of the Final Environmental Impact Statement for the Selma to Montgomery National Historic Trail Comprehensive Management Plan

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 the National Park Service announces the availability of the Final Environmental Impact Statement (EIS) for the Selma to Montgomery National Historic Trail Comprehensive Management Plan. The authority for publishing this notice is contained in 40 CFR 1506.6.

The document provides a framework for the management, use, and development of the trail by the National Park Service and its partners over the next 15 to 20 years. Beginning at Brown Chapel AME Church in Selma, Alabama, the trail follows the route of the March 1965 Selma to Montgomery voting rights march, traveling through Lowndes County along U.S. Highway 80, and ending at the Alabama State Capitol in Montgomery. The document describes four management alternatives for consideration and analyzes the environmental impacts of those alternatives. These alternatives, including the preferred Alternative C, were presented in the draft EIS.

**DATES:** The National Park Service will execute a Record of Decision (ROD) no sooner than 30 days following publication of the Environmental Protection Agency's notice of availability in the **Federal Register**.

**ADDRESSES:** Copies of the Final EIS are available by contacting John Barrett, National Park Service, 100 Alabama St., SW., Atlanta, GA 30303.

**FOR FURTHER INFORMATION CONTACT:** John Barrett, 404–562–3124, extension 637.

**SUPPLEMENTARY INFORMATION:** There have been no substantive changes to the alternatives as described in the draft EIS and Alternative C remains the preferred alternative.

The responsible official for this Environmental Impact Statement is Patricia A. Hooks, Regional Director, Southeast Region, National Park Service, 100 Alabama Street SW., 1924 Building, Atlanta, Georgia 30303.

Dated: May 11, 2005.

**Patricia A. Hooks,**

*Regional Director, Southeast Region.*

[FR Doc. 05–12214 Filed 6–20–05; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Merced Wild and Scenic River Revised Comprehensive Management Plan and Final Supplemental Environmental Impact Statement; Yosemite National Park; Tuolumne, Mariposa, and Madera Counties, California; Notice of Availability

*Summary:* Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), the Council of Environmental Quality regulations (40 CFR part 1500), and the Wild and Scenic Rivers Act (as amended, 16 U.S.C. 1271), the National Park Service, Department of the Interior, has prepared the Final Merced Wild and Scenic River Revised Comprehensive Management Plan and Supplemental Environmental Impact Statement (Final Revised Merced River Plan/SEIS). It is intended to amend and supplement the Merced

Wild and Scenic River Comprehensive Management Plan and Final Environmental Impact Statement (Merced River Plan/FEIS) released in June 2000. The Final Revised Merced River Plan/SEIS identifies and evaluates four alternatives for guiding management of the Merced Wild and Scenic River within the jurisdiction of the National Park Service in Yosemite and the El Portal Administrative Site. Potential impacts and appropriate mitigation measures are assessed for each alternative. When approved, the plan will serve as a template for all future decisions relating to recreation and land use within the 81-mile Merced River corridor on both the main stem and South Fork. The primary goals of the plan are to ensure the free-flowing condition of the river, along with providing long-term protection and enhancement of what the Wild and Scenic Rivers Act calls the river's ''Outstandingly Remarkable Values'' the unique qualities that make the river worthy of special protection.

*Purpose and Need for Federal Action:* The Merced River Plan is the official document for guiding future management of the main stem and South Fork of the Merced Wild and Scenic River within the jurisdiction of the National Park Service (NPS). In August 2000, the Merced River Plan/FEIS was approved (the Record of Decision was subsequently revised in November 2000). Shortly after the Record of Decision was signed, the plan became the subject of a lengthy litigation process. In April 2004, the U.S. Court of Appeals for the 9th Circuit directed the NPS to prepare a ''new or revised'' comprehensive management plan that addresses two deficiencies identified in the Court's October 27, 2003 opinion (*Friends of Yosemite Valley* v. *Norton,* 348 F.3d 789, 803 9th Cir. 2003). The Court ruled that: (1) The revised plan must implement a user capacity program that presents specific measurable limits on use, and (2) the revised plan must reassess the river corridor boundary in the El Portal Administrative Site based on the location of Outstandingly Remarkable Values. The programmatic guidance identified herein would revise and supplement the Merced River Plan/FEIS and the park's 1980 General Management Plan.

*Proposed Plan and Alternatives:* In the proposed Revised Merced River Plan, Alternative 2 (agency preferred alternative) would include all of the elements of the No Action Alternative, with the addition of implementing the Visitor Experience Resource Protection (VERP) user capacity component, along with interim limits on some park facilities; the El Portal segment boundary would be redrawn to a quarter-mile on either side of the river. In addition to this proposed plan, the Final Revised Merced River Plan/SEIS identifies and analyzes three other alternatives: Alternative 1—No Action; Alternative 3—Segment Limits with VERP Program; and Alternative 4—Management Zone Limits with VERP Program. Alternative 2 has also been deemed to be the ''environmentally preferable'' alternative.

The No Action Alternative represents a baseline from which to compare the three action alternatives. Under Alternative 1, the Merced River Plan—as detailed in the 2000 Record of Decision (and subsequent revision)—would continue to guide management in the river corridor. Application of its management elements (boundaries, classifications, Outstandingly Remarkable Values, management zoning, River Protection Overlay, Section 7 determination process) would continue as presented in the plan. However, a program of standards and indicators under the Visitor Experience Resource Protection (VERP) framework would not be in place and the park would continue managing user capacity under existing programs and policies outlined in the February 2004 User Capacity Program for the Merced Wild and Scenic River Corridor. This program includes continuation of the current wilderness management program and existing Wilderness Trailhead Quota System. Alternative 1 would implement the narrow boundary for the El Portal segment as described in the selected alternative of the Merced River Plan/FEIS (100-year floodplain or River Protection Overlay [whichever is greater] along with adjacent wetlands).

Alternative 3 would also include all of the elements from the No Action alternative, in addition to a VERP user capacity component (as described in Alternative 2), along with a maximum daily limit for each river segment and an annual visitation limit of 5.32 million; the El Portal segment would have the maximum quarter-mile boundary.

Alternative 4 would contain the elements of No Action in addition to a VERP user capacity component (as described in Alternative 2), along with limits for each river management zone and an annual visitation limit of 3.27 million; the El Portal segment boundary would be drawn according to the location of Outstandingly Remarkable Values.

*Planning Background:* The draft and final Revised Merced River Plan/SEIS were prepared pursuant to the Wild and Scenic Rivers Act and National Environmental Policy Act. On July 27, 2004, a Notice of Intent to prepare an environmental impact statement was published in the **Federal Register**. At this time, a 30-day scoping period was initiated. In response to public comment, this scoping period was extended to September 10, 2004. During scoping, a series of public meetings were held. A letter from the Superintendent was sent to over 8,000 interested members of the public on the park's Planning Mailing list, encouraging them to submit ideas, issues, and concerns relating to the scope of this planning effort. In addition, the scoping period and associated public meetings were publicized via regional media, on the park's Web site, through emailed notices on the park's electronic newsletter, and on various state-wide online bulletin boards. Over 100 letters, faxes, and emails were received and considered during the development of the Draft Revised Merced River Plan/SEIS. All written scoping comments, as well as oral testimony from public hearings, can be viewed on the park's Web site (*http://www.nps.gov/yose/planning/mrp/revision*). A scoping report is also available.

On January 14, 2005, a Notice of Availability for the Draft Merced Wild and Scenic River Revised Comprehensive Management Plan Supplemental Environmental Impact Statement was published in the **Federal Register**. The public review period continued through March 22, 2005. Approximately 1,500 printed copies and 600 CD–ROM versions of the draft SEIS were mailed to interested individuals and organizations. In February and March 2005, a series of public meetings was held in locations throughout California to discuss the draft document. During the public comment period, eleven public meetings were hosted throughout California between February 22, 2005 and March 7, 2005. Meetings were held at El Portal, San Francisco, Burbank, Oakhurst, Mammoth Lakes, Sacramento, Fresno, Merced, Mariposa, Groveland and in Yosemite Valley. An additional Open House was hosted in Yosemite Valley prior to the end of the public comment period. Each public meeting was set up to allow for (1) informal conversations between park staff (including consultants) and the public, (2) a presentation by park staff on the plan's proposed elements, and (3) a formal public hearing attended by a court reporter. The public was encouraged to submit written comments on the Draft

Revised Merced River Plan/SEIS via letter, email or fax. Attendees could also leave written comments on comment forms provided at the meetings.

The NPS contacted local, regional, and national media outlets, issued press releases that were faxed and emailed to media outlets and phone calls that were made to newspaper and news reporters to generate interest in the plan. In addition, paid newspaper advertisements were placed in the Mariposa Gazette, the Sierra Star (Oakhurst, CA), the Union Democrat (Sonora, CA), the Merced Sun-Star and the Mammoth Times. Paid public notices were placed in the San Francisco Chronicle, the L.A. Times, the Sacramento Bee, and the Fresno Bee. Numerous stories about the plan and the schedule of public meetings appeared in local and regional newspapers. In addition, several project fact sheets were posted on the park's Web site; fliers were posted on community bulletin boards, post offices, and local businesses in communities where public meetings were hosted; and press release announcements were included in the park's Daily Report throughout the entire comment period. The park specifically initiated dialogue with several interested local parties. These included park employees and their families, Delaware North Companies Parks and Resorts at Yosemite (primary concessioner) employees and residents, and park partner staff such as the Yosemite Institute, the Yosemite Association, and The Yosemite Fund. In addition, there was extensive outreach within the local communities of El Portal and Wawona through participation at local Mariposa County Planning Advisory Committee meetings. The park also conducted a ''walking tour'' in El Portal to discuss the process for identifying Outstandingly Remarkable Values within the El Portal segment of the Merced River and the rationale for the various El Portal boundary alternatives. The NPS engaged gateway communities throughout the process through personal communications and meetings between the park staff and gateway community members.

As a result of the public review period, the NPS received comments from 114 individuals, 25 organizations, 6 government agencies, 2 tribes and 1 university, including public testimony given by individuals at public meetings. Over 900 individual comments were received. The analysis of these comments generated about 400 concerns statements, which were categorized and considered for incorporation in the planning process. The public comments received and transcripts from the public hearings are available for viewing on the park Web site (*http://www.nps.gov/yose/planning/mrp/revision*). The Public Comment Analysis and Response Report is included as Appendix F in the Final SEIS.

*Distribution of Final Revised Merced River Plan/SEIS:* A mail-back postcard was sent to all individuals and organizations on the park's general mailing list asking recipients if they would like to receive a printed copy or CD–ROM version (or both) of the Final Revised Merced River Plan/SEIS. This announcement also indicated that the plan would be available for viewing on the park's Web site (*http://www.nps.gov/yose/planning*). Copies of the final plan will also be available at the National Park Service headquarters in Yosemite Valley, the Yosemite Valley Research Library, the National Park Service warehouse building in El Portal, and at a number local and regional libraries (listed in Chapter VI of the Final SEIS).

*Decision Process:* Depending upon the response from other agencies, interested organizations, and the general public, at this time it is anticipated that a Record of Decision would be approved not sooner than at least 30 days have elapsed after publication by the EPA of their filing notice for the Final Revised MRP/SEIS. Notice of the approved decision will be posted in the **Federal Register** and announced in local and regional media. As a delegated EIS, the official responsible for the decision is the Regional Director, Pacific West Region, National Park Service; subsequently the official responsible for implementing the approved Revised Merced River Plan is the Superintendent, Yosemite National Park.

Dated: May 18, 2005.

**Jonathan B. Jarvis,**

*Regional Director, Pacific West Region.*

[FR Doc. 05–12207 Filed 6–20–05; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Intent To Prepare a General Management Plan and Environmental Impact Statement

**AGENCY:** National Park Service, Interior.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, the National Park Service (NPS) announces its intent to prepare a General Management Plan and Environmental Impact Statement (GMP/EIS) for Cedar Creek and Belle Grove National Historical Park, located in Frederick, Shenandoah, and Warren Counties of Virginia. The park consists of 3,000 acres that comprise significant portions of the Cedar Creek Battlefield, a decisive battle in the Civil War, and Belle Grove Plantation, an antebellum manor house listed on the National Register of Historic Places. In the enabling legislation for the park, Congress established a Federal Advisory Commission to advise in the preparation of a GMP, and key partner organizations who may continue to own and manage properties within the park. Prepared by planners at the park and in the NPS Northeast Region, with assistance from advisors and consultants, the GMP/EIS will propose a long-term approach to managing Cedar Creek and Belle Grove National Historical Park.

**FOR FURTHER INFORMATION CONTACT:** Diann Jacox, Superintendent, Cedar Creek and Belle Grove National Historical Park, (540) 868–9176.

**SUPPLEMENTARY INFORMATION:** Consistent with the park's mission, NPS policy, and other laws and regulations, alternatives will be developed to guide the management of the site over the next 15 to 20 years. The alternatives will incorporate various zoning and management prescriptions to ensure resource protection and public enjoyment of the site, and continued involvement by the key partner organizations. The environmental consequences that could result from implementing the various alternatives will be evaluated in the GMP/EIS. The public will be invited to express opinions about the management of the park early in the process through public meetings and other media; and will have an opportunity to review and comment on the draft GMP/EIS. The Advisory Commission and key partner organizations will be involved early in the planning process and will remain actively involved throughout the development of the plan. Following the public review processes outlined under NEPA, the final plan will become official, authorizing implementation of a preferred alternative. The target date for the Record of Decision is October 8, 2008.

Dated: June 2, 2005.

**Diann Jacox,**

*Superintendent, Cedar Creek and Belle Grove National Historical Park.*

[FR Doc. 05–12211 Filed 6–20–05; 8:45 am]

**BILLING CODE 4312–52–M**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Middle Fork Avalanche Hazard Reduction, Environmental Impact Statement, Glacier National Park, MT

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Notice of Intent to prepare an Environmental Impact Statement for Middle Fork Avalanche Hazard Reduction, Glacier National Park.

**SUMMARY:** Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(C), the National Park Service is preparing an Environmental Impact Statement for Middle Fork Avalanche Hazard Reduction for Glacier National Park, Montana. This effort will result in agreed upon methods to reduce the avalanche hazard to trains and personnel that travel through the John Stevens Canyon between mile post 180 and 192 on State Highway 2, adjacent to the boundary of Glacier National Park. The Burlington Northern Santa-Fe Railroad runs along the southern boundary of Glacier National Park on Flathead National Forest lands. These lands are under a Right-of-Way. The avalanche paths that threaten the trains and personnel are within Glacier National Park. Alternatives to be considered include (1) No-Action, (2) Snow Sheds in all Chutes and an Avalanche Monitoring Program (but no triggering or stability testing), (3) Combination of Snow Sheds and Avalanche Monitoring, Stability Testing and Triggering, (4) No New Sheds and Ongoing Avalanche Monitoring Stability Testing and Triggering and (5) Temporary Avalanche Monitoring, Stability Testing and Triggering Until Snow Sheds are Constructed. The No Action alternative will consider the affects of maintaining the existing sheds avalanche monitoring and continued use of the existing avalanche sensor wires. Alternative 2 will consider the effects of constructing five new sheds and adding onto six existing sheds. Avalanche monitoring would be ongoing, but no stability testing or triggering would occur after sheds are constructed. Alternative 3 will consider a combination of snow sheds and monitoring, stability testing and triggering of avalanches when snow conditions indicate. Alternative 4 will consider only using avalanche monitoring, stability testing and triggering. Alternative 5 will consider the temporary use of avalanche stability testing and triggering until snow sheds are constructed. Avalanche monitoring would continue to occur.

Major issues include avalanche stability testing and triggering within proposed wilderness in Glacier National Park, impacts to threatened and endangered species known to use the area, winter recreational use in the area, protection of resources from accidental freight spills caused by avalanches, and safety for the public and personnel in the area. Amtrak travels daily through the area.

A scoping letter has been prepared. Copies may be obtained from Superintendent, PO Box 128, Glacier National Park, West Glacier, Montana 59936 or by calling 406–888–7901. Information may also be obtained from *http://parkplanning.nps.gov/*.

**DATES:** The Park Service will accept comments from the public through July 21, 2005.

**ADDRESSES:** Information will be available for public review and comment in the office of the Superintendent, and at the following locations Glacier National Park, Superintendent's Office, Headquarters, West Glacier, Montana, 406–888–7901, Hudson Bay District Office, St. Mary Montana or at *http://parkplanning.nps.gov*.

**FOR FURTHER INFORMATION CONTACT:** Mary Riddle, Glacier National Park, PO Box 128 West Glacier, Montana 59936, 406–888–7898. *mary_riddle@nps.gov*.

**SUPPLEMENTARY INFORMATION:** If you wish to comment on the scoping letter or on any other issues associated with the plan, you may submit your comments by any one of several methods. You may mail comments to Superintendent, Glacier National Park PO Box 128 West Glacier, Montana 59936. You may also comment via the Internet to *http://parkplanning.nps.gov/* You may hand-deliver comments to Glacier National Park, Headquarters, West Glacier, Montana. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the 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 address, you must state this prominently at the beginning of your comment. 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.

Dated: May 9, 2005.

**Michael Snyder,**

*Deputy Director, Intermountain Region, National Park Service.*

[FR Doc. 05–12213 Filed 6–20–05; 8:45 am]

**BILLING CODE 4310–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Delaware Water Gap National Recreation Area Citizen Advisory Commission Meeting

**AGENCY:** National Park Service; Interior.

**ACTION:** Notice of public meetings.

**SUMMARY:** This notice announces two public meetings of the Delaware Water Gap National Recreation Area Citizen Advisory Commission. Notice of these meetings is required under the Federal Advisory Committee Act, as amended (5 U.S.C. App.2).

**DATES:** Saturday, September 17, 2005, at 9 a.m.

**ADDRESSES:** Merrill Creek Reservoir, Washington, New Jersey 07882.

The agenda will include reports from Citizen Advisory Commission members including committees such as Recruitment, Natural Resources, Inter-Governmental, Cultural Resources, By-Laws, Special Projects, and Public Visitation and Tourism. Superintendent John J. Donahue will give a report on various park issues, including cultural resources, natural resources, construction projects, and partnership ventures. The agenda is set up to invite the public to bring issues of interest before the Commission.

**DATES:** Saturday, November 19, 2005, at 9 a.m.

**ADDRESSES:** Delaware Township Municipal Building, Dingmans Ferry, Pennsylvania 18328.

The agenda will include reports from Citizen Advisory Commission members including committees such as Recruitment, Natural Resources, Inter-Governmental Cultural Resources, Special Projects, and Public Visitation and Tourism. Superintendent John J. Donahue will give a report on various park issues, including cultural resources, natural resources, construction projects, and partnership ventures. The agenda is set up to invite the public to bring issues of interest before the Commission.

**FOR FURTHER INFORMATION CONTACT:** Superintendent John J. Donahue, 570–588–2418.

**SUPPLEMENTARY INFORMATION:** The Delaware Water Gap National Recreation Area Citizen Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the recreation area and its surrounding communities.

Dated: May 16, 2005.

**John J. Donahue,**

*Superintendent.*

[FR Doc. 05–12210 Filed 6–20–05; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Great Sand Dunes National Park Advisory Council Meeting

**AGENCY:** National Park Service, DOI.

**ACTION:** Announcement of meeting.

**SUMMARY:** Great Sand Dunes National Park and Preserve announces a meeting of the Great Sand Dunes National Park Advisory Council, which was established to provide guidance to the Secretary on long-term planning for Great Sand Dunes National Park and Preserve.

**DATES:** The meeting date is: July 8, 2005, 9 a.m.–4:30 p.m., Mosca, Colorado.

**ADDRESSES:** The meeting location is: Mosca, Colorado—Great Sand Dunes National Park and Preserve Visitor Center, 11999 Highway 150, Mosca, CO 81146.

**FOR FURTHER INFORMATION CONTACT:** Steve Chaney, 719–378–6312.

**SUPPLEMENTARY INFORMATION:** At the July 8 meeting, the National Park Service will present the advisory council with draft alternatives developed for Draft General Management Plan. The council will discuss those alternatives and provide feedback to the agency. A public comment period will be held from 4:15 p.m. to 4:30 p.m.

**Michael D. Snyder,**

*Acting Regional Director.*

[FR Doc. 05–12212 Filed 6–20–05; 8:45 am]

**BILLING CODE 4310–CL–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Kaloko-Honokohau National Historical Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Na Hoapili O Kaloko Honokohau, Kaloko-Honokohau National Historical Park Advisory Commission will be held at 9 a.m., August 12, 2005 at Kaloko-Honokohau National Historical Park headquarters, Kailua-Koho, Hawaii.

The agenda will be on discussions on the proposed recommendations for the Live-In Cultural/Education Center.

The meeting is open to the public. Disabled persons requiring special assistance should contact the Superintendent at (808) 329–6881 ext. 7, 7 days prior to the meeting.

Minutes will be record for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. Transcripts will be available after 30 days of the meeting.

For copies of the minutes, contact Kaloko-Honokohau National Historical Park at (808) 329–6881.

Dated: May 25, 2005.

**Geraldine K. Bell,**

*Superintendent, Kaloko-Honokohau National Historical Park.*

[FR Doc. 05–12209 Filed 6–20–05; 8:45 am]

**BILLING CODE 4312–6H–M**

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–543]**

### In the Matter of Certain Baseband Processor Chips and Chipsets, Transmitter and Receiver (Radio) Chips, Power Control Chips, and Products Containing Same, Including Cellular Telephone Handsets; Notice of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 19, 2005, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Broadcom Corporation of Irvine, California. Supplements to the complaint were filed on June 7 and 10, 2005. The complaint as supplemented alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain baseband processor chips and chipsets, transmitter and receiver (radio) chips, power control chips, and products containing same, including cellular telephone handsets, by reason of infringement of claims 1–5, 7, 8, 13, 14, and 16–19 of U.S. Patent No. 6,374,311, claims 1, 4, 8, 9, 11, 14, and 17–24 of U.S. Patent No. 6,714,983, claim 2 of U.S. Patent No. 5,682,379, claims 8–11 and 13 of U.S. Patent No. 6,359,872, and claims 33, 35, and 38 of U.S. Patent No. 6,583,675. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

**ADDRESSES:** The complaint and supplements, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Karin J. Norton, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2606.

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2004).

*Scope of Investigation:* Having considered the complaint, the U.S. International Trade Commission, on June 15, 2005, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain baseband processor chips or chipsets, transmitter or receiver (radio) chips, power control chips, or products containing same, including cellular telephone handsets, by reason of infringement of one or more of claims 1–5, 7, 8, 13, 14, and 16–19 of U.S. Patent No. 6,374,311, claims 1, 4, 8, 9, 11, 14, and 17–24 of U.S. Patent No. 6,714,983, claim 2 of U.S. Patent No. 5,682,379, claims 8–11 and 13 of U.S. Patent No. 6,359,872, and claims 33, 35, and 38 of U.S. Patent No. 6,583,675, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is-Broadcom Corporation, 16215 Alton Parkway, Irvine, California 92618.

(b) The respondent is the following company alleged to be in violation of section 337 and upon which the complaint is to be served: Qualcomm Incorporated, 5775 Morehouse Drive, San Diego, CA 92121.

(c) Karin J. Norton, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Charles E. Bullock is designated as the presiding administrative law judge.

A response to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such response will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting the response to the complaint will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: June 16, 2005.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 05–12197 Filed 6–20–05; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

### Porcelain-on-Steel Cooking Ware From China and Taiwan (Investigations Nos. 731–TA–298 and 299 (Second Review)); Top-of-the-Stove Stainless Steel Cooking Ware From Korea and Taiwan (Investigations Nos. 701–TA–267 and 268 and 731–TA–304 and 305 (Second Review))

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of expedited five-year reviews concerning the antidumping duty orders on porcelain-on-steel cooking ware from China and Taiwan, and the countervailing and antidumping duty orders on top-of-the-stove stainless steel cooking ware from Korea and Taiwan.

**SUMMARY:** The Commission hereby gives notice of the scheduling of expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty orders on porcelain-on-steel cooking ware from China and Taiwan, and the countervailing and antidumping duty orders on top-of-the-stove stainless steel cooking ware from Korea and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**EFFECTIVE DATE:** June 6, 2005.

**FOR FURTHER INFORMATION CONTACT:** Megan Spellacy (202–205–3190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background*—On June 6, 2005, the Commission determined that the domestic interested parties group responses to its notice of institution (70 FR 9974, March 1, 2005) of the subject five-year reviews were adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] [2] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act.

*Staff report.*—A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on July 1, 2005, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

*Written submissions.*—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[3] and any party other than an interested party to the reviews may file written comments with the Secretary on what determinations the Commission should reach in the reviews. Comments are due on or before

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

[2] Vice Chairman Deanna Tanner Okun and Commissioner Daniel R. Pearson concluded that the domestic group responses for these reviews were adequate and the respondent group response was inadequate, but that circumstances warranted a full review.

[3] The Commission has found the responses submitted by Columbian Home Products, LLC and the Stainless Steel Cookware Committee to be individually adequate. Comments from other interested parties will not be accepted) (*see* 19 CFR 207.62(d)(2)).

July 8, 2005 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by July 8, 2005. However, should the Department of Commerce extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 Fed. Reg. 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 Fed. Reg. 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

*Determinations.*—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: June 16, 2005.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 05–12196 Filed 6–20–05; 8:45 am]

**BILLING CODE 7020–02–M**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review: Comment Request

June 15, 2005.

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 Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, 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:* Office of the Assistant Secretary for Administration and Management.

*Type of Review:* Extension of currently approved collection.

*Title:* Applicant Background Questionnaire.

*OMB Number:* 1225–0072.

*Frequency:* On occasion.

*Affected Public:* Individuals or households.

*Number of Respondents:* 3,000.

*Estimated Annual Responses:* 3,000.

*Average Response Time:* 3 minutes.

*Total Annual Burden Hours:* 150.

*Total Annualized capital/startup costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $0.

*Description:* The U.S. Department of Labor (DOL) provides a wide range of services to a diverse American workforce. As part of its obligation to provide equal employment opportunities, DOL is charged with ensuring that qualified individuals in groups that have historically been underrepresented in various employments are included in applicant pools for Departmental positions. See 5 U.S.C. 7201(c); 29 U.S.C. 791; 5 CFR 720.204. To achieve this goal, DOL employment offices have targeted recruitment outreach to a variety of sources. Included in these sources are educational institutions which historically serve a high concentration of minorities, women, and persons with disabilities. Outreach efforts also extend to professional organizations, newspapers and magazines, as well as participation in career fairs and conferences, many of which reach high concentrations of historically underrepresented groups.

Without the information from this collection, DOL does not have the ability to evaluate the effectiveness of any of these targeted recruiting strategies because collection of racial and ethnic information only would occur at the point of hiring. DOL needs to collect data on the pools of applicants which result from the various targeted recruiting strategies listed above. With the information from this collection, DOL can adjust and redirect its targeted recruitment to ensure that the applicant pools contain candidates from historically underrepresented groups.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 05–12192 Filed 6–20–05; 8:45 am]

**BILLING CODE 4510–23–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

**AGENCY:** Employment and Training Administration, DOL.

**ACTION:** Notice.

**SUMMARY:** The Employment and Training Administration is issuing this notice to announce the receipt of a ''Certification of Non-Relocation and Market and Capacity Information Report'' (Form 4279–2) for the following:

*Applicant/Location:* Shelby County Cookers, LLC, Harlan, Iowa.

*Principal Product:* The loan, guarantee, or grant applicant has plans to complete the construction and upgrade of a meat processing plant for

fully cooked bacon. The NAICS industry code for this enterprise is 311512 (meat processed from carcasses).

**DATES:** All interested parties may submit comments in writing no later than July 5, 2005. Copies of adverse comments received will be forwarded to the applicant noted above.

**ADDRESSES:** Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room N–4514, Washington, DC 20210; or transmit via fax 202–693–3015 (this is not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** Anthony D. Dais, at telephone number (202) 693–2784 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR Part 75, authorizes the United States Department of Agriculture (USDA) to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or, (b) An increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration (ETA) within the Department of Labor is responsible for the review and certification process. Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

Signed at Washington, DC, this 15th day of June, 2005.

**Emily Stover DeRocco,**

*Assistant Secretary for Employment and Training.*

[FR Doc. E5–3202 Filed 6–20–05; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

**1. Mammoth Coal Company**

[Docket No. M–2005–039–C]

Mammoth Coal Company, P.O. Box 120, Leviasy, West Virginia 26676 has filed a petition to modify the application of 30 CFR 75.1002 (Installation of electric equipment and conductors; permissibility) to its Winifrede #1 Mine (MSHA I.D. No. 46–08867) located in Kanawha County, West Virginia. The petitioner proposes to use 2,300 volts to operate the Joy Technologies, Inc., (Joy) continuous miner. The petitioner states that the nominal voltage of the power circuits for the new miners will not exceed 2,300 volts, the nominal voltage of the control circuits will not exceed 120 volts, and all electrical personnel will receive training before the proposed alternative method is implemented. The petitioner also proposes to use a 2,400 volt power center to power a continuous miner with high voltage trailing cable inby the last open crosscut and within 150 feet of pillar workings. The petitioner asserts that application of the existing standard will result in a diminution of safety and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**2. Foundation Coal West**

[Docket No. M–2005–040–C]

Foundation Coal West, P.O. Box 3040, Gillette, Wyoming 82717–3040 has filed a petition to modify the application of 30 CFR 77.802 (Protection of high-voltage circuits; neutral grounding resistors; disconnecting devices) to its Belle Ayr Mine (MSHA I.D. No. 48–00732) and Eagle Butte Mine (MSHA I.D. No. 48–01078) both located in Campbell County, Wyoming. The petitioner requests a modification of the existing standard to permit an alternative method of compliance for the grounding of a diesel electric generator. The petitioner proposes to use a portable diesel powered electric generator for temporary power and/or to move electrically powered mining equipment in and around the mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**3. McElroy Coal Company**

[Docket No. M–2005–041–C]

McElroy Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.507 (Power connection points) to its McElroy Mine (MSHA I.D. No. 46–01437) located in Marshall County, West Virginia. The petitioner proposes to use non-permissible submersible pumps installed in bleeder and return entries and sealed areas of the McElroy Mine. The petitioner has listed specific procedures in this petition that will be followed when the proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**4. Consolidation Coal Company**

[Docket No. M–2005–042–C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.507 (Power connection points) to its Shoemaker Mine (MSHA I.D. No. 46–01436) located in Marshall County, West Virginia. The petitioner proposes to use non-permissible submersible pumps installed in bleeder and return entries and sealed areas of the Shoemaker Mine. The petitioner has listed specific procedures in this petition that will be followed when the proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**Request for Comments**

Persons interested in these petitions are encouraged to submit comments via Federal eRulemaking Portal: *http://www.regulations.gov;* E-mail: *zzMSHA-Comments@dol.gov;* Fax: (202) 693–9441; or Regular Mail/Hand Delivery/Courier: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before July 21, 2005. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 15th day of June 2005.

**Rebecca J. Smith,**

*Acting Director, Office of Standards, Regulations, and Variances.*

[FR Doc. 05–12184 Filed 6–20–05; 8:45 am]

**BILLING CODE 4510–43–P**

## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

## Susan Harwood Training Grant Program, FY 2005 Budget

*Announcement Type:* Initial announcement of availability of funds and solicitation for grant applications.

*Funding Opportunity No.:* SHTG-FY–05–01.

*Catalog of Federal Domestic Assistance No.:* 17.502.

*Dates:* Grant applications must be received by the OSHA Office of Training and Education in Arlington Heights, Illinois, by 4:30 p.m. (central time) on Thursday, July 21, 2005.

*Summary:* This notice contains all of the necessary information and forms needed to apply for grant funding. The U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) awards funds to nonprofit organizations to provide training and education programs or to develop training materials for employers and workers about safety and health topics selected by OSHA. Nonprofit organizations, including community-based and faith-based organizations, that are not an agency of a State or local government, are eligible to apply. State or local government-supported institutions of higher education are eligible to apply in accordance with 29 CFR part 95. This notice announces grant availability for two different categories of Susan Harwood Training grants. General descriptions of the two categories of grants are provided below.

**Targeted Topic Training Category**

The Targeted Topic training category grants are available to nonprofit organizations to conduct training for employers and employees on two different occupational safety and health topic areas selected by OSHA.

**Training Materials Development Category Grants**

The OSHA Training Materials Development category grants are available to nonprofit organizations to develop, evaluate, and validate training materials on five different occupational safety and health topic areas selected by OSHA.

**ADDRESSES:** Grant applications must be sent to the attention of: Grants Officer, U.S. Department of Labor, OSHA Office of Training and Education, 2020 S. Arlington Heights Road, Arlington Heights, Illinois 60005–4102.

**SUPPLEMENTARY INFORMATION:**

### I. Funding Opportunity Description

*Overview of the Susan Harwood Training Grant Program*

The Susan Harwood Training Grant Program provides funds for programs to train workers and employers to recognize, avoid, and prevent safety and health hazards in their workplaces. The program emphasizes three areas:

- Educating workers and employers in small businesses. A small business has 250 or fewer workers.
- Training workers and employers about new OSHA standards.
- Training workers and employers about high risk activities or hazards identified by OSHA through its Strategic Management Plan, or as part of an OSHA special emphasis program.

*Grant Categories Being Announced*

OSHA will accept applications for two different categories of grants in FY 2005.

- Targeted Topic training category
- OSHA Training Materials Development category

*Topics for the Targeted Topic Training Category*

The Targeted Topic category grants are available to nonprofit organizations to conduct training for employers and employees on two different occupational safety and health topic areas selected by OSHA.

Grantees funded for Targeted Topic training category grants are expected to provide occupational safety and health training programs addressing one of the topic subject areas selected by OSHA, develop safety and health training and/or educational programs, recruit workers and employers for the training, and conduct and evaluate the training. Grantees are also expected to conduct follow up evaluations with people trained by their program to determine what, if any, changes were made to reduce hazards in their workplaces as a result of the training. If your organization plans to train workers or employers in any of the 26 states operating OSHA-approved State Plans, State OSHA requirements should be included in the training.

Two different topic areas were selected for this grant announcement. OSHA may award grants for some or all of the listed Targeted Topic subjects. Applicants wishing to apply for more than one grant topic subject must submit a separate grant application for each subject. Each application must propose a plan for developing and conducting training programs addressing the recognition and prevention of safety and health hazards for one of the subject areas listed below.

*Construction Industry Hazards.* Programs that train workers and employers in the recognition and prevention of safety and health hazards in one of the following subjects:

- Excavation and trenching
- Focus Four hazards (falls, electrocution, caught-in and struck-by)
- Highway construction work zone safety
- Steel erection
- Crane operator training

*General Industry Hazards.* Programs that train workers and employers in the recognition and prevention of safety and health hazards in one of the following subjects:

- Food processing industry involved in preserving fruits and vegetables (SIC 203/NAICS 3114)
- Concrete and concrete products (SIC 327 except 3274 and 3275/NAICS 32733)
- Public warehousing and storage (SIC 422/NAICS 4931)
- Landscaping/horticultural services (SIC 078/NAICS 56173)
- Lockout/tagout hazards

**Topics for the OSHA Training Materials Development Category**

The OSHA Training Materials Development category grants are available to nonprofit organizations to develop, evaluate, and validate classroom quality training materials on five different occupational safety and health topic areas selected by OSHA.

Grantees funded for OSHA Training Materials Development category grants are expected to develop, evaluate, and validate classroom-quality training materials on occupational safety and health topics selected by OSHA that may be used immediately for classroom or worksite training or for self-study. These training materials should be original products that do not duplicate information and products currently available from OSHA or other government agencies.

The objective is to make quality training materials available for training and education purposes that have broad applicability. The training materials are to be tailored to the selected industry or hazard and selected target audience, as announced in this solicitation. The training materials are to be developed in portable formats that are suitable for

hard-copy publication and distribution and Internet publication and distribution. OSHA is not soliciting the development of Web-based training programs. While limited on-site training may be proposed for evaluation and validation purposes, the conduct of training programs should not be a significant work plan element in the grant proposal.

Grantees developing training materials under this grant category will be required to post the training materials on their organization's Web site for two years after receiving OSHA approval of their final products, and provide access to users at no cost. OSHA may list the grantees' URL addresses to access these materials or directly link to the materials on the grantees' Web sites from OSHA's Web site. In addition, grantees will also be required to track and report quarterly to OSHA on the distribution and use of these training materials during the two years the materials are posted on their Web site. Grantees will collect and report on training materials product usage by tracking the number of times the grantee's training materials Web site was visited, and the number of times the training materials were downloaded. After the two year period, OSHA may continue to post or to link to the materials on the Internet for no-cost access by any interested party.

Five different topic areas were selected for this grant announcement. OSHA may award grants for some or all of the OSHA Training Materials Development subjects. Applicants wishing to apply for more than one grant topic subject must submit a separate grant application for each subject. Each application must propose a plan for developing, evaluating and validating training materials for one of the subjects listed below.

*Construction Industry Hazards.* Programs suitable for training others or for self-study in the recognition and prevention of safety and health hazards on the following subject:

- Focus Four hazards (falls, electrocution, caught-in and struck-by)

*General Industry Hazards.* Programs suitable for training others or for self-study in the recognition and prevention of safety and health hazards on one of the following subjects:

- Prevention of amputation hazards
- Electrical installation safety issues related to Electrical Standards, 1910 Subpart S; the most recent edition of the National Fire Protection Association (NFPA) 70E, Standard for Electrical Safety in the Workplace; and the National Electrical Code (NEC).
- Primary metals and basic steel (SIC 331/NAICS 3311 and 3312)
- Oil and gas field services (SIC 138/NAICS 213111 and 213112)

*Prevention of Transportation Fatalities and Accidents, Work-Related.* Programs suitable for training others or for self-study that address the principles of safe driving or safe use of motorized equipment for the prevention of work-related transportation fatalities and accidents. Select one of the following subjects:

- Work-related motor vehicle accident and fatality prevention program
- Powered industrial trucks (fork lifts and motorized hand trucks)

*Respiratory Diseases.* Programs suitable for training others or for self-study in the recognition and prevention of safety and health hazards of working with:

- Isocyanates

*Other Safety and Health Topic Areas.* Programs suitable for training others or for self-study on one of the following subjects:

- Employer responsibilities for new small business employers
- Prevention of workplace violence
- Train-the-trainer course for community- and faith-based organizations on presenting safety and health training to vulnerable workers

## II. Award Information

Targeted Topic category grants will be awarded for a 12-month period. The project period for these grants begins September 30, 2005, and ends September 30, 2006. There is approximately $2.9 million available for this grant category. The average Federal award will be $150,000.

OSHA Training Materials Development category grants will be awarded for a 12-month period. The project period for these grants begins September 30, 2005 and ends September 30, 2006 There is approximately $4 million available for this grant category. The average Federal award will be $200,000.

## III. Eligibility Information

### *1. Eligible Applicants*

Nonprofit organizations, including community-based and faith-based organizations, that are not an agency of a State or local government are eligible to apply. State or local government supported institutions of higher education are eligible to apply in accordance with 29 CFR part 95. Eligible organizations can apply independently for funding, or in partnership with other eligible organizations, but in such a case, a lead organization must be identified. Sub-contracts must be awarded in accordance with 29 CFR 95.40–48, including OMB circulars requiring free and open competition for procurement transactions.

A 501(c)(4) nonprofit organization, as described in 26 U.S.C. 501(c)(4), that engages in lobbying activities will not be eligible for the receipt of Federal funds constituting an award, grant or loan. See 1 U.S.C. 1611.

Applicants other than State or local government supported institutions of higher education will be required to submit evidence of nonprofit status, preferably from the Internal Revenue Service (IRS).

Authorities: The Occupational Safety and Health Act of 1970 and the Consolidated Appropriations Act, 2005, Pub. L. 108–447, authorize this program.

### *2. Cost Sharing or Matching*

Applicants are not required to contribute non-Federal resources towards the grant.

### *3. Other Eligibility Requirements*

A. Legal Rules That Apply to Faith-Based Organizations That Receive Federal Financial Assistance

The government is prohibited from providing direct financial assistance for religious activity*. These grants may not be used for religious instruction, worship, prayer, proselytizing or other inherently religious practices. Neutral, non-religious criteria that neither favor nor disfavor religion will be employed in the selection of grant recipients and must be used by grantees in the selection of sub-recipients.

* In this context, the term direct financial assistance means financial assistance that is provided directly by a government entity or an intermediate organization, as opposed to financial assistance that an organization receives as the result of the genuine and independent private choice of a beneficiary. In other contexts, the term ''direct'' financial assistance may be used to refer to financial assistance that an organization receives directly from the Federal government (also known as ''discretionary'' assistance), as opposed to assistance that it receives from a State or Local government (also known as ''indirect'' or ''block'' grant assistance). The term ''direct'' has the former meaning throughout this solicitation for grant applications (SGA).

## IV. Application and Submission Information

### *1. Address To Request Application Package*

Application forms are published as part of this **Federal Register** notice and

in the **Federal Register**, which may be obtained from your nearest U.S. Government Office or public library or online at *http://www.archives.gov/federal_register/index.html.* The complete **Federal Register** notice and application forms may also be downloaded from the OSHA Susan Harwood Training Grant Program Web site at *http://www.osha.gov/dcsp/ote/sharwood.html.*

*2. Content and Form of Application Submission*

Separate grant applications must be submitted by organizations interested in applying for a grant under more than one grant category and by organizations interested in applying for more than one subject area under each category.

A. Required Contents

To be considered for a Harwood grant, an application must include all of the information listed below. A complete application will contain the following forms and narrative sections. The parts are listed in the order in which they should appear in the application.

(a) Application for Federal Assistance form (SF 424).

(b) Survey on Ensuring Equal Opportunity for Applicants form.

(c) Program Summary. The program summary is a short one-to-two page abstract that succinctly summarizes the proposed project and provides information about the applicant organization.

(d) Budget Information forms (SF 424A).

(e) Detailed Project Budget Backup. The detailed budget will break out the costs that are listed in Section B of the SF 424A Budget Information form.

(f) A description of any voluntary non-Federal resource contribution to be provided by the applicant, including source of funds and estimated amount.

(g) Technical Proposal, program narrative, not to exceed 30 single-sided pages, double-spaced, 12-point font, containing:

Problem Statement/Need for Funds;

Administrative and Program Capability; and

Workplan.

(h) Assurances form (SF 424B).

(i) Certifications form (OSHA 189).

(j) Supplemental Certification Regarding Lobbying Activities form.

(k) Organizational Chart.

(l) Evidence of Non-Profit status, preferably from the Internal Revenue Service (IRS), if applicable. (Does not apply to State and local government-supported institutions of higher education.)

(m) Accounting System Certification, if applicable. Organizations that receive less than $1 million annually in Federal grants must attach a certification signed by your certifying official stating that your organization has a functioning accounting system that meets the criteria below. Your organization may also designate a qualified entity (include the name and address in the documentation) to maintain a functioning accounting system that meets the criteria below. The certification should attest that your organization's accounting system provides for the following:

1. Accurate, current and complete disclosure of the financial results of each Federally sponsored project.

2. Records that identify adequately the source and application of funds for Federally sponsored activities.

3. Effective control over and accountability for all funds, property and other assets.

4. Comparison of outlays with budget amounts.

5. Written procedures to minimize the time elapsing between the transfer of funds.

6. Written procedures for determining the reasonableness, allocability and allowability of costs.

7. Accounting records, including cost accounting records that are supported by source documentation.

(n) Any attachments such as resumes, exhibits, list of previous grants, and letters of support.

The forms listed above are included as a part of this **Federal Register** notice. The forms are also available on the OSHA grant web page at *http://www.osha.gov/dcsp/ote/sharwood.html.* These forms do not count toward the page limitation specified.

B. Technical Proposal

The Technical Proposal will contain the narrative segments of the application including the Program Summary abstract, not to exceed two pages, and the Program Narrative section, not to exceed 30 single-sided, double-spaced, 12-point font, typed pages in length, consisting of the Problem Statement/Need for Funds, Administrative and Program Capability, and Workplan. Reviewers will only consider Technical Proposal Program Narrative information up to the 30-page limit. The Technical Proposal must demonstrate the capability to successfully administer the grant and to meet the objectives of this solicitation. The Technical Proposal will be rated in accordance with the selection criteria specified in Section V., A. (**Note:** Separate review criteria are provided for each grant category.)

The Technical Proposal must include the following sections.

(a) Program Summary; an abstract of the application, not to exceed two pages, that must include the following information:

- Applicant organization's full legal name.
- Project director's name, title, street address, and mailing address if it is different from the street address, telephone and fax numbers, and e-mail address. The Project Director is the person who will be responsible for the day-to-day operations and administration of the program.
- Certifying Representative's name, title, street address, and mailing address if it is different from the street address, telephone and fax numbers, and e-mail address. The Certifying Representative is the official in your organization who is authorized to enter into grant agreements.
- Funding requested. List how much Federal funding you are requesting. If your organization is contributing non-Federal resources, also list the amount of non-Federal resources and the source of the funds.
- Grant Category. List the grant category your organization is applying under, *i.e.*, Targeted Topic training category, or OSHA Training Materials Development category.
- Grant Topic. List the grant topic and industry or subject area your organization has selected to target in its application.
- Summary of the Proposed Project. Write a brief program summary of your proposed project.
- Applicant Background. Describe your applicant organization, including its mission and a description of your membership, if any.

(b) The Program Narrative segment, which is not to exceed 30 single-sided, double-spaced, 12-point font pages in length, should address each section listed below.

- Problem Statement/Need for Funds. Describe the hazards that will be addressed in your program, the target population(s) that will benefit from your training and education program, and the barriers that have prevented this population from receiving adequate training. When you discuss target populations, include geographic location(s), and the number of workers and employers.
- Administrative and Program Capability. Briefly describe your organization's functions and activities. Relate this description of functions to your organizational chart that is included in the application. If your organization is conducting, or has

conducted within the last five years, any other government (Federal, State, local) grant programs, the application must include an attachment (which will not count towards the page limit) providing information regarding previous grants including (a) the organization for which the work was done, and (b) the dollar value of the grant. If your organization has no previous grant experience, you may partner with an organization that has grant experience to manage the grant. If you use this approach, the management organization should be identified and its grant program experience discussed.

Program Experience. Describe your organization's experience conducting the type of program that you are proposing. Include program specifics such as program title, numbers trained and duration of training. Experience includes safety and health experience, training experience with adults, and programs operated specifically for the selected target population(s). Nonprofit organizations, including community-based and faith-based organizations, that do not have prior experience in safety and health may partner with an established safety and health organization to acquire safety and health expertise.

- Staff Experience. Describe the qualifications of the professional staff you will assign to the program. Include resumes of staff already on board. If some positions are vacant, include position descriptions/minimum hiring qualifications instead of resumes. Qualified staff are those with safety and health experience, training experience and experience working with the target population.
- Workplan. The 12-month workplan should correlate with the grant project period that will begin September 30, 2005, and end September 30, 2006. An outline of specific items required in your workplan follows.

Plan Overview. Describe your plan for grant activities and the anticipated outcomes. The overall plan will describe such things the development of training materials, the training content, recruiting of trainees, where or how training will take place, and the anticipated benefits to workers and employers receiving the training.

Activities. Break your overall plan down into activities or tasks. For each activity, explain what will be done, who will do it, when it will be done, and the results of the activity. When you discuss training include the subjects to be taught, the length of the training sessions, and training location (classroom, worksites.) Describe how you will recruit trainees for the training.

Quarterly Projections. For training and other quantifiable activities, estimate how many, *e.g.*, number of advisory committee meetings, classes to be conducted, workers and employers to be trained, etc., you will do each quarter of the grant (grant quarters match calendar quarters, *i.e.*, January to March, April to June) and provide the training number totals for the grant. Quarterly projections are used to measure your actual performance against your plans. If you plan to conduct a train-the-trainer program, estimate the number of individuals you expect to be trained during the grant period by those who received the train-the-trainer training. These second tier training numbers should only be included if your organization is planning to follow up with the trainers to obtain this data during the grant period.

Materials. Describe each educational material you will produce under the grant, if not treated as a separate activity under *Activities* above. Provide a timetable for developing and producing the material. OSHA must review and approve training materials for technical accuracy before the materials are used in your grant program. Therefore, your timetable must include provisions for an OSHA review of draft and camera-ready products. For Targeted Topic training grants, any commercially-developed training materials you are proposing to utilize in your grant training must also go through an OSHA review before being used.

Evaluation. There are three types of evaluations that should be conducted. First, describe plans to evaluate the training sessions or the training materials being developed. Second, describe your plans to evaluate your progress in accomplishing the grant work activities listed in your application. This includes comparing planned and actual accomplishments. Discuss who is responsible for taking corrective action if plans are not being met. Third, describe your plans to assess the effectiveness of the training your organization is conducting or to evaluate and validate the training materials your organization is developing. This will involve following-up, by survey or on-site review, if feasible, with people who attended the training or utilized your training materials to find out what changes were made to abate hazards in their workplaces. Include timetables for follow-up and for submitting a summary of the assessment results to OSHA.

(c) An organizational chart of the staff that will be working on this grant and their location within the applicant organization.

(d) A Detailed Project Budget that clearly details the costs of performing all of the requirements presented in this solicitation. The detailed budget will break out the costs that are listed in Section B of the SF 424A Budget Information form.

(e) A description of any voluntary non-Federal resource contribution to be provided by the applicant, including source of funds and estimated amount.

Attachments: Summaries of other relevant organizational experiences; information on prior government grants; resumes of key personnel and/or position descriptions; and signed letters of commitment to the project.

To be considered responsive to this solicitation the application must consist of the above mentioned separate parts. The Technical Proposal narrative is not to exceed 30 single-sided (8½″ x 11″ or A4), double-spaced, 12-point font, typed pages. Major sections and sub-sections of the application should be divided and clearly identified (*e.g.*, with tab dividers), and all pages shall be numbered. Standard Forms, attachments, resumes, exhibits, letters of support, and the abstract are not counted toward the page limit.

Applicants are reminded to budget for compliance with the administrative requirements set forth (copies of all regulations that are referenced in this SGA are available on-line at no cost at *http://www.osha.gov/dcsp/ote/sharwood.html*). This includes the costs of performing activities such as travel for two staff members, one program and one financial, to the Chicago area to attend a new grantee orientation meeting; financial audit, if required; project closeout; document preparation (*e.g.*, quarterly progress reports, project document); and ensuring compliance with procurement and property standards. The Detailed Project Budget should identify administrative costs separately from programmatic costs for both Federal and non-Federal funds. Administrative costs include indirect costs from the costs pool and the cost of activities, materials, meeting close-out requirements as described in Section VI, and personnel (*e.g.*, administrative assistants) who support the management and administration of the project but do not provide direct services to project beneficiaries. Indirect cost charges, which are considered administrative costs, must be supported with a copy of an approved Indirect Cost Rate Agreement form. Administrative costs cannot exceed 25% of the total grant budget. The project budget should clearly demonstrate that the total amount and distribution of funds is sufficient to cover the cost of all major

project activities identified by the applicant in its proposal, and must comply with Federal cost principles (which can be found in the applicable OMB Circulars).

*3. Submission Date, Times, and Addresses*

*Date:* The closing date for receipt of applications is Thursday, July 21, 2005. Applications must be received by 4:30 p.m. (central time) at the address below. Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted; the applicant, however, bears the responsibility for timely submission. Applications that do not meet the conditions set forth in this notice will not be honored. No exceptions to the mailing and delivery requirements set forth in this notice will be granted.

Applications must be delivered to: Grants Officer, U.S. Department of Labor, OSHA Office of Training and Education, 2020 S. Arlington Heights Road, Arlington Heights, Illinois 60005–4102.

The individual signing the SF 424 form on behalf of the applicant must be authorized to bind the applicant.

One (1) blue ink-signed original complete application in English plus two (2) copies of each application must be received at the designated place by the date and time specified or it will not be considered unless it is received before the award is made and:

(a) It was sent by registered or certified mail no later than the fifth calendar day before the closing date; or

(b) It was sent by U.S. Postal Service Express Mail/Next Day Service from the post office to the addressee no later than 4:45 p.m. at the place of mailing two (2) working days (excluding weekends and Federal holidays and days when the Federal government is closed), prior to the closing date; or

(c) It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. ''Postmark'' means a printed, stamped, or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request that the postal clerk place a legible hand cancellation ''bulls-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail/Next Day Service from the Post Office to the addressee is the date entered by the Post Office receiving clerk on the ''Express Mail/Next Day Service ''Post Office to Addressee'' label and the postmark on the envelope or wrapper on the original receipt from the U.S. Postal Service. ''Postmark'' has the same meaning as defined above.

*4. Intergovernmental Review*

The Harwood Training Grant Program is not subject to Executive Order 12372 Intergovernmental Review of Federal Programs.

*5. Funding Restrictions*

Grant funds may be spent on the following.

(a) Conducting training.

(b) Conducting other activities that reach and inform workers and employers about workplace occupational safety and health hazards and hazard abatement.

(c) Conducting outreach and recruiting activities to increase the number of workers and employers participating in the program.

(d) Developing educational materials for use in training.

(e) For the OSHA Training Materials Development category grants, purchase of software necessary to track the number of visits to the grantee's training materials Web site and the number of times the training materials were downloaded.

Grant funds may not be used for the following activities under the terms of the grant program.

(a) Any activity that is inconsistent with the goals and objectives of the Occupational Safety and Health Act of 1970.

(b) Training individuals not covered by the Occupational Safety and Health Act.

(c) Training workers or employers from workplaces not covered by the Occupational Safety and Health Act. Examples include: State and local government workers in non-State Plan States, and workers covered by section 4(b)(1) of the Act.

(d) Training on topics that do not cover the recognition, avoidance, and prevention of unsafe or unhealthy working conditions. Examples of unallowable topics include: Workers' compensation, first aid, and publication of materials prejudicial to labor or management.

(e) Assisting workers in arbitration cases or other actions against employers, or assisting employers and workers in the prosecution of claims against Federal, State or local governments.

(f) Duplicating services offered by OSHA, a State under an OSHA-approved State Plan, or consultation programs provided by State designated agencies under section 21(d) of the Occupational Safety and Health Act.

(g) Generating membership in the grantee's organization. This includes activities to acquaint nonmembers with the benefits of membership, inclusion of membership appeals in materials produced with grant funds, and membership drives.

While the activities described above may be part of an organization's regular programs, the costs of these activities cannot be paid for by grant funds, whether the funds are from matching resources or from the Federally funded portion of the grant.

Determinations of allowable costs will be made in accordance with the applicable Federal cost principles, e.g., Nonprofit Organizations—OMB Circular A–122; Educational Institutions—OMB Circular A–21. Disallowed costs are those charges to a grant that the grantor agency or its representative determines to not be allowed in accordance with the applicable Federal Cost Principles or other conditions contained in the grant.

No applicant at any time will be entitled to reimbursement of pre-award costs.

**V. Application Review Information**

Grant applications will be reviewed by technical panels comprised of OSHA staff. The results of the grant reviews will be presented to the Assistant Secretary who will make the selection of organizations to be awarded grants. Agency priorities and geographic factors may also be taken into consideration in the selection process. OSHA may award grants for some or all of the listed topic areas. It is anticipated that the grant awards will be announced in September 2005.

*1. Criteria*

The technical panels will review grant applications against the criteria listed below, on the basis of 100 maximum points. Please note that grant review criteria are listed separately for the Targeted Topic training and OSHA Training Materials Development

categories. Target Topic training grant category applications will be reviewed and rated as follows.

A. *Technical Approach, Program Design*—45 points total (**Note:** Separate review criteria are provided for each grant category.)

*Program Design:*

(1) The proposed training and education program must address the recognition and prevention of safety and health hazards for one of the following Targeted Topic subject areas. (3 points)

*Construction Industry Hazards.* Programs that train workers and employers in the recognition and prevention of safety and health hazards in one of the following subjects:

- Excavation and trenching
- Focus Four hazards (falls, electrocution, caught-in and struck-by)
- Highway construction work zone safety
- Steel erection
- Crane operator training

*General Industry Hazards.* Programs that train workers and employers in the recognition and prevention of safety and health hazards in one of the following subjects:

- Food processing industry involved in preserving fruits and vegetables (SIC 203/NAICS 3114)
- Concrete and concrete products (SIC 327 except 3274 and 3275/NAICS 32733
- Public warehousing and storage (SIC 422/NAICS 4931)
- Landscaping/horticultural services (SIC 078/NAICS 56173)
- Lockout/tagout hazards

(2) The proposal plans to train workers and/or employers, it clearly estimates the numbers to be trained, and clearly identifies the types of workers and employers to be trained. The training will reach workers and employers from multiple employers. (4 points)

(3) If the proposal contains a train-the-trainer program, the following information must be provided: (4 points)

- what ongoing support the grantee will provide to new trainers;
- the number of individuals to be trained as trainers;
- the estimated number of courses to be conducted by the new trainers;
- the estimated number of students to be trained by these new trainers; and
- a description of how the grantee will obtain data from the new trainers about their classes and student numbers.

(4) The planned activities and training are tailored to the needs and levels of the workers and employers to be trained. The target audience to be served through the grant program is described. The training materials and training programs are to be tailored to the training needs of one or more of the following target audiences: small businesses; minority businesses; limited English proficiency, non-literate and low literacy workers; youth; immigrant and minority workers, and other hard-to-reach workers; and workers in high-hazard industries and industries with high fatality rates. Organizations proposing to develop Spanish-language training materials should utilize the OSHA Dictionaries (English-to-Spanish and Spanish-to-English) for terminology. The Dictionaries are available on the OSHA Web site at: *http://www.osha.gov/dcsp/compliance_assistance/spanish_dictionaries.html*. Organizations proposing to develop materials in languages other than English will also be required to provide an English version of the materials. (20 points)

(5) There is a plan to recruit trainees for the program. (3 points)

(6) If the proposal includes developing educational materials for use in the training program, there is a plan for OSHA to review the educational materials for technical accuracy during development. If commercially-developed training products will be used for the Targeted Topic training program, applicants should also plan for OSHA to review the materials before using the products. (3 points)

(7) There is a plan to evaluate the program's effectiveness and impact to determine if the safety and health training and services provided resulted in workplace change. This includes a description of the evaluation plan to follow up with trainees to determine the impact the program has had in abating hazards and reducing worker injuries. (5 points)

(8) The application is complete, including forms, budget detail, narrative and workplan, and required attachments. (3 points)

B. Budget—20 points total

(1) The budgeted costs are reasonable. No more than 25% of the total budget is for administration. (10 points)

(2) The budget complies with Federal cost principles (which can be found in the applicable OMB Circulars) and with OSHA budget requirements contained in the grant application instructions. (5 points)

(3) The cost per trainee is less than $500 and the cost per training hour is reasonable. (5 points)

C. Past Performance—18 points total

(1) Describe your organization's experience with occupational safety and health. Applicants that do not have prior experience in providing safety and health training to workers or employers may partner with an established safety and health organization to acquire safety and health expertise. (5 points)

(2) Describe your organization's experience in training adults in work-related subjects or in recruiting, training and working with the target audience for this grant. (5 points)

(3) The application organization demonstrates that the applicant has strong financial management and internal control systems. Describe the programs you have managed over the past five years. (5 points)

(4) List any Federal and/or State grants that you have administered over the past five years. (3 points)

D. Experience and Qualification of Personnel—17 points total

(1) The staff to be assigned to the project has experience in occupational safety and health, the specific topic chosen, and in training adults. (10 points)

(2) Project staff has experience in recruiting, training, and working with the population your organization proposes to serve under the grant. (7 points)

OSHA training materials development category grant applications will be reviewed and rated as follows.

A. Technical Approach, Program Design—50 points total

(**Note:** Separate review criteria are provided for each grant category.)

Grantees will be expected to develop, evaluate and validate classroom-quality training materials that are tailored to a specific topic, industry and target audience that may be used immediately for classroom or worksite training or for self-study. These training materials should be original products that do not duplicate information and products currently available from OSHA or other government agencies. More than one target audience may be selected. The training materials must include:

- Detailed description of the most dangerous tasks/job duties.
- Identification of the hazards associated with these tasks.
- Methods of abating these hazards.
- Training materials should be tailored directly to the target audience participant. Grantees will be expected to submit classroom quality products. Classroom quality materials should follow the commonly accepted instructional systems design process that OSHA has adopted as a quality measure for all of its education and training products. OSHA has outlined a seven-step design process in the U.S.

Department of Labor publication OSHA 2254 (1998 Revised) *Training Requirements in OSHA Standards and Training Guidelines.* OSHA uses the following seven-step model: Determine if training is needed; identify training needs; identify goals and objectives; develop learning activities; conduct the training; evaluate program effectiveness; and improve the program.

- Grantees are to develop the training materials in a portable format that is suitable for hard-copy publication and distribution and Internet publication and distribution. OSHA is not soliciting the development of Web-based training programs.
- Grantees will be required to post the approved final product training materials on their Web site for two years at no cost to users. OSHA may list the grantees' URL addresses to access these materials or directly link to the materials on the grantees' Web sites from OSHA's Web site.
- Grantees will be required to track and report quarterly to OSHA on the usage of the training materials developed under this grant. Usage statistics would include the number of times the training materials Web site was visited, and the number of times the training materials were downloaded from the Internet during the two-year period.

*Program Design:* (1) The proposed training and educational materials are tailored to the specific topic, industry and a selected target audience and must address one of the following Training Materials Development subject areas. (3 points)

*Construction Industry Hazards.* Programs suitable for training others or for self-study in the recognition and prevention of safety and health hazards on the following subject:

- Focus Four hazards (falls, electrocution, caught-in and struck-by)

*General Industry Hazards.* Programs suitable for training others or for self-study in the recognition and prevention of safety and health hazards on one of the following subjects:

- Prevention of amputation hazards
- Electrical installation safety issues related to Electrical Standards, 1910 Subpart S; the most recent edition of the National Fire Protection Association (NFPA) 70E, Standard for Electrical Safety in the Workplace; and the National Electrical Code (NEC).
- Primary metals and basic steel (SIC 331/NAICS 3311 and 3312)
- Oil and gas field operations (SIC 138/NAICS 213111 and 213112)

*Prevention of Transportation Fatalities and Accidents, Work-Related.* Programs suitable for training others or for self-study that address the principles of safe driving or safe use of motorized equipment for the prevention of work-related transportation fatalities and accidents. Select one of the following subjects:

- Work-related motor vehicle accident and fatality prevention program
- Powered industrial trucks (fork lifts and motorized hand trucks)

*Respiratory Diseases.* Programs suitable for training others or for self-study in the recognition and prevention of safety and health hazards of working with:

- Isocyanates

*Other Safety and Health Topic Areas.* Programs suitable for training others or for self-study on one of the following subjects:

- Employer responsibilities for new small business employers
- Prevention of workplace violence
- Train-the-trainer course for community- and faith-based organizations on presenting safety and health training to vulnerable workers

(2) Identify the target audience(s) for this training and describe your plan to analyze their training needs. Applicants are encouraged to develop training materials that also serve limited-English proficiency workers (*i.e.*, non-English speaking, non-literate and low-literacy workers).

Training programs and materials are to be tailored to the training needs of one or more of the following target audiences: small businesses; minority businesses; limited English proficiency, non-literate and low literacy workers; youth; immigrant and minority workers; other hard-to-reach workers; and workers in high-hazard industries or industries with high fatality rates. Organizations proposing to develop Spanish-language training materials should utilize the OSHA Dictionaries (English-to-Spanish and Spanish-to-English) for safety and health terminology. The Dictionaries are available on the OSHA Web site at: *http://www.osha.gov/dcsp/compliance_assistance/spanish_dictionaries.html.* Organizations proposing to develop materials in languages other than English will also be required to provide an English version of the materials. (15 points)

(3) Describe the tasks/job duties that will be discussed during the training. Explain how these tasks/job duties or other unique characteristics of the intended audience will be incorporated into the training materials. (5 points)

(4) Describe the occupational safety and health hazards associated with the above tasks/job duties. Explain how these hazards were identified and the method(s) being proposed to eliminate or control these hazards to be highlighted during the training process are provided. (5 points)

(5) List the objectives for each course or set of training materials and describe how you will evaluate and verify that these objectives will be met. There is a clear link between objectives and evaluation criteria. (7 points)

(6) Provide a brief outline of the proposed course or training program. Include a sample or detailed description of a lesson/training module. (6 points)

(7) Describe the items that will be included as the final training products/materials. These may include instructor's manuals, student's manuals, brochures, visual aids, videotapes, or technology-based training materials such as digital photos, CD's, or DVD's. (2 points)

(8) Describe your plan for OSHA to review the education materials for technical accuracy and quality of instructional design during development. (2 points)

(9) Explain how you will track and report on the usage of the training materials during the two-year period these materials are to be posted on your Web site. (2 points)

(10) The application is complete, including forms, budget detail, narrative and workplan, and required attachments. (3 points)

B. Budget—15 points total

(1) The budgeted costs are reasonable. No more than 25% of the total budget is for administration. (10 points)

(2) The budget complies with Federal cost principles (which can be found in applicable OMB Circulars) and with OSHA budget requirements contained in the grant application instructions. (5 points)

C. Past Performance—18 points total

(1) Describe your organization's experience with occupational safety and health. Applicants that do not have prior experience in safety and health may partner with an established safety and health organization to acquire safety and health expertise. (5 points)

(2) Describe your organization's experience training adults in work-related subjects or in recruiting, training, and working with the population it proposes to serve under the grant. (5 points)

(3) The applicant organization demonstrates that it has strong financial management and internal control systems. Describe the programs you

have managed over the past five years. (5 points)

(4) List any Federal and/or State grants that the organization has administered over the past five years. (3 points)

D. Experience and Qualifications of Personnel—17 points total

(1) The staff to be assigned to the project has experience in occupational safety and health, the specific topic chosen, and training adults. (10 points)

(2) Staff has experience in recruiting, training, and working with the population it proposes to serve under the grant. (7 points)

*2. Review and Selection Process*

OSHA will screen all applications to determine whether all required proposal elements are present and clearly identifiable. Those that do not may be deemed non-responsive and may not be evaluated. A technical panel will objectively rate each complete application against the criteria described in this announcement. The panel recommendations to the Assistant Secretary are advisory in nature. The Assistant Secretary may establish a minimally acceptable rating range for the purpose of selecting qualified applicants. The Assistant Secretary will make a final selection determination based on what is most advantageous to the Government, considering factors such as panel findings, geographic presence of the applicants, the best value to the government, cost, and other factors. The Assistant Secretary's determination for award under this SGA is final.

*3. Anticipated Announcement and Award Dates*

Announcement of these awards is expected to occur by September 30, 2005. The grant agreement will be awarded by no later than September 30, 2005.

**VI. Award Administration Information**

*1. Award Notices*

Organizations selected as grant recipients will be notified by a representative of the Assistant Secretary, usually from an OSHA Regional office. An applicant whose proposal is not selected will be notified in writing.

Notice that an organization has been selected as a grant recipient does not constitute approval of the grant application as submitted. Before the actual grant award, OSHA will enter into negotiations concerning such items as program components, staffing and funding levels, and administrative systems. If the negotiations do not result in an acceptable submittal, the Assistant Secretary reserves the right to terminate the negotiation and decline to fund the proposal.

**Note:** Except as specifically provided, OSHA's acceptance of a proposal and an award of Federal funds to sponsor any program(s) does not provide a waiver of any grant requirement or procedures. For example, if an application identifies a specific sub-contractor to provide the services, the USDOL OSHA award does not provide the justification or basis to sole-source the procurement, *i.e.*, to avoid competition.

*2. Administrative and National Policy Requirements*

All grantees, including faith-based organizations, will be subject to applicable Federal laws and regulations (including provisions of appropriations law) and the applicable Office of Management and Budget (OMB) Circulars. The grant award(s) awarded under this SGA will be subject to the following administrative standards and provisions, if applicable.

29 CFR part 95, which covers grant requirements for nonprofit organizations, including universities and hospitals. These are the Department of Labor regulations implementing OMB Circular A–110.

29 CFR part 93, new restrictions on lobbying.

29 CFR part 98, government wide debarment and suspension (nonprocurement) and government wide requirements for drug-free workplace (grants).

OMB Circular A–21, which describes allowable and unallowable costs for educational institutions.

OMB circular A–122, which describes allowable and unallowable costs for other nonprofit organizations.

OMB Circulars A–133, 29 CFR parts 96 and 99, which provide information about audit requirements.

29 CFR parts 31, 32 and 36 as applicable.

Certifications. All applicants are required to certify to a drug-free workplace in accordance with 29 CFR part 98, to comply with the New Restrictions on Lobbying published at 29 CFR part 93, to make a certification regarding the debarment rules at 29 CFR part 98, and to complete a special lobbying certification.

Students. Grant-funded training programs must serve multiple employers and their employees. Grant-funded training programs must serve individuals covered by the Occupational Safety and Health Act of 1970. As a part of the grant close-out process, grantees must self-certify that their grant-funded programs and materials were not provided to ineligible audiences.

Other. In keeping with the policies outlined in Executive Orders 13256, 12928, 13230, and 13021 as amended, the grantee is strongly encouraged to provide subgranting opportunities to Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities.

*3. Special Program Requirements*

*OSHA review of educational materials.* OSHA will review all educational materials produced by the grantee for technical accuracy and quality of instructional design during development and before final publication. OSHA will also review training curricula and purchased training materials for accuracy before they are used. Grantees developing training materials must follow all copyright laws and provide written certification that their materials are free from copyright infringements.

When grant recipients produce training materials, they must provide copies of completed materials to OSHA before the end of the grant period. OSHA has a lending program that circulates grant-produced audiovisual materials. Audiovisual materials produced by the grantee as a part of its grant program may be included in this lending program. In addition, all materials produced by grantees must be provided to OSHA in hard copy as well as in a digital format (CD Rom/DVD) for possible publication on the Internet by OSHA. Three copies of the materials must be provided to OSHA. Acceptable formats for training materials include Microsoft XP Word and PowerPoint.

As listed in 29 CFR 95.36, the Department of Labor reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so. Applicants should note that grantees must agree to provide the Department of Labor a paid-up, nonexclusive and irrevocable license to reproduce, publish, or otherwise use for Federal purposes all products developed, or for which ownership was purchased, under an award including, but not limited to, curricula, training models, technical assistance products, and any related materials, and to authorize them to do so. Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronic or otherwise.

*Posting of OSHA Training Materials Development Training Materials on the Internet.* Grantees developing training materials under the OSHA Training Materials Development grant category will be required to post the training materials on their organization's Web site for two years after receiving OSHA approval of their final products, and provide access to users at no cost. OSHA may list the grantees' URL addresses to access these materials or directly link to the materials on the grantees' Web sites from OSHA's Web site. In addition, these grantees will also be required to track and report quarterly to OSHA on the distribution and use of these training materials during the two years the materials are posted on their Web site. Grantees will collect and report on training materials product usage by tracking the number of times the grantee's training materials Web site was visited, and the number of times the training materials were downloaded.

*Acknowledgment of USDOL Funding.* In all circumstances, all approved grant-funded materials developed by a grantee shall contain the following disclaimer:

> This material was produced under grant number _____ from the Occupational Safety and Health Administration, U.S. Department of Labor. It does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.

*Public reference to grant:* When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all Grantees receiving Federal funds must clearly state:

- The percentage of the total costs of the program or project, that will be financed with Federal money;
- The dollar amount of Federal financial assistance for the project or program; and
- The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

*4. Reporting*

Grantees are required by Departmental regulations to submit program and financial reports each calendar quarter. All reports are due no later than 30 days after the end of the fiscal quarter and shall be submitted to the appropriate OSHA Regional Office.

Financial: The Grantee(s) shall submit financial reports on a quarterly basis. The first reporting period shall end on the last day of the fiscal quarter (December 31, March 31, June 30, or September 30) during which the grant was signed. Financial reports are due within 30 days of the end of the reporting period (*i.e.*, by January 30, April 30, July 30, and October 30).

The Grantee(s) shall use Standard Form (SF) 269A, Financial Status Report, to report the status of the funds, at the project level, during the grant period. A final SF269A shall be submitted no later than 90 days following completion of the grant period.

If the Grantee(s) uses the U.S. Department of Health and Human Services Payment Management System (HHS PMS), it must also send USDOL copies of the PSC 272 that it submits to HHS, on the same schedule. Otherwise, the Grantee(s) shall submit Standard Form (SF) 272, *Federal Cash Transactions Report,* on the same schedule as the SF269A.

Technical Program: After signing the agreement, the Grantee(s) shall submit technical progress reports to USDOL/OSHA Regional Offices at the end of each fiscal quarter. Technical progress reports provide both quantitative and qualitative information and a narrative assessment of performance for the preceding three-month period. OSHA Form 171 shall be used for reporting training numbers and a narrative report shall be provided that details grant activities conducted during the quarter, information on how the project is progressing in achieving its stated objectives, and notes any problems or delays along with corrective actions proposed. The first reporting period shall end on the last day of the fiscal quarter (December 31, March 31, June 30, or September 30) during which the grant was signed. Quarterly progress reports are due within 30 days of the end of the report period (*i.e.*, by January 30, April 30, July 30, and October 30.) Between reporting dates, the Grantees(s) shall also immediately inform USDOL/OSHA of significant developments and/or problems affecting the organization's ability to accomplish work.

**VII. Agency Contacts**

Any questions regarding this SGA should be directed to Cynthia Bencheck, e-mail address: *Bencheck.Cindy@dol.gov,* tel: 847–297–4810 (note that this is NOT a toll-free number), or Ernest Thompson, *Thompson.Ernest@dol.gov,* tel 847–297–4810. To obtain further information on the Susan Harwood Training Grant Program of the U.S. Department of Labor, visit the OSHA Web site of the Occupational Safety and Health Administration at *www.osha.gov.*

Signed at Washington, DC, this 15th day of June, 2005.

**Jonathan L. Snare,**

*Acting Assistant Secretary of Labor.*

**Attachments**

*Project Document Format*

SF 424, Application for Federal Assistance form

Your organization is required to have a Data Universal Number System (DUNS) number (received from Dun and Bradstreet) to complete this form. Information about ''Obtaining a DUNS Number ''A Guide for Federal Grant and Cooperative Agreement Applicants'' is available at *http://www.whitehouse.gov/omb/grants/duns_num_guide.pdf.*

Survey on Ensuring Equal Opportunity for Applicants form

Program Summary (not to exceed two pages)

Budget Information, SF 424A form

Detailed Project Budget Backup

If applicable: Provide a copy of approved indirect cost rate agreement, and statement of program income.

Technical Proposal, program narrative, not to exceed 30 single-sided pages, double-spaced, 12-point font, containing:

Problem Statement/Need for Funds

Administrative and Program Capability

Workplan

Assurances (SF 424B)

Certifications form (OSHA 189)

Supplemental Certification Regarding Lobbying Activities

Organizational Chart

Evidence of Nonprofit status, (letter from the IRS) if applicable

Accounting System Certification, if applicable

Organizations that receive less than $1 million annually in Federal grants must attach a certification signed by your certifying official stating that your organization has a functioning accounting system that meets the criteria below. Your organization may also designate a qualified entity (include the name and address in the documentation) to maintain a functioning accounting system that meets the criteria below. The certification should attest that your organization's accounting system provides for the following:

1. Accurate, current and complete disclosure of the financial results of each Federally sponsored project.

2. Records that identify adequately the source and application of funds for Federally sponsored activities.

3. Effective control over and accountability for all funds, property and other assets.

4. Comparison of outlays with budget amounts.

5. Written procedures to minimize the time elapsing between the transfer of funds.

6. Written procedures for determining the reasonableness, allocability and allowability of costs.

7. Accounting records, including cost accounting records, that are supported by source documentation.

Attachments such as:

Summaries of other relevant organizational experience; information on prior government grants; resumes of key personnel or position descriptions; signed letters of commitment to the project.

*Attachments (Forms)*

SF–424, Application for Federal Assistance

Survey on Ensuring Equal Opportunity for Applicants form

SF–424A, Budget Information form

SF 424B, Assurances

OSHA 189 form, Certification

Supplemental Certification Regarding Lobbying Activities

The forms are also available at: *http://www.osha.gov/dcsp/ote/sharwood.html.*

**BILLING CODE 4510–26–P**

**APPLICATION FOR FEDERAL ASSISTANCE**

Version 7/03

| | | | |
|---|---|---|---|
| | | **2. DATE SUBMITTED** | Applicant Identifier |
| **1. TYPE OF SUBMISSION:** Application ☐ **Construction** ☐ **Non-Construction** | Pre-application ☐ **Construction** ☐ **Non-Construction** | **3. DATE RECEIVED BY STATE** | State Application Identifier |
| | | **4. DATE RECEIVED BY FEDERAL AGENCY** | Federal Identifier |

**5. APPLICANT INFORMATION**

| | |
|---|---|
| Legal Name: | **Organizational Unit:** Department: |
| Organizational DUNS: | Division: |
| **Address:** Street: | **Name and telephone number of person to be contacted on matters involving this application (give area code)** Prefix: First Name: |
| City: | Middle Name |
| County: | Last Name |
| State: Zip Code | Suffix: |
| Country: | Email: |
| **6. EMPLOYER IDENTIFICATION NUMBER** *(EIN):* ☐☐-☐☐☐☐☐☐☐ | Phone Number (give area code) Fax Number (give area code) |
| **8. TYPE OF APPLICATION:** ☐ **New** ☐ **Continuation** ☐ **Revision** If Revision, enter appropriate letter(s) in box(es) (See back of form for description of letters.) ☐ ☐ Other (specify) | **7. TYPE OF APPLICANT:** (See back of form for Application Types) Other (specify) |
| | **9. NAME OF FEDERAL AGENCY:** |
| **10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:** ☐☐-☐☐☐ TITLE (Name of Program): | **11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:** |
| **12. AREAS AFFECTED BY PROJECT** *(Cities, Counties, States, etc.):* | |
| **13. PROPOSED PROJECT** Start Date: Ending Date: | **14. CONGRESSIONAL DISTRICTS OF:** a. Applicant b. Project |

| | | | |
|---|---|---|---|
| **15. ESTIMATED FUNDING:** | | **16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?** | |
| a. Federal | $ .00 | a. Yes. ☐ THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE: | |
| b. Applicant | $ .00 | | |
| c. State | $ .00 | | |
| d. Local | $ .00 | b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372 | |
| e. Other | $ .00 | ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW | |
| f. Program Income | $ .00 | **17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?** | |
| g. TOTAL | $ .00 | ☐ Yes If "Yes" attach an explanation. ☐ No | |

**18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.**

a. Authorized Representative

| | | |
|---|---|---|
| Prefix | First Name | Middle Name |
| Last Name | | Suffix |
| b. Title | | c. Telephone Number (give area code) |
| d. Signature of Authorized Representative | | e. Date Signed |

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Standard Form 424 (Rev.9-2003)
Prescribed by OMB Circular A-102

## INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

This is a standard form used by applicants as a required face sheet for pre-applications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

| Item: | Entry: | Item: | Entry: |
|---|---|---|---|
| 1. | Select Type of Submission. | 11. | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project. |
| 2. | Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable). | 12. | List only the largest political entities affected (e.g., State, counties, cities). |
| 3. | State use only (if applicable). | 13 | Enter the proposed start date and end date of the project. |
| 4. | Enter Date Received by Federal Agency<br>Federal identifier number: If this application is a continuation or revision to an existing award, enter the present Federal Identifier number. If for a new project, leave blank. | 14. | List the applicant's Congressional District and any District(s) affected by the program or project |
| 5. | Enter legal name of applicant, name of primary organizational unit (including division, if applicable), which will undertake the assistance activity, enter the organization's DUNS number (received from Dun and Bradstreet), enter the complete address of the applicant (including country), and name, telephone number, e-mail and fax of the person to contact on matters related to this application. | 15 | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 6. | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. | 16. | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. |
| 7. | Select the appropriate letter in the space provided.<br>A. State<br>B. County<br>C. Municipal<br>D. Township<br>E. Interstate<br>F. Intermunicipal<br>G. Special District<br>H. Independent School District<br>I. State Controlled Institution of Higher Learning<br>J. Private University<br>K. Indian Tribe<br>L. Individual<br>M. Profit Organization<br>N. Other (Specify)<br>O. Not for Profit Organization | 17. | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. |
| 8. | Select the type from the following list:<br>• "New" means a new assistance award.<br>• "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.<br>• "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. If a revision enter the appropriate letter:<br>A. Increase Award B. Decrease Award<br>C. Increase Duration D. Decrease Duration | 18 | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) |
| 9. | Name of Federal agency from which assistance is being requested with this application. | | |
| 10. | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested. | | |

# SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS

OMB No. 1890-0014 Exp. 1/31/2006

**Purpose:** The Federal government is committed to ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for Federal funding. In order for us to better understand the population of applicants for Federal funds, we are asking nonprofit private organizations (not including private universities) to fill out this survey.

Upon receipt, the survey will be separated from the application. Information provided on the survey will not be considered in any way in making funding decisions and will not be included in the Federal grants database. While your help in this data collection process is greatly appreciated, completion of this survey is voluntary.

**Instructions for Submitting the Survey:** If you are applying using a hard copy application, please place the completed survey in an envelope labeled "Applicant Survey." Seal the envelope and include it along with your application package. If you are applying electronically, please submit this survey along with your application.

**Applicant's (Organization) Name:** _____

**Applicant's DUNS Number:** _____

**Grant Name:** _____ **CFDA Number:** _____

1. Does the applicant have 501(c)(3) status?

☐ Yes ☐ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

☐ 3 or Fewer ☐ 15-50
☐ 4-5 ☐ 51-100
☐ 6-14 ☐ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

☐ Less Than $150,000
☐ $150,000 - $299,999
☐ $300,000 - $499,999
☐ $500,000 - $999,999
☐ $1,000,000 - $4,999,999
☐ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

☐ Yes ☐ No

5. Is the applicant a non-religious community-based organization?

☐ Yes ☐ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

☐ Yes ☐ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local )?

☐ Yes ☐ No

8. Is the applicant a local affiliate of a national organization?

☐ Yes ☐ No

## Survey Instructions on Ensuring Equal Opportunity for Applicants

**Provide the applicant's (organization) name and DUNS number and the grant name and CFDA number.**

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory.

**Paperwork Burden Statement**

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1890-0014. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 2202-4651.

**If you have comments or concerns regarding the status of your individual submission of this form, write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, SW, ROB-3, Room 3671, Washington, D.C. 20202-4725

OMB No. 1890-0014 Exp. 1/31/2006

## BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

**SECTION A - BUDGET SUMMARY**

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ 0.00 |
| 2. | | | | | | 0.00 |
| 3. | | | | | | 0.00 |
| 4. | | | | | | 0.00 |
| 5. Totals | | $ 0.00 | $ 0.00 | $ 0.00 | $ 0.00 | $ 0.00 |

**SECTION B - BUDGET CATEGORIES**

| 6. Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY (1) | (2) | (3) | (4) | Total (5) |
|---|---|---|---|---|---|
| a. Personnel | $ | $ | $ | $ | $ 0.00 |
| b. Fringe Benefits | | | | | 0.00 |
| c. Travel | | | | | 0.00 |
| d. Equipment | | | | | 0.00 |
| e. Supplies | | | | | 0.00 |
| f. Contractual | | | | | 0.00 |
| g. Construction | | | | | 0.00 |
| h. Other | | | | | 0.00 |
| i. Total Direct Charges *(sum of 6a-6h)* | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| j. Indirect Charges | | | | | 0.00 |
| k. TOTALS *(sum of 6i and 6j)* | $ 0.00 | $ 0.00 | $ 0.00 | $ 0.00 | $ 0.00 |
| | | | | | |
| 7. Program Income | $ | $ | $ | $ | $ 0.00 |

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

**Previous Edition Usable**

| SECTION C - NON-FEDERAL RESOURCES | | | | |
|---|---|---|---|---|
| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
| 8. | $ | $ | $ | $ 0.00 |
| 9. | | | | 0.00 |
| 10. | | | | 0.00 |
| 11. | | | | 0.00 |
| 12. TOTAL *(sum of lines 8-11)* | $ 0.00 | $ 0.00 | $ 0.00 | $ 0.00 |

| SECTION D - FORECASTED CASH NEEDS | | | | | |
|---|---|---|---|---|---|
| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
| 13. Federal | $ 0.00 | $ | $ | $ | $ |
| 14. Non-Federal | 0.00 | | | | |
| 15. TOTAL *(sum of lines 13 and 14)* | $ 0.00 | $ 0.00 | $ 0.00 | $ 0.00 | $ 0.00 |

| SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT | | | | |
|---|---|---|---|---|
| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | |
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTAL *(sum of lines 16-19)* | $ 0.00 | $ 0.00 | $ 0.00 | $ 0.00 |

| SECTION F - OTHER BUDGET INFORMATION | |
|---|---|
| 21. Direct Charges: | 22. Indirect Charges: |
| 23. Remarks: | |

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## INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

**Section A. Budget Summary Lines 1-4 Columns (a) and (b)**

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

**Lines 1-4, Columns (c) through (g)**

*For new applications*, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

*For continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

*For supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

**Line 5** - Show the totals for all columns used.

**Section B Budget Categories**

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

**Line 6a-i** - Show the totals of Lines 6a to 6h in each column.

**Line 6j** - Show the amount of indirect cost.

**Line 6k** - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

**Line 7** - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

**INSTRUCTIONS FOR THE SF-424A** (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

**Section C. Non-Federal Resources**

**Lines 8-11** Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

**Column (a)** - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

**Column (b)** - Enter the contribution to be made by the applicant.

**Column (c)** - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

**Column (d)** - Enter the amount of cash and in-kind contributions to be made from all other sources.

**Column (e)** - Enter totals of Columns (b), (c), and (d).

**Line 12** - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

**Section D. Forecasted Cash Needs**

**Line 13** - Enter the amount of cash needed by quarter from the grantor agency during the first year.

**Line 14** - Enter the amount of cash from all other sources needed by quarter during the first year.

**Line 15** - Enter the totals of amounts on Lines 13 and 14.

**Section E. Budget Estimates of Federal Funds Needed for Balance of the Project**

**Lines 16-19** - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

**Line 20** - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

**Section F. Other Budget Information**

**Line 21** - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

**Line 22** - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

**Line 23** - Provide any other explanations or comments deemed necessary.

OMB Approval No. 0348-0040

## ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE |
|---|---|
| | |
| APPLICANT ORGANIZATION | DATE SUBMITTED |
| | June 16, 2005 |

**Standard Form 424B (Rev. 7-97) Back**

# CERTIFICATIONS

U.S. DEPARTMENT OF LABOR
Occupational Safety and Health Administration

**Certification Regarding Drug-Free Workplace Requirements**

1. The grantee certifies that it will or will continue to provide a drug-free workplace by:

   (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

   (b) Establishing an ongoing drug-free awareness program to inform employees about:

      (1) The dangers of drug abuse in the workplace;

      (2) The grantee's policy of maintaining a drug-free workplace;

      (3) Any available drug counseling, rehabilitation, and employee assistance programs; and

      (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

   (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a).

   (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

      (1) Abide by the terms of the statement; and

      (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.

   (e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant.

   (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d) (2), with respect to any employee who is so convicted:

      (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

      (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

   (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

2. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

   Place of Performance (street address, city, county, State, ZIP code)

   _____

   _____

   _____

   Check [ ] if there are workplaces on file that are not identified here.

**Certification Regarding Debarment, Suspension and Other Responsibility Matters**

1. The prospective grantee certifies to the best of its knowledge and belief, that it and its principals:

   (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

   (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or

a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective grantee is unable to certify to any of the statements in this certification, such prospective grantee shall attach an explanation to this proposal.

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**Lobbying Certification** (Applications of $100,000 or more)

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activity," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each failure.

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Signature of Certifying Representative

Date

Typed Name and Title

Name of Applicant Organization

SUPPLEMENTAL CERTIFICATION REGARDING LOBBYING ACTIVITIES

Section 18. of the "Lobbying Disclosure Act of 1995," signed by the President on December 19, 1995, requires that any organization described in section 501 (c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of Federal funds constituting an award, grant, or loan. To insure compliance with these requirements, all applicants must complete statement 1. below. Those that are 501(c)(4) entities must also complete statement 2. All applicants must have the form signed by the certifying representative.

1. As an officer of _____,
*(Applicant Organization Name)*

this is to certify that we are _____/are not_____ an IRS 501 (c)(4) entity.

2. As an IRS 501(c)(4) entity, we have _____/have not_____ engaged in lobbying activities.

_____
Signature

_____
Official Title

[FR Doc. 05–12203 Filed 6–20–05; 8:45 am]
BILLING CODE 4510–26–C

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice.

**SUMMARY:** NARA is giving public notice that the agency proposes to request use of four (4) National Archives Trust Fund forms that will be used by individuals who wish to purchase copies of pages from Bankruptcy Cases (NATF 90), Civil Cases (NATF 91), Criminal Cases (NATF 92); and Court of Appeals Cases (NATF 93). The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be received on or before August 22, 2005 to be assured of consideration.

**ADDRESSES:** Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to (301) 837–3213; or electronically mailed to *tamee.fechhelm@nara.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number (301) 837–1694, or fax number (301) 837–3213.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways, including the use of information technology, to minimize the burden of the collection of information on

respondents; and (e) whether small businesses are affected by this collection. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

*Title:* Order Forms for U.S. Court Records in the National Archives.

*OMB number:* 3095–NEW.

*Agency form number:* NATF Forms 90, 91, 92, and 93.

*Type of review:* Regular.

*Affected public:* Individuals or households.

*Estimated number of respondents:* 76,222.

*Estimated time per response:* 10 minutes.

*Frequency of response:* On occasion.

*Estimated total annual burden hours:* 12,704 hours.

*Abstract:* Submission of requests on a form is necessary to handle in a timely fashion the volume of requests received for these records (approximately 73,334 per year for the NATF 90, approximately 1,426 per year for the NATF 91, approximately 1,312 per year for the NATF 92, approximately 150 per year for the NATF 93) and the need to obtain specific information from the researcher to search for the records sought. As a convenience, the form will allow researchers to provide credit card information to authorize billing and expedited mailing of the copies. NARA is exploring the option of allowing researchers to use Order Online: (*http://www.archives.gov/research_room/obtain_copies/military_and_genealogy_order_forms.html*) to complete the forms and order the copies.

Dated: June 15, 2005.

**Shelly L. Myers,**

*Deputy Chief Information Officer.*

[FR Doc. 05–12127 Filed 6–20–05; 8:45 am]

**BILLING CODE 7515–01–P**

## EXECUTIVE OFFICE OF THE PRESIDENT

### Office of National Drug Control Policy

### Paperwork Reduction Act; Comment Request

**AGENCY:** Office of National Drug Control Policy.

**ACTION:** 60 day notice.

**SUMMARY:** The Office of National Drug Control Policy (ONDCP) provides this opportunity for public comment on three data collection projects proposed by the National Youth Anti-Drug Media Campaign. The proposed projects are similar to existing projects but stem from the hiring of a new advertising contractor. We propose the following: (1) Qualitative testing of creative concepts; (2) advertising testing before inclusion into the media plan; and, (3) a tracking study to measure advertising effectiveness. Comments must be received within 60 days of this publication.

**ADDITIONAL INFORMATION:** Request additional information from Kendall Oliphant, (202) 395–6168, or fax the request to (202) 395–0858.

Dated: June 16, 2005.

**Daniel R. Petersen,**

*Assistant General Counsel.*

[FR Doc. 05–12217 Filed 6–20–05; 8:45 am]

**BILLING CODE 3180–02–P**

## NATIONAL TRANSPORTATION SAFETY BOARD

### Sunshine Act Meeting; Notice

**TIME AND DATE:** 9:30 a.m., Tuesday, June 28, 2005.

**PLACE:** NTSB Board Room, 429 L'Enfant Plaza, SW., Washington, DC 20594.

**STATUS:** The one item is Open to the Public.

**MATTER TO BE CONSIDERED:** *7852A*—Marine Accident Report—Capsizing of U.S. Small Passenger Vessel *Taki-Tooo*, Tillamook Bay Inlet, Oregon, June 14, 2003.

**NEWS MEDIA CONTACT:** Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, June 24, 2005.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov.*

**FOR FURTHER INFORMATION CONTACT:** Vicky D'Onofrio, (202) 314–6410

Dated: June 17, 2005.

**Vicky D'Onofrio,**

*Federal Register Liason Officer.*

[FR Doc. 05–12347 Filed 6–17–05; 2:57 pm]

**BILLING CODE 7533–01–M**

## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Proposed Collection: Comment Request

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

**SUMMARY:** The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 313, ''Application for Material License''; and NRC Form 313A, ''Training and Experience and Preceptor Statement.''

2. *Current OMB approval number:* 3150–0120.

3. *How often the collection is required:* There is a one-time submittal of information to receive a license. Once a specific license has been issued, there is a 10-year resubmittal of the information for renewal of the license.

4. *Who is required or asked to report:* All applicants requesting a license for byproduct or source material.

5. *The estimated number of annual respondents:* 15,914 (3,074 NRC licensees + 12,840 Agreement State licensees).

6. *The number of hours needed annually to complete the requirement or request:* 70,022 (13,526 hours for NRC licensees and 56,496 hours for Agreement State licensees).

7. *Abstract:* Applicants must submit NRC Forms 313, and 313A to obtain a specific license to possess, use, or distribute byproduct or source material. The information is reviewed by the NRC to determine whether the applicant is qualified by training and experience, and has equipment, facilities, and procedures which are adequate to protect the public health and safety, and minimize danger to life or property.

Submit, by August 22, 2005, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–5 F53, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 15th day of June, 2005.

For the Nuclear Regulatory Commission.

**Brenda Jo. Shelton,**

*NRC Clearance Officer, Office of Information Services.*

[FR Doc. E5–3201 Filed 6–20–05; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

## Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

### I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 26, 2005, to June 9, 2005. The last biweekly notice was published on June 7, 2005 (70 FR 33210).

### Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted

with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(I)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

*Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York*

*Date of amendment request: May 25, 2005.*

*Description of amendment request:* The amendment would revise Technical Specification Section 3.4.9, ''Pressurizer,'' to revise the pressurizer water level limit during operation in Mode 3 (hot standby).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Pressurizer water level is an assumed initial condition for certain accident analyses. Plant initial conditions are not accident initiators and do not have an effect on the probability of the accident occurring. The proposed change only revises the specified limit on water level in the pressurizer, so this change does not affect accident probability.

Pressurizer water level is an assumed initial condition for accidents such as LOCA [loss-of-coolant accident], loss-of-load and loss-of-normal feedwater. The limiting accident analysis results occur at full power conditions when the available core thermal power is maximized. The proposed change does not affect the specified pressurizer level limit at any power level from zero to full power. That is, the pressurizer level limit is not being changed in Modes 1 and 2. The proposed change does revise the specified pressurizer water level limit in Mode 3 (Hot Standby) but this does not affect accident analysis results because the limiting analyses will remain those that are postulated to occur in Mode 1 with the plant at full power.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve physical changes to existing plant equipment or the installation of any new equipment. The design of the pressurizer, the pressurizer level control system and the pressurizer safety valves is not being changed and the ability of these systems, structures, and components to perform their design or safety functions is not being affected. The proposed change revises the specified limit on pressurizer water level in Mode 3 (Hot Standby) to allow operators greater flexibility in performing a plant cooldown. The method used in performing the plant cooldown is not

being changed. This proposed change does not create new failure modes or malfunctions of plant equipment nor is there a new credible failure mechanism.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Pressurizer level is an initial condition assumed in certain accident analyses involving an insurge in the pressurizer and an increasing reactor coolant system (RCS) pressure. These analyses demonstrate that the design pressure for the RCS is not exceeded for the limiting analyses based on the plant at full power. The proposed change does not affect the existing Technical Specification requirement for Mode 1 (Power Operation) or Mode 2 (Plant Startup) and therefore does not affect the assumptions or results of these accident analyses. The margin for RCS design pressure demonstrated by these analysis results is not being reduced. The proposed change only applies to the pressurizer level limit in Mode 3 (Hot Standby) when there is substantially lower thermal energy available to cause rapid expansion of reactor coolant and an insurge to the pressurizer. Protection of the RCS pressure boundary is still maintained by the pressurizer safety valves, which are not being modified by the proposed change in pressurizer water level.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

*NRC Section Chief:* Richard J. Laufer.

*Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana*

*Date of amendment request:* March 15, 2005.

*Description of amendment request:* A change is proposed to revise the Waterford Steam Electric Station Unit 3 (Waterford 3) Technical Specification (TS) Section 4.4.4.4 to modify the steam generator tube inspection Acceptance Criteria for the ''Plugging or Repair Limit'' and the ''Tube Inspection,'' as contained in the Waterford 3 TS Surveillance Requirements (SR) 4.4.4.4.a.7 and 4.4.4.4.a.9, respectively. The purpose of these changes is to define the depth of the required tube inspections and to clarify the plugging criteria within the tubesheet region.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Conducting the rotating Plus Point probe inspections to a minimum tubesheet length of 10.4 inches maintains the existing design limits and does not increase the probability or consequences of an accident involving tube burst or primary to secondary accident-induced leakage, as previously analyzed in the Waterford 3 Final Safety Analysis Report. Also the NEI [Nuclear Energy Institute] 97–06 structural integrity and accident induced leakage of the steam generator tubes performance criteria will continue to be satisfied.

Tube burst is precluded for a tube with defects within the tubesheet region because of the constraint provided by the tubesheet. As such, tube pullout resulting from the axial forces induced by primary to secondary differential pressures would be a prerequisite for tube burst to occur. Any degradation below C* is shown by empirical test results and analyses to be acceptable, thereby precluding an event with consequences similar to a postulated tube rupture event. WCAP–16208–P has shown that tube flaws below the C* length will not result in primary to secondary leakage greater than 0.1 gpm [gallons per minute] per steam generator. Inspection to the C* length will ensure that the postulated accident induced leakage for events that involve a faulted steam generator (*e.g.*, a main steam line break (MSLB)) will remain within both the current and proposed extended power uprate (EPU) accident analyses of 720 gpd (0.5 gpm) and 540 gpd (0.375 gpm), respectively.

Therefore, the proposed change does not affect the probability or consequences of any Waterford 3 analyzed accidents.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Steam generator tube leakage and structural integrity will be maintained during all plant conditions upon implementation of the proposed inspection scope and plugging or repair limit changes to the Waterford 3 Technical Specifications. These changes do not introduce any new mechanisms that might result in a different kind of accident from those previously evaluated. Even with the limiting circumstances of a complete circumferential separation (360o through wall crack) of all of the tubes below the C* length, tube pullout is precluded and leakage is predicted to be maintained within both the current and proposed extended power uprate (EPU) accident analyses assumptions.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed inspection and plugging criteria will better assure that steam generator tube performance is maintained within its design basis and within the safety analysis assumptions. Operation with potential tube degradation below the C* inspection length within the tubesheet region of the steam generator tubing meets the intent of the inspection guidance of RG 1.83, *Inservice Inspection of Pressurized Water Reactor Steam Generator Tubes*, the requirements of General Design Criteria 14, 30 and 32 of 10 CFR 50, and the recommendations of NEI–97–06, Steam Generator Program Guidelines. The total leakage from an undetected flaw population below the C* inspection length under postulated accident conditions is accounted for to assure that the leakage criterion is met and bounded by both the current and the proposed EPU accident analyses assumptions. Adequate margin remains for other possible steam generator tube leak sources.

The proposed changes also maintain the structural and accident-induced leakage integrity of the steam generator tubes as required by NEI 97–06 and the plant design basis.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* N. S. Reynolds, Esquire, Winston & Strawn 1400 L Street NW., Washington, DC 20005–3502.

*NRC Section Chief:* David Terao.

*FirstEnergy Nuclear Operating Company, et al., Docket No. 50–334, Beaver Valley Power Station, Unit No. 1 (BVPS–1), Beaver County, Pennsylvania*

*Date of amendment request:* April 11, 2005.

*Description of amendment request:* The proposed amendment would revise the BVPS–1 Technical Specifications (TSs) to permit operation with replacement Model 54F steam generators (SGs) installed. These include changes to reactor core safety limits, reactor trip system and engineered safety features actuation system setpoints, and other safety analysis inputs related to the proposed new model 54F steam generators as well as changes to steam generator limiting conditions for operation and surveillance requirements. These proposed TS changes were originally submitted as part of the licensee's extended power uprate application,

dated October 4, 2004, however, delays in the review of that application have required the licensee to separately request these proposed TS changes in order to support SG replacement during and startup from the BVPS–1 2006 refueling outage.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. The proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The safety and radiological dose consequence analyses confirmed that safety analysis and dose consequence analysis acceptance criteria will be satisfied for the Model 54F BVPS Unit No. 1 replacement steam generators, including changes to reactor core safety limits, reactor trip system (RTS) and engineered safety features actuation system (ESFAS) setpoints, and other safety analysis inputs related to the proposed changes. The analyses are conservative and bounding with respect to operation with RSGs [replacement steam generators] at the current licensed maximum power level.

For the purpose of this evaluation, the proposed changes to Technical Specifications 3.4.1.3, Reactor Coolant system Shutdown, and 3.4.5, Steam Generators, which will directly address the new Unit No. 1 replacement steam generators (RSG) can be grouped in the following areas:

(a) The first area of change is to remove the references to repair of tubes by sleeving since they are not applicable to the RSG tubes.

The accidents of interest are [steam generator] tube rupture and steam line break. A reduction in tube integrity could increase the possibility of a tube rupture accident and could increase the consequences of a steam line break. The tubing in the RSGs is designed and evaluated consistent with the margins of safety specified in the ASME Code [American Society of Mechanical Engineers, Boiler and Pressure Vessel Code], Section III. The program for periodic inservice inspection provides sufficient time to take proper and timely corrective action if tube degradation is present. The basis for the 40% through wall plugging limit is applicable to the RSGs just as it was to the original steam generators (OSG). An analysis has been performed consistent with the guidance in Draft Regulatory Guide 1.121 to justify the applicability of the 40% through wall plugging limit. As a result, there is no reduction in tube integrity for the RSGs.

Elimination of the repair option and the associated references to repair of the OSG tubes is an administrative adjustment since the sleeve design is not applicable to the RSGs. The elimination of the repair option does not alter the requirements for inservice inspection or reduce the plugging limit for the RSG tubes.

(b) The second area of change is to remove the references to voltage-based repair criteria on tube-to-tube support plate intersections since they are not applicable to the RSG tubes.

Elimination of the repair option and the associated repair of the OSG tubes is an administrative adjustment since the voltage based repair criteria is not applicable to the RSGs. The elimination of the repair option does not alter the requirements for inservice inspection or reduce the plugging limit for the RSG tubes.

(c) The third area of change is to update the wording and content of the TS to provide clarification and to incorporate wording enhancements consistent with the updates made to the subject TS for several other plants that have replaced steam generators. Since the RSGs will be subjected to a preservice inspection prior to installation, there is no need to perform inservice inspection following installation.

The changes to update the wording and content of the TS to provide clarification and to incorporate wording enhancements are administrative changes that provide clarifications. These changes do not alter the requirements for inservice inspection or the plugging limit for the tubes.

(d) The fourth area of change is to revise the steam generator water levels.

The proposed steam generator water level setpoint changes do not impact the initiation of accidents; therefore, they do not involve an increase in the probability of an accident previously evaluated. The proposed changes do impact the safety analyses for accidents that credit the applicable trips and associated system actions; however, they do not alter these accidents or the associated accident acceptance criteria. The safety analyses for these accidents have been performed at 2900 MWt [megawatts thermal] (which is conservative and bounding for the current licensed power level of 2689 MWt) and show acceptable results. Therefore, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

The proposed change to steam generator water level used to verify steam generator operability in Modes 4 and 5, *i.e.*, TS 3.4.1.3, does not impact the initiation of accidents; therefore, it does not involve an increase in the probability of an accident previously evaluated. The proposed change does not alter the safety analyses for accidents or the associated accident acceptance criteria. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

The proposed changes, due to the replacement steam generators, do not alter the requirements for tube inspection, tube integrity, or tube plugging limit, therefore they do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Use of the VIPRE computer code and the WRB–2M correlation at BVPS for departure from nucleate boiling (DNB) analysis for those Updated Final Safety Analysis Report (UFSAR) transients and accidents for which DNB might be a concern will not involve a significant increase in the probability or consequences of an accident previously evaluated for the following reasons. The code and correlation are evaluation tools that are independent of the probability of an accident. Use of the code and correlation establish DNB limits such that core damage will not occur during postulated design basis accidents. Thus, use of the code and correlation will not involve a significant increase in the consequences of an accident previously evaluated.

Use of the 1979 ANS [American Nuclear Society] Decay Heat + $2\sigma$ 4 model for MSLB [main steam line break] outside containment M&E [mass and energy] releases will not have a significant increase in the probability or consequences of an accident previously evaluated because the model is not an accident initiator.

The remaining changes, which include the changes to the Overtemperature $\Delta T$ and Overpower $\Delta T$ equations, the change to the charging pump discharge pressure, and the additions of WCAP–14565–P–A and WCAP–15025–P–A to the list of NRC approved methodologies in TS 6.9.5, will not involve a significant increase in the probability or consequences of an accident previously evaluated because none of the changes are accident initiators.

The RSG radiological analysis reflects an expansion of the selective application of the AST methodology and incorporation of the ARCHON96 methodology for on-site atmospheric dispersion factors. The radiological analysis concludes that normal operation of the BVPS Unit No. 1 with the RSGs with an atmospheric containment will not impact the unit's compliance with the normal operation operator exposure limits set forth in 10 CFR 20 [Title 10 of the Code of Federal Regulations, Part 20], or the public exposure limits set forth in 10 CFR 20, 10 CFR 50, Appendix I and 40 CFR 190, or with the post-accident exposure limits set forth by 10 CFR 100 or 10 CFR 50.67, as supplemented by Regulatory Guide 1.183, for the plant operator and the public.

The effects on accident radiation dose considered the replacement of the Unit No. 1 steam generators, a core power level to 2900 MWt, incorporation of the ARCHON96 methodology and the expansion of the selective implementation of the AST methodology. None of these changes are initiators of any design basis accident or event, and therefore, will not increase the probability of any accident previously evaluated. The probability of any evaluated accident or event is independent of these changes.

These proposed changes required alteration of some assumptions previously made in the radiological consequence evaluations. The assumption alterations were necessary to reflect the replacement steam generators for Unit No. 1 and the incorporation of the ARCHON96 and AST methodologies. These changes were evaluated for their effect on accident dose consequences. The updated dose consequence analyses demonstrate compliance with the limits set forth for AST

applications in 10 CFR 50.67, as supplemented by Regulatory Guide 1.183 or 10 CFR part 100.

Therefore, in conclusion, none of the proposed changes involve a significant increase in the probability of an accident previously evaluated, and the dose consequences remain within the allowable limits set forth for AST applications in 10 CFR 50.67, as supplemented by Regulatory Guide 1.183 or 10 CFR part 100.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The areas of change described previously for the Unit No. 1 RSGs do not adversely affect the design or function of any other safety-related component. With respect to postulated accident conditions, the OSGs and the RSGs are the same. There is no mechanism to create a new or different kind of accident for the RSGs by eliminating repair criteria or by clarifying the applicability of inservice inspection requirements because a baseline of tube conditions is established and plugging limits are maintained to ensure that defective tubes are identified and removed from service.

The proposed changes to steam generator water level setpoints, and the steam generator water level used to verify steam generator operability in Modes 4 and 5 do not impact the initiation of accidents. They do not alter the accidents that credit the associated trips or accident acceptance criteria. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter the requirements for tube inspection, tube integrity, or tube plugging limit; therefore, they do not create the possibility of a new or different kind of accident from any previously evaluated.

Use of the VIPRE computer code and WRB–2M correlation at BVPS will not create the possibility of a new or different kind of accident from any accident previously evaluated because the code and correlation are evaluation tools. They are not accident initiators. Thus, their use cannot create a new or different kind of accident.

Use of the 1979 ANS Decay Heat + 2σ model for MSLB outside containment M&E releases will not create the possibility of a new or different kind of accident from any accident previously evaluated because the model does not alter how any equipment is operated.

The remaining changes, which include the changes to the Overtemperature ΔT and Overpower ΔT equations, the change to the charging pump discharge pressure, and the additions of WCAP–14565–P–A and WCAP–15025–P–A to the list of NRC approved methodologies in TS 6.9.5, will not create the possibility of a new or different kind of accident from any accident previously evaluated because these changes do not alter how any equipment is operated.

The radiological changes will not create the possibility of a new or different kind of accident from any previously evaluated because they do not affect how components or systems are operated, nor do they create new components or systems failure modes.

Therefore, in conclusion, none of the proposed changes create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No. The proposed changes will not involve a significant reduction in a margin of safety.

The steam generator tube integrity provides the margin of safety. The tubing in the RSGs is designed and evaluated consistent with the margins of safety specified in the ASME Code, Section III. The program for periodic inservice inspection provides sufficient time to take proper and timely corrective action if tube degradation is present. The basis for the 40% through wall plugging limit is applicable to the RSGs just as it was to the OSGs. A Regulatory Guide 1.121 analysis was performed to confirm the applicability of the 40% through wall plugging limit. As a result, there is no reduction in tube integrity for the RSGs.

The proposed changes to steam generator water level setpoints do not alter the reactor trip system/engineered safety features actuation system setpoint analysis methodology, or the associated accident analysis methodology or acceptance criteria. The safety analyses for these accidents have been performed at a power level of 2900 MWt (which is conservative and bounding for the current licensed power level of 2689 MWt) and show acceptable results. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The proposed change to the steam generator water level used to verify steam generator operability in Modes 4 and 5 does not alter the steam generator water level uncertainty and setpoint analysis methodology or the associated natural circulation analysis methodology or acceptance criteria. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The proposed changes to update the wording and content of the TS to provide clarification and to incorporate wording enhancements are administrative changes that provide clarifications.

The proposed changes do not alter the requirements for tube integrity, tube inspection or tube plugging limit; therefore, they do not involve a significant reduction in a margin of safety.

Use of the VIPRE computer code and the WRB–2M correlation at BVPS will not involve a significant reduction in a margin of safety because the code and correlation are used to establish a margin of safety previously approved by the NRC such that core damage will not occur.

Use of the 1979 ANS Decay Heat + 2σ model for MSLB outside containment M&E releases will not involve a significant reduction in a margin of safety because the results of the subject accident have been shown to produce acceptable results.

The remaining changes, which include changes to the Overtemperature σT and Overpower σT equations, the change to the charging pump discharge pressure, and the additions of WCAP–14565–P–A and WCAP–15025–P–A to the list of NRC approved methodologies in TS 6.9.5, will not involve a significant reduction in a margin of safety because they are being made to maintain the existing margin of safety.

The radiological changes will not involve a significant reduction in a margin of safety because BVPS compliance with the limits set forth in 10 CFR 20, 10 CFR 50, Appendix I, 40 CFR 190, 10 CFR 100 and 10 CFR 50.67, as supplemented by Regulatory Guide 1.183, will be maintained following approval of the requested changes.

A FENOC assessment of the cumulative effect of the proposed changes provides [a] reasonable expectation that collectively they will not result in a significant reduction in the overall margin of safety. The results of the analyses demonstrate that the applicable design and safety criteria and regulatory requirements will continue to be met following approval of the proposed changes.

Therefore, in conclusion, none of the propose changes involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for Licensee:* Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

*NRC Section Chief:* Richard J. Laufer.

*Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama*

*Date of amendment request:* June 1, 2005.

*Description of amendment request:* The amendments proposed by Southern Nuclear Operating Company (SNC) would revise the Technical Specifications (TS) to replace the previous TS requirement to implement a Containment Tendon Surveillance Program based on Regulatory Guide 1.35, Rev. 2, ''Inservice Inspection of Ungrouted Tendons in Prestressed Concrete Containment Structures,'' with a Containment Inspection Program that complies with the current requirements of Title 10 of the Code of Federal Regulations (10 CFR) Section 50.55a, ''Codes and Standards,'' in order to reflect the latest requirements for tendon surveillance.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the

licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change replaces the previous TS requirement to implement a Containment Tendon Surveillance Program based on Regulatory Guide 1.35, Rev. 2, with a Containment Inspection Program that complies with the current requirements of 10 CFR 50.55a. This regulation requires licensees to implement a Containment Inspection Program in compliance with the 1992 Edition with the 1992 Addenda of Subsection IWE, ''Requirements for Class MC and Metallic Liners of Class CC Components of Light-Water Cooled Plants,'' and with Subsection IWL, ''Requirements for Class CC Concrete Components of Light-Water Cooled Plants,'' of Section XI, Division 1, of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) with additional modifications and limitations as stated in 10 CFR 50.55a(b)(2)(ix). SNC has implemented a Containment Inspection Program that complies with the regulatory requirements. This proposed TS amendment is requested to update the TS to the latest 10 CFR 50.55a regulatory requirements.

In addition, reporting requirements that are redundant to existing regulations are deleted, minor editorial changes are made, and the applicability of [Surveillance Requirement] SR 3.0.2 to the tendon surveillance program is deleted since surveillance frequencies and associated extensions are specified in ASME Section XI, Subsection IWL.

By complying with the regulatory requirements described in 10 CFR 50.55a, the probability of a loss of containment structural integrity is maintained as low as reasonably achievable. Maintaining containment structural integrity as described in the revised Containment Inspection Program does not impact the operation of the reactor coolant system (RCS), containment spray (CS) system, or emergency core cooling system (ECCS). The Containment Inspection Program ensures that the containment will function as designed to provide an acceptable barrier to release of radioactive materials to the environment. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change does not impact any accident initiators or analyzed events, nor does it impact the types or amounts of radioactive effluent that may be released offsite. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Maintaining containment structural integrity does not impact the operation of the RCS, CS system, or ECCS. The proposed change does not involve a modification to the physical configuration of the plant or a change in the methods governing normal plant operation. The proposed change does not introduce a new accident initiator, accident precursor, or malfunction mechanism. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendment does not involve a significant reduction in a margin of safety.

By complying with the regulatory requirements described in 10 CFR 50.55a, the probability of a loss of containment structural integrity is maintained as low as reasonably achievable. The Containment Inspection Program ensures that the containment will function as designed to provide an acceptable barrier to release of radioactive materials to the environment. The proposed change does not adversely affect plant operation or existing safety analyses. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

*NRC Section Chief:* Evangelos C. Marinos.

*Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri*

*Date of application request:* May 26, 2005.

*Description of amendment request:* The amendment would change Technical Specification (TS) 3.7.2, ''Main Steam Isolation Valves (MSIVs),'' by adding the MSIV actuator trains to (1) the limiting condition for operation (LCO) and (2) the conditions, required actions, and completion times for the LCO. The existing conditions and required actions in TS 3.7.2 are renumbered to account for the new conditions and required actions.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated.

Response: No.

The proposed changes to incorporate requirements for the MSIV actuator trains do not involve any design or physical changes to the facility, including the MSIVs and actuator trains themselves. The design and functional performance requirements, operational characteristics, and reliability of the MSIVs and actuator trains are thus unchanged. There is therefore no impact on the design safety function of the MSIVs to close (as an accident mitigator), nor is there any change with respect to inadvertent closure of an MSIV (as a potential transient initiator). Since no failure mode or initiating condition that could cause an accident (including any plant transient) evaluated per the FSAR [Callaway Final Safety Analysis Report]-described safety analyses is created or affected, the [proposed] change[s] cannot involve a significant increase in the probability of an accident previously evaluated.

With regard to the consequences of an accident and the equipment required for mitigation of the accident, the proposed changes involve no design or physical changes to the MSIVs or any other equipment required for accident mitigation. With respect to [the] MSIV actuator train allowed outage times [(*i.e.*, completion times)], the consequences of an accident are independent of equipment allowed outage times as long [as] adequate equipment availability is maintained. The proposed MSIV actuator train allowed outage times take into account the redundancy of the MSIV actuator trains and are limited in extent consistent with other allowed outage times specified in the Technical Specifications. Adequate equipment (MSIV) availability would therefore continue to be required by the Technical Specifications. On this basis, the consequences of applicable, analyzed accidents (such as a main steam line break) are not significantly impacted by the proposed changes. Based on all of the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated.

Response: No.

None of the proposed changes, *i.e.*, the addition of Conditions, Required Actions and Completion Times [and addition to the LCO] to [the] Technical Specifications for the MSIV actuator trains, involve a change in the design, configuration, or operational characteristics of the plant. No physical alteration of the plant is involved, as no new or different type of equipment is to be installed. The proposed changes do not alter any assumptions made in the safety analyses, nor do they involve any changes to plant procedures for ensuring that the plant is operated within analyzed limits. As such, no new failure modes or mechanisms that could cause a new or different kind of accident from any previously evaluated are being introduced.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. [Do] the proposed change[s] involve a significant reduction in a margin of safety.

Response: No.

The proposed addition of Conditions, Required Actions and Completion Times [and proposed addition to the LCO] to the Technical Specifications for the MSIV actuator trains does not alter the manner in which safety limits or limiting safety system settings are determined. [There are no proposed changes to safety limits or limiting safety system settings.] No changes to instrument/system actuation setpoints are involved. The safety analysis acceptance criteria are not impacted by [these proposed] change[s], and the proposed change[s] will not permit plant operation in a configuration outside the design basis.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Section Chief:* Robert A. Gramm.

**Notice of Issuance of Amendments to Facility Operating Licenses**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

*AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey*

*Date of amendment request:* October 21, 2004.

*Description of amendment request:* The amendment deletes the Technical Specification (TS) requirements to submit monthly operating reports and annual occupational radiation exposure reports. The change is consistent with Revision 1 of the Nuclear Regulatory Commission approved Technical Specifications Task Force (TSTF) Change Traveler, TSTF–369, ''Elimination of Requirements for Monthly Operating Reports and Occupational Radiation Exposure Reports.'' This TS improvement was published in the **Federal Register** (69 FR 35067) on June 23, 2004, as part of the Consolidated Line Item Improvement Process.

*Date of issuance:* June 8, 2005.

*Effective date:* June 8, 2005.

*Amendment No.:* 254.

*Facility Operating License No. DPR–16:* Amendment revises the Technical Specifications.

*Public comments requested as to proposed no significant hazards consideration (NSHC):* Yes. April 8, 2005 (70 FR 18056). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. Comments received from the State of New Jersey are discussed in Section 7.0 of the related safety evaluation. The notice also provided an opportunity to request a hearing by June 7, 2005, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 8, 2005.

*Attorney for licensee:* Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

*NRC Section Chief:* Richard J. Laufer.

*Dominion Nuclear Connecticut, Inc., et al., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut*

*Date of application for amendment:* September 7, 2004.

*Brief description of amendment:* The amendment revised the required frequency of quench and recirculation spray nozzle surveillances from once every 10 years to ''following maintenance which could result in nozzle blockage.'' The change also revised wording to correct grammar.

*Date of issuance:* May 31, 2005.

*Effective date:* As of the date of issuance and shall be implemented within 180 days from the date of issuance.

*Amendment No.:* 222.

*Facility Operating License No. NPF–49:* The amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** December 7, 2004 (69 FR 70715).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 31, 2005.

*No significant hazards consideration comments received:* No.

*Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina*

*Date of application for amendments:* June 3, 2003, as supplemented by letter dated January 18 and May 10, 2005.

*Brief description of amendments:* The amendments would add a note to Limiting Condition of Operation 3.7.11, ''Auxiliary Building Filtered Ventilation Exhaust System (ABFVES),'' that would allow the Auxiliary Building pressure boundary to be opened intermittently under administrative control.

*Date of issuance:* June 2, 2005.

*Effective date:* As of the date of issuance and shall be implemented within 60 days from the date of issuance.

*Amendment Nos.:* 229 and 211.

*Renewed Facility Operating License Nos. NPF–9 and NPF–17:* Amendments revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** March 16, 2004 (69 FR 12365). The supplements dated January 18 and May 10, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 2, 2005.

*No significant hazards consideration comments received:* No.

*Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana*

*Date of amendment request:* December 20, 2004.

*Brief description of amendment:* The amendment deletes the requirements related to monthly operating reports and occupational radiation exposure reports.

*Date of issuance:* May 25, 2005.

*Effective date:* As of the date of issuance, and shall be implemented 90 days from the date of issuance.

*Amendment No.:* 145.

*Facility Operating License No. NPF–47:* The amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** March 1, 2005 (70 FR 9990).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 25, 2005.

*No significant hazards consideration comments received:* No.

*Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont*

*Date of application for amendment:* December 7, 2004.

*Brief description of amendment:* This amendment revised the Technical Specifications (TSs) by removing the surveillance requirement (SR) for testing the setting of the standby liquid control system pressure relief valves. Also, the SR for the recirculation pump discharge valves was revised to remove stroke time specifications.

*Date of Issuance:* June 1, 2005.

*Effective date:* As of the date of issuance, and shall be implemented within 60 days.

*Amendment No.:* 224.

*Facility Operating License No. DPR–28:* The amendment revised the TSs.

*Date of initial notice in* ***Federal Register:*** January 18, 2005 (70 FR 2889).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated June 1, 2005.

*No significant hazards consideration comments received:* No.

*Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan*

*Date of application for amendments:* April 6, 2004, as supplemented by four letters dated April 15, 2005.

*Brief description of amendments:* The amendments convert the current Technical Specifications (CTS) to the improved Technical Specifications (ITS) and relocate license conditions to the ITS or other license controlled documents. The ITS are based on NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants,'' dated April 30, 2001, and guidance provided in the Commission's Final Policy Statement, ''The U.S. Nuclear Regulatory Commission Final Policy Statement on Technical Specifications (TSs) Improvements for Nuclear Power Reactors,'' published on July 22, 1993 (58 FR 39132), and 10 CFR Part 50.36, ''TSs.'' The overall objective of the proposed amendments was to rewrite, reformat, and streamline the CTS to improve plant safety and the understanding of the bases underlying the TSs.

*Date of issuance:* June 1, 2005.

*Effective date:* As of the date of issuance and shall be implemented by October 30, 2005.

*Amendment Nos.:* 287, 269.

*Facility Operating License Nos.* DPR–58 and DPR–74: Amendments revised the TSs.

Date of initial notice in ***Federal Register:*** September 29, 2004 (69 FR 58205). The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 1, 2005.

*No significant hazards consideration comments received:* No.

*Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York*

*Date of application for amendment:* October 22, 2004.

*Brief description of amendment:* The amendment deleted Sections 5.3, ''Reactor Vessel,'' 5.4, ''Containment,'' and 5.6, ''Seismic Design,'' relocating all information, which pertains to design details, to the Updated Final Safety Analysis Report.

*Date of issuance:* June 6, 2005.

*Effective date:* As of the date of issuance to be implemented within 90 days.

*Amendment No.:* 189.

*Facility Operating License No. DPR–63:* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** December 7, 2004 (69 FR 70719).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 6, 2005.

*No significant hazards consideration comments received:* No.

*Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin*

*Date of application for amendments:* November 5, 2003, as supplemented by letter dated April 22, 2004.

*Brief description of amendments:* The amendments revised the Point Beach Nuclear Plant (PBNP), Units 1 and 2, Updated Final Safety Analysis Report [UFSAR] to reflect the Commission staff's approval of the WCAP–14439-P, Revision 2 analysis entitled, ''Technical Justification for Eliminating Large Primary Loop Pipe Rupture as the Structural Design Basis for the Point Beach Nuclear Plant Units 1 and 2 for the Power Uprate and License Renewal Program.''

*Date of issuance:* June 6, 2005.

*Effective date:* As of the date of issuance and shall be implemented with the next update of the UFSAR in accordance with 10 CFR 50.71(e).

*Amendment Nos.:* 219, 224.

*Facility Operating License Nos. DPR–24 and DPR–27:* Amendments revised the License.

Date of initial notice in ***Federal Register:*** February 7, 2005 (70 FR 6466). The supplement dated April 22, 2004, provided clarifying information that did not change the scope of the amendment, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 6, 2005.

*No significant hazards consideration comments received:* No.

*Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin*

*Date of application for amendments:* October 15, 2004.

*Brief description of amendments:* The amendments revised Technical Specifications related to the reactor coolant pump flywheel inspection program by increasing the inspection interval to 20 years.

*Date of issuance:* June 6, 2005.

*Effective date:* As of the date of issuance and shall be implemented within 45 days.

*Amendment Nos.:* 218, 223.

*Facility Operating License Nos. DPR–24 and DPR–27:* Amendments revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** March 29, 2005 (70 FR 15945).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 6, 2005.

*No significant hazards consideration comments received:* No.

*Nuclear Management Company, LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota*

*Date of application for amendments:* October 15, 2004.

*Brief description of amendments:* The amendments revise Technical Specifications related to the reactor coolant pump flywheel inspection program by increasing the inspection interval to 20 years.

*Date of issuance:* June 7, 2005.

*Effective date:* As of the date of issuance and shall be implemented within 90 days.

*Amendment Nos.:* 170, 160.

*Facility Operating License Nos. DPR–42 and DPR–60:* Amendments revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** March 15, 2005 (70 FR 12748).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 7, 2005.

*No significant hazards consideration comments received:* No.

*Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California*

*Date of application for amendments:* September 23, 2004, and its supplements dated December 21, 2004, and April 7, 2005.

*Brief description of amendments:* The amendments increase the current minimum emergency diesel generator fuel oil inventory required to be maintained onsite to support the use of low-sulfur fuel oil required by California Air Resources Board.

*Date of issuance:* May 25, 2005.

*Effective date:* As of the date of issuance, and shall be implemented within 90 days from the date of issuance.

*Amendment Nos.:* Unit 1—181; Unit 2—183.

*Facility Operating License Nos. DPR–80 and DPR–82:* The amendments revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** January 4, 2005 (70 FR 402). The December 21, 2004, and April 7, 2005, supplemental letters provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 25, 2005.

*No significant hazards consideration comments received:* No.

*Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee*

*Date of application for amendments:* June 5, 2003, as supplemented by letters dated June 3 and October 26, 2004.

*Brief description of amendments:* The amendments authorize changes to the Updated Final Safety Analysis Report (UFSAR) for both units, to acknowledge credit for possible operator action to ensure that the containment design pressure is not exceeded in the event of a high energy line break inside containment with a consequential failure of the station control and service air system inside containment.

*Date of issuance:* May 24, 2005.

*Effective date:* As of the date of issuance and shall be implemented as part of the next UFSAR update made in accordance with 10 CFR 50.71(e).

*Amendment Nos.:* 302 and 292.

*Facility Operating License Nos. DPR–77 and DPR–79:* Amendments authorize changes to the UFSAR.

*Date of initial notice in* ***Federal Register:*** June 24, 2003 (68 FR 37584). The supplemental letters provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 24, 2005.

*No significant hazards consideration comments received:* No.

*Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri*

*Date of application for amendment:* October 27, 2004.

*Brief description of amendment:* The amendment revised Technical Specification 3.7.3, ''Main Feedwater Isolation Valves (MFIVs),'' to add the main feedwater regulating valves (MFRVs) and the associated MFRV bypass valves (MFRVBVs). In addition, the allowed outage time, or completion time, for inoperable MFIVs is extended.

*Date of issuance:* May 31, 2005.

*Effective date:* This amendment is effective as of its date of issuance, and shall be implemented prior to entry into Mode 3 in the restart from the upcoming Refueling Outage 14 (fall 2005).

*Amendment No.:* 167.

*Facility Operating License No. NPF–30:* The amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** December 7, 2004 (69 FR 70722).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 31, 2005.

*No significant hazards consideration comments received:* No.

Dated at Rockville, Maryland, this 10th day of June, 2005.

For the Nuclear Regulatory Commission.

**Ledyard B. Marsh,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. E5–3138 Filed 6–20–05; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Draft Report for Comment: ''Documentation and Applications of the Reactive Geochemical Transport Model RATEQ,'' NUREG/CR–6871

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability and request for comments.

### Background

The U.S. Nuclear Regulatory Commission (NRC) uses environmental models to evaluate the potential release of radionuclides from NRC-licensed sites. In doing so, the NRC recognizes

that, at many sites, groundwater-related pathways could contribute significantly to the potential dose received by members of the public. Consequently, consistent with its mission to protect the health and safety of the public and the environment, the NRC uses contaminant transport models to predict the locations and concentrations of radionuclides in soil as a function of time. Through this notice, the NRC is seeking comment on documentation of a subsurface transport model developed for the NRC by the U.S. Geological Survey (USGS) for realistic transport modeling at sites with complex chemical environments.

Because many radionuclides temporarily attach, or adsorb, to the surfaces of soil particles, their mobility is reduced compared to that of compounds that move with the groundwater without interacting with solid surfaces. As a result, most subsurface-transport models used by the NRC and its licensees estimate the effects of the anticipated interactions between radionuclides and solids in the ground. Toward that end, these subsurface-transport models use a ''distribution coefficient,'' which is assumed to be constant and reflects the proportion of radionuclide in the groundwater compared to the radionuclide associated with the solids in the ground. These distribution coefficients are widely used, and consequently, the relevant literature documents ranges of their values for various soil types and radionuclides. However, the documented ranges can be very large because the chemical reactions that cause radionuclides to attach to solids are very sensitive to water chemistry and soil mineralogy. As a result, uncertainties in the parameters used to characterize the adsorption of radionuclides in soils have been identified as a major source of uncertainty in decommissioning, uranium recovery, and radioactive waste disposal cases evaluated by the NRC.

Surface-complexation and ion-exchange models offer a more realistic approach to considering soil-radionuclide interactions in performance-assessment models. These models can also account for variable chemical environments that might affect such interactions. The subject report, prepared for the NRC by the USGS, describes the theory, implementation, and examples of use of the RATEQ computer code, which simulates radionuclide transport in soil and allows the use of surface-complexation and ion-exchange models to calculate distribution coefficients based on actual site chemistry.

The RATEQ code will help the NRC staff define realistic site-specific ranges of the distribution coefficient values used to evaluate NRC-licensed sites. In site-remediation cases, such as restoration of the groundwater aquifer in and around uranium in-situ leach mining facilities, the RATEQ code can aid in the estimation of restoration costs by estimating the volume of treatment water needed to restore sites to acceptable environmental conditions.

*Solicitation of Comments:* The NRC seeks comments on the report and is especially interested in comments on the value of the report to users who run the RATEQ code and are familiar with the types of complex chemical environments that complicate many remediation projects.

**DATES:** The NRC will consider all written comments received before September 30, 2005. Comments received after September 30, 2005, will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date. Comments should be addressed to the contact listed below.

*Availability:* An electronic version of the report is available in Adobe Portable Document Format at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/contract/cr6871/cr6871.pdf* and can be read with Adobe Acrobat Reader software, available at no cost from *http://www.adobe.com.* The report and the computer files for the test cases discussed therein are available at *http://wwwrcamnl.wr.usgs.gov/rtm.* Hard and electronic copies of the report are available from the contact listed below.

**FOR FURTHER INFORMATION CONTACT:** Dr. John D. Randall, Mail Stop T9C34, U.S. Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, MD 20852, telephone (301) 415–6192, e-mail *jdr@nrc.gov.*

Dated at Rockville, Maryland, this 10th day of June, 2005.

For the Nuclear Regulatory Commission.

**Cheryl A. Trottier,**

*Chief, Radiation Protection, Environmental Risk & Waste Management Branch, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research.*

[FR Doc. E5–3200 Filed 6–20–05; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Draft Report for Comment: ''Consideration of Geochemical Issues in Groundwater Restoration at Uranium In-Situ Leach Mining Facilities,'' NUREG/CR–6870

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability and request for comments.

### Background

Some mining processes use fluids to dissolve (or leach) a mineral without the need to remove physically the ore containing the mineral from an ore deposit in the ground. In general, these ''in-situ'' leach mining operations at uranium mines are considerably more environmentally benign than traditional mining and milling of uranium ore. Nonetheless, the use of leaching fluids to mine uranium may contaminate the groundwater aquifer in and around the region from which the uranium is extracted. The U.S. Nuclear Regulatory Commission (NRC) requires licensees to restore the aquifer to established water-quality standards following the cessation of in-situ leach mining operations.

The NRC also requires licensees to ensure that sufficient funds will be available to cover the cost of decommissioning their facilities. For these uranium mines, restoration generally consists of pumping specially treated water into the affected aquifer and removing the displaced water—and thereby the undesirable contaminants—from the system. Because groundwater restoration can represent approximately 40 percent of the cost of decommissioning a uranium leach mining facility, a good estimate of the necessary volume of treatment water is important to estimate the cost of decommissioning accurately.

The subject report, prepared for the NRC by the U.S. Geological Survey, summarizes the application of a geochemical model to the restoration process to estimate the degree to which a licensee has decontaminated a site where a leach mining process has been used. Toward that end, this report analyzes the respective amounts of water and chemical additives pumped into the mined regions to remove and neutralize the residual contamination using 10 different restoration strategies. The analyses show that strategies that used hydrogen sulfide in systems with low natural oxygen content provided the best results. On the basis of those findings, this report also summarizes

the conditions under which various restoration strategies will prove successful. This, in turn, will allow more accurate estimates of restoration and decommissioning costs.

The subject report will be useful for licensees and State regulators overseeing uranium leach mining facilities, who need to estimate the volume of treatment water needed to decontaminate those facilities.

*Solicitation of Comments:* The NRC seeks comments on the report and is especially interested in comments on the utility and feasibility of the modeling techniques described in the report.

**DATES:** The NRC will consider all written comments received before August 31, 2005. Comments received after August 31, 2005, will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date. Comments should be addressed to the contact listed below.

*Availability:* An electronic version of the report is available in Adobe Portable Document Format at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/contract/cr6870/cr6870.pdf* and can be read with Adobe Acrobat Reader software, available at no cost from *http://www.adobe.com.* Hard and electronic copies are available from the contact listed below.

**FOR FURTHER INFORMATION CONTACT:** Dr. John D. Randall, Mail Stop T9C34, U.S. Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, MD 20852, telephone (301) 415–6192, e-mail *jdr@nrc.gov.*

Dated at Rockville, Maryland, this 10th day of June, 2005.

For the Nuclear Regulatory Commission.

**Cheryl A. Trottier,**

*Chief, Radiation Protection, Environmental Risk & Waste Management Branch, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research.*

[FR Doc. E5–3199 Filed 6–20–05; 8:45 am]

**BILLING CODE 7590–01–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Excepted Service

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** This gives notice of OPM decisions granting authority to make appointments under Schedules A, B and C in the excepted service as required by 5 CFR 6.6 and 213.103.

**FOR FURTHER INFORMATION CONTACT:** Quasette Crowner, Chief, Executive Resources Group, Center for Leadership and Executive Resources Policy, Division for Strategic Human Resources Policy, 202–606–8046.

**SUPPLEMENTARY INFORMATION:** Appearing in the listing below are the individual authorities established under Schedules A, B and C between May 1, 2005 and May 31, 2005. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

**Schedule A**

No Schedule A appointments were approved for May 2005.

**Schedule B**

No Schedule B appointments were approved for May 2005.

**Schedule C**

The following Schedule C appointments were approved during May 2005:

*Section 213.3303 Executive Office of the President*

*Council on Environmental Quality*

EQGS00021 Communications Analyst to the Associate Director for Communications. Effective May 05, 2005.

*Office of Management and Budget*

BOGS60035 Confidential Assistant to the Administrator, Office of Federal Procurement Policy. Effective May 26, 2005.

*Section 213.3304 Department of State*

DSGS60949 Public Affairs Specialist to the Coordinator for International Information Programs. Effective May 09, 2005.

DSGS60951 Congressional Affairs Manager to the Assistant Secretary for International Organizational Affairs. Effective May 09, 2005.

DSGS60965 Foreign Affairs Officer to the Deputy Assistant Secretary. Effective May 11, 2005.

DSGS60962 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective May 13, 2005.

DSGS60963 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective May 13, 2005.

*Section 213.3305 Department of the Treasury*

DYGS00457 Senior Advisor to the Chief of Staff. Effective May 27, 2005.

*Section 213.3306 Department of Defense*

DDGS16879 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective May 17, 2005.

DDGS16876 Staff Assistant to the Deputy Assistant Secretary of Defense (Detainee Affairs). Effective May 19, 2005.

DDGS16878 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective May 26, 2005.

DDGS16872 Special Assistant to the Assistant Secretary of Defense (International Secretary Policy). Effective May 27, 2005.

*Section 213.3307 Department of the Army*

DWGS60017 Special Assistant to the Army General Counsel. Effective May 06, 2005.

*Section 213.3309 Department of the Air Force*

DFGS60012 Personal and Confidential Assistant to the General Counsel. Effective May 26, 2005.

*Section 213.3310 Department of Justice*

DJGS00117 Deputy Director, Office of Faith-Based and Community Initiatives to the Director, Office of Faith-Based and Community Initiatives. Effective May 17, 2005.

DJGS00306 Special Assistant to the Director, Office of Intergovernmental and Public Liaison. Effective May 20, 2005.

DJGS00057 Chief of Staff to the Principal Deputy Assistant Attorney General. Effective May 26, 2005.

*Section 213.3311 Department of Homeland Security*

DMGS00353 Executive Assistant to the Director, State and Local Affairs. Effective May 06, 2005.

DMGS00366 Assistant Director for Legislative Affairs to the Chief of Staff. Effective May 09, 2005.

DMGS00360 Writer-Editor to the Executive Secretary. Effective May 11, 2005.

DMGS00352 Special Assistant to the Assistant Secretary for Infrastructure Protection. Effective May 13, 2005.

DMGS00368 Press Assistant to the Assistant Secretary for Public Affairs. Effective May 13, 2005.

DMGS00357 Trip Coordinator to the Chief of Staff. Effective May 17, 2005.

DHGS60255 Regional Director, Chicago, Illinois-Region V, to the Director of Intergovernmental Affairs. Effective May 20, 2005.
DMGS00361 Confidential Assistant to the Director of Scheduling and Advance. Effective May 20, 2005.
DMGS00364 Assistant Director for Legislative Affairs, Information Analysis and Infrastructure Protection to the Assistant Secretary for Legislative Affairs. Effective May 26, 2005.
DMGS00369 Press Assistant to the Assistant Secretary for Public Affairs. Effective May 26, 2005.
DMGS00365 Advance Representative to the Director of Scheduling and Advance. Effective May 27, 2005.
DMGS00367 Writer-Editor (Speechwriter) to the Assistant Secretary for Public Affairs. Effective May 27, 2005.
DJGS00045 Deputy Director, Office for Victims of Crime to the Director Office for Victims of Crime. Effective May 27, 2005.

*Section 213.3312 Department of the Interior*

DIGS61038 Special Assistant to the Director Minerals Management Service. Effective May 26, 2005.

*Section 213.3313 Department of Agriculture*

DAGS00795 Confidential Assistant to the Deputy Administrator-Program Operations. Effective May 02, 2005.

*Section 213.3314 Department of Commerce*

DCGS00560 Senior Policy Advisor to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective May 10, 2005.
DCGS60458 Deputy Director of Marketing for Outreach to the Executive Director for Trade Promotion and Outreach. Effective May 19, 2005.
DCGS00237 Special Assistant to the Deputy Assistant Secretary for Industry Analysis. Effective May 26, 2005.
DCGS00315 Director of Public Affairs to the Assistant Secretary for Economic Development. Effective May 26, 2005.

*Section 213.3315 Department of Labor*

DLGS60240 Legislative Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 03, 2005.
DLGS60146 Attorney Advisor to the Solicitor of Labor. Effective May 13, 2005.
DLGS60163 Chief of Staff to the Assistant Secretary for Occupational Safety and Health. Effective May 27, 2005.

*Section 213.3316 Department of Health and Human Services*

DHGS60020 Senior Advisor to the Assistant Secretary for Health. Effective May 10, 2005.

*Section 213.3317 Department of Education*

DBGS00390 Confidential Assistant to the Director, Scheduling and Advance Staff. Effective May 03, 2005.
DBGS00392 Special Assistant to the Secretary. Effective May 04, 2005.
DBGS00394 Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective May 09, 2005.
DBGS00396 Special Assistant to the Director, Faith-Based and Community Initiatives Center. Effective May 18, 2005.

*Section 213.3318 Environmental Protection Agency*

EPGS05019 Program Advisor (Media Relations) to the Associate Administrator for Public Affairs. Effective May 09, 2005.
EPGS05018 Deputy Associate Administrator for Office of Congressional Affairs to the Associate Administrator for Congressional and Intergovernmental Relations. Effective May 26, 2005.

*Section 213.3327 Department of Veterans Affairs*

DVGS60106 Special Assistant to the Assistant Secretary for Congressional and Legislative Affairs. Effective May 27, 2005.

*Section 213.3328 Broadcasting Board of Governors*

IBGS00020 Special Assistant to the Chairman, Broadcasting Board of Governors. Effective May 26, 2005.

*Section 213.3330 Securities and Exchange Commission*

SEOT60057 Legislative Affairs Specialist to the Director of Legislative Affairs. Effective May 31, 2005.

*Section 213.3331 Department of Energy*

DEGS00469 Trip Coordinator to the Director, Office of Scheduling. Effective May 9, 2005.
DEGS00465 Special Assistant to the Chief of Staff. Effective May 19, 2005.
DEGS00471 Special Assistant to the Director, Public Affairs. Effective May 26, 2005.
DEGS00460 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 31, 2005.

*Section 213.3332 Small Business Administration*

SBGS00587 Senior Advisor for Policy and Planning to the Associate Administrator for Policy. Effective May 17, 2005.

*Section 213.3337 General Services Administration*

GSGS00165 Special Assistant to the Chief Acquisition Officer. Effective May 09, 2005.

*Section 213.3348 National Aeronautics and Space Administration*

NNGS00157 Special Assistant (Correspondence) to the Administrator. Effective May 19, 2005.
NNGS00155 Executive Assistant to the Chief of Strategic Communications. Effective May 26, 2005.

*Section 213.3355 Social Security Administration*

SZGS00017 Associate Commissioner for External Affairs to the Deputy Commissioner for Communications. Effective May 26, 2005.

*Section 213.3376 Appalachian Regional Commission*

APGS00005 Policy Advisor to the Federal Co-Chairman. Effective May 03, 2005.

*Section 213.3384 Department of Housing and Urban Development*

DUGS60138 Special Assistant to the Assistant Secretary for Community Planning and Development. Effective May 27, 2005.

*Section 213.3394 Department of Transportation*

DTGS60377 Director of Congressional, International, and Public Affairs to the Deputy Administrator. Effective May 17, 2005.

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218

Office of Personnel Management.

**Dan G. Blair,**

*Acting Director.*

[FR Doc. 05–12218 Filed 6–20–05; 8:45 am]

**BILLING CODE 6325–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51837; File No. SR–NASD–2005–062]**

## Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto to Modify the Text of NASD Trade Reporting Rules to Reflect the Implementation of SR-NASD-2003-159

June 13, 2005.

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 May 12, 2005, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), 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 Nasdaq. On June 9, 2005, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] Nasdaq has designated this proposal as concerned solely with the administration of a self-regulatory organization, pursuant to Section 19(b)(3)(A)(iii) of the Act[4] and Rule 19b–4(f)(3) thereunder,[5] which renders the proposed rule change effective upon filing. 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

Nasdaq is modifying the text of trade reporting rules in order to reflect the implementation of provisions of SR–NASD–2003–159[6] that had a delayed implementation date.

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].[7]

4630. Reporting Transactions in Nasdaq National Market Securities

* * * * *

4632. Transaction Reporting

(a)–(b) No change.

(c) Information To Be Reported

Each last sale report shall contain the following information:

(1)–(4) No change.

(5) The time of execution *expressed in hours, minutes, and seconds based on Eastern Time, unless another provision of the Association's rules requires that a different time must be included on the report* [if the trade is reported more than 90 seconds after execution].

(6) For any transaction in an order for which a member has recording and reporting obligations under Rules 6954 and 6955, the trade report must include [:

(A) A] *a*n order identifier, meeting such parameters as may be prescribed by the Association, assigned to the order that uniquely identifies the order for the date it was received (see Rule 6954(b)(1)).

[(B) The time of the execution expressed in hours, minutes, and seconds. This information must be reported regardless of the period of time between execution of the trade and the report to the Nasdaq Market Center. All times reported to the Nasdaq Market Center shall be in Eastern Time.]

(d)–(g) No change.

* * * * *

[IM–4632–2. Delayed Effective Date of Obligation to Include Time of Execution on All Reports Submitted to the Nasdaq Market Center

On April 19, 2004, the Securities and Exchange Commission (''SEC'') approved a proposed rule change filed by the Association (SR–NASD–2003–159) requiring members to include the time of execution on all reports submitted to the Nasdaq Market Center reporting service (formerly known as the Automated Confirmation Transaction Service, or ''ACT''). In response to comments from the Association's Small Firm Advisory Board, Nasdaq agreed to delay the effective date of this requirement until one year after the date of SEC approval. Therefore, the effective date of this requirement is April 25, 2005.

Until April 25, 2005, members remain obligated to provide the time of execution only in those circumstances specifically articulated in the Association's rules. To prevent confusion, Nasdaq has not modified the Association's rules to reflect the obligation to provide the time of execution in all circumstances. These language modifications will be made at a time closer to the actual effective date of the obligation.]

4640. Reporting Transactions in Nasdaq SmallCapSM Market Securities

* * * * *

4642. Transaction Reporting

(a)–(b) No change.

(c) Information To Be Reported

Each last sale report shall contain the following information:

(1)–(4) No change.

(5) The time of execution *expressed in hours, minutes, and seconds based on Eastern Time, unless another provision of the Association's rules requires that a different time must be included on the report* [if the trade is reported more than 90 seconds after execution].

(6) For any transaction in an order for which a member has recording and reporting obligations under Rules 6954 and 6955, the trade report must include [:

(A) A] *a*n order identifier, meeting such parameters as may be prescribed by the Association, assigned to the order that uniquely identifies the order for the date it was received (see Rule 6954(b)(1)).

[(B) The time of execution expressed in hours, minutes, and seconds. This information must be reported regardless of the period of time between execution of the trade and the report to the Nasdaq Market Center. All times reported to the Nasdaq Market Center system shall be in Eastern Time.]

(d)–(g) No change.

[IM–4642. Delayed Effective Date of Obligation to Include Time of Execution on All Reports Submitted to the Nasdaq Market Center

On April 19, 2004, the Securities and Exchange Commission (''SEC'') approved a proposed rule change filed by the Association (SR–NASD–2003–159) requiring members to include the time of execution on all reports submitted to the Nasdaq Market Center reporting service (formerly known as the Automated Confirmation Transaction Service, or ''ACT''). In response to comments from the Association's Small Firm Advisory Board, Nasdaq agreed to delay the effective date of this requirement until one year after the date of SEC approval. Therefore, the effective

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 made minor technical changes to the proposed rule change. The effective date of the original proposed rule change is May 12, 2005, and the effective date of Amendment No. 1 is June 9, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on June 9, 2005, the date on which Nasdaq filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(3).

[6] *See* Securities Exchange Act Release Nos. 49404 (March 11, 2004), 69 FR 12727 (March 17, 2004) (SR–NASD–2003–159) (proposing release) and 49581 (April 19, 2004), 69 FR 22578 (April 26, 2004) (SR–NASD–2003–159) (approval order).

[7] Changes are marked to the rule text that appears in the electronic NASD Manual found at *http://www.nasd.com*.

date of this requirement is April 25, 2005.

Until April 25, 2005, members remain obligated to provide the time of execution only in those circumstances specifically articulated in the Association's rules. To prevent confusion, Nasdaq has not modified the Association's rules to reflect the obligation to provide the time of execution in all circumstances. These language modifications will be made at a time closer to the actual effective date of the obligation.]

* * * * *

4650. Reporting Transactions in Nasdaq Convertible Debt Securities

* * * * *

4652. Transaction Reporting

(a)–(b) No change.

(c) Information To Be Reported

Each last sale report shall contain the following information:

(1)–(4) No change.

(5) The time of execution *expressed in hours, minutes, and seconds based on Eastern Time, unless another provision of the Association's rules requires that a different time must be include on the report* [if the trade is reported more than 90 seconds after execution].

(6) For any transaction in an order for which a member has recording and reporting obligations under Rules 6954 and 6955, the trade report must include[:

(A) A] *a*n order identifier, meeting such parameters as may be prescribed by the Association, assigned to the order that uniquely identifies the order for the date it was received (see Rule 6954(b)(1)).

[(B) The time of the execution expressed in hours, minutes, and seconds. This information must be reported regardless of the period of time between execution of the trade and the report to the Nasdaq Market Center. All times reported to the Nasdaq Market Center system shall be in Eastern Time.]

(d)–(g) No change.

[IM–4652. Delayed Effective Date of Obligation to Include Time of Execution on All Reports Submitted to the Nasdaq Market Center

On April 19, 2004, the Securities and Exchange Commission (''SEC'') approved a proposed rule change filed by the Association (SR–NASD–2003–159) requiring members to include the time of execution on all reports submitted to the Nasdaq Market Center reporting service (formerly known as the Automated Confirmation Transaction Service, or ''ACT''). In response to comments from the Association's Small Firm Advisory Board, Nasdaq agreed to delay the effective date of this requirement until one year after the date of SEC approval. Therefore, the effective date of this requirement is April 25, 2005.

Until April 25, 2005, members remain obligated to provide the time of execution only in those circumstances specifically articulated in the Association's rules. To prevent confusion, Nasdaq has not modified the Association's rules to reflect the obligation to provide the time of execution in all circumstances. These language modifications will be made at a time closer to the actual effective date of the obligation.]

* * * * *

5400. Nasdaq Stock Market and Alternative Display Facility Trade Reporting

* * * * *

5430. Transaction Reporting

(a) When and How Transactions are Reported

(1)–(3) No change.

(4) Transaction Reporting to the Nasdaq Market Center Outside Normal Market Hours

(A) Last sale reports of transactions in designated securities executed between 8 a.m. and 9:30 a.m. Eastern Time shall be reported within 90 seconds after execution and shall be designated as ''.T'' trades to denote their execution outside normal market hours. Transactions not reported within 90 seconds shall *also* be designated as .T trades[, and include the time of execution]. Transactions not reported before 9:30 a.m. shall be reported after 4 p.m. and before 6:30 p.m. as .T trades[, and include the time of execution].[1]

(B) Last sale reports of transactions in designated securities executed between the hours of 4 p.m. and 6:30 p.m. Eastern Time shall be reported within 90 seconds after execution and be designated as ''.T'' trades to denote their execution outside normal market hours. Transactions not reported within 90 seconds shall *also* be designated as .T trades[, and include the time of execution]. Transactions not reported before 6:30 p.m. shall be reported on an ''as of'' basis the following day between 8 a.m. and 6 p.m.

(C) Last sale reports of transactions executed between midnight and 8 a.m. Eastern Time shall be reported between 8 a.m. and 9:30 a.m. Eastern Time on trade date as ''.T'' trades[, and include the time of execution]. Transactions not reported before 9:30 a.m. shall be reported after 4 p.m. and before 6:30 p.m. as .T trades[, and include the time of execution].[2]

(D) Last sale reports of transactions executed between 6:30 p.m. and midnight Eastern Time shall be reported on the next business day (T+1) between 8 a.m. and 6:30 p.m. Eastern Time and be designated ''as/of'' trades[and include the time of execution].

(5)–(6) No change.

(7) All members shall append the .W trade report modifier to transaction reports occurring at prices based on average-weighting, or other special pricing formulae. [Members reporting transactions to the Nasdaq Market Center with the .W modifier shall also include the time of execution on the transaction report.]

(8)–(12) No change.

(13) To identify pre-opening and after-hours trades reported late, Nasdaq will convert the .T modifier to .ST for any report submitted to the Nasdaq Market Center more than 90 seconds after execution.[3]

(b) No change.

[1 Until Nasdaq implements the use of the .ST modifier, which denotes the late reporting of a pre-opening or after-hours trade, members shall report on the following day on an ''as/of basis,'' and include the time of execution, last sale reports of transactions in designated securities executed between 8 a.m. and 9:30 a.m. Eastern Time that are not reported to the Nasdaq Market Center prior to 9:30 a.m. These reports shall include the time of execution.]

[2 Until Nasdaq implements the use of the .ST modifier, which denotes the late reporting of a pre-opening or after-hours trade, members shall report on the following day on an ''as/of basis'' last sale reports of transactions in designated securities executed between midnight and 8 a.m. Eastern Time that are not reported to the Nasdaq Market Center prior to 9:30 a.m. These reports shall include the time of execution.]

[3 Nasdaq expects to implement use of the .ST modifier for Nasdaq listed securities in the fourth quarter of 2004, and will issue a notice of the exact implementation date.]

* * * * *

6100. Trade Reporting Service

* * * * *

6130. Trade Report Input

(a)–(c) No change.

(d) Trade Information To Be Input

Each report to the Nasdaq Market Center shall contain the following information:

(1)–(3) No change.

(4) *The time of* [E]*execution expressed in hours, minutes, and seconds based*

*on Eastern Time, unless another provision of the Association's rules requires that a different time must be included on the report*[time for any transaction in Nasdaq or CQS securities not reported within 90 seconds of execution];

(5)–(12) No change.

(13) For any transaction in an order for which a member has recording and reporting obligations under Rules 6954 and 6955, the trade report must include[:

(A) A] *a*n order identifier, meeting such parameters as may be prescribed by the Association, assigned to the order that uniquely identifies the order for the date it was received (see Rule 6954(b)(1)).

[(B) The time of the execution expressed in hours, minutes, and seconds. This information must be reported regardless of the period of time between execution of the trade and the report to the Nasdaq Market Center. All times reported to the Nasdaq Market Center system shall be in Eastern Time.]

(e)–(f) No change.

* * * * *

6400. Reporting Transactions in Listed Securities

* * * * *

6420. Transaction Reporting

(a) When and How Transactions are Reported

(1)(A) Registered Reporting Members shall transmit to the Nasdaq Market Center, within 90 seconds after execution, last sale reports of transactions in eligible securities executed between 9:30 a.m. and 4 p.m. Eastern Time otherwise than on a national securities exchange. Transactions not reported within 90 seconds after execution shall be designated as late[, and such trade reports must include the time of execution].

(B) Registered Reporting Members shall transmit to the Nasdaq Market Center, within 90 seconds after execution, last sale reports of transactions in eligible securities executed in the United States otherwise than on a national securities exchange between 4 p.m. and 6:30 p.m. Eastern Time; trades executed and reported after 4 p.m. Eastern Time shall be designated as ''.T'' trades to denote their execution outside normal market hours. Transactions not reported within 90 seconds after execution must be designated as .T trades[, and include the time of execution on the trade report]. Transactions not reported by 6:30 p.m. shall be reported on an ''as of'' basis the following day between 8 a.m. and 6:30 p.m. Eastern Time.

(2)(A) Non-Registered Reporting Members shall, within 90 seconds after execution, transmit to the Nasdaq Market Center, or by telephone to the Nasdaq Market Center Operations Department if the Nasdaq Market Center reporting service is unavailable due to system or transmission failure, last sale reports of transactions in eligible securities executed between 9:30 a.m. and 4 p.m. Eastern Time otherwise than on a national securities exchange. Transactions not reported within 90 seconds after execution shall be designated as late[, and include the time of execution].

(B) Non-registered Reporting Members shall, within 90 seconds after execution, transmit to the Nasdaq Market Center, or by telephone to the Nasdaq Market Center Operations Department if the Nasdaq Market Center reporting service is unavailable due to system or transmission failure, last sale reports of transactions in eligible securities executed in the United States otherwise than on a national securities exchange between the hours of 4 p.m. and 6:30 p.m. Eastern Time; trades executed and reported after 4 p.m. Eastern Time shall be designated as ''.T'' trades to denote their execution outside normal market hours. Transactions not reported within 90 seconds after execution must be designated as .T trades[, and include the time of execution on the trade report]. Transactions not reported by 6:30 p.m. shall be reported on an ''as of'' basis the following day between 8 a.m. and 6:30 p.m.

(3)–(5) No change.

(6) All members shall report to Nasdaq using the .W modifier transactions at prices based on average-weighting or other special pricing formulae unrelated to the current or closing price of the security on the primary market. [Members shall also include the time of execution on the transaction report.]

(7) No change.

(8) All members shall append the .PRP trade report modifier to transaction reports that reflect a price different from the current market when the execution price is based on a prior reference point in time. The transaction report shall include the prior reference time in lieu of the actual time the trade was executed. The .PRP modifier shall not be appended to a report of a transaction whose price is based on a prior reference point in time if the trade is executed and reported within 90 seconds from the prior reference point in time.[1]

(9) No change.

(10) To identify pre-opening and after-hours trades reported late, Nasdaq shall convert the .T modifier to .ST for any report submitted to the Nasdaq Market Center more than 90 seconds after execution.[2]

(b) No change.

(c) Information To Be Reported

Each last sale report shall contain the following information:

(1)–(4) No change.

(5) The time of execution *expressed in hours, minutes, and seconds based upon Eastern Time, unless another provision of the Association's rules requires that a different time must be included on the report* [if the trade is reported more than 90 seconds after execution].

(d)–(f) No change.

[1] Implementation of the .PRP modifier for listed securities is delayed until *June 6, 2005*. [such time that the Consolidated Tape Association approves use of the modifier and makes the necessary system changes to accommodate the modifier.]

[2] Implementation of the .ST modifier for listed securities is delayed until such time that the Consolidated Tape Association approves use of the modifier and makes the necessary system changes to accommodate the modifier.]

* * * * *

[IM–6420–2. Delayed Effective Date of Obligation to Include Time of Execution on All Reports Submitted to the Nasdaq Market Center

On April 19, 2004, the Securities and Exchange Commission (''SEC'') approved a proposed rule change filed by the Association (SR–NASD–2003–159) requiring members to include the time of execution on all reports submitted to the Nasdaq Market Center reporting service (formerly known as the Automated Confirmation Transaction Service, or ''ACT''). In response to comments from the Association's Small Firm Advisory Board, Nasdaq agreed to delay the effective date of this requirement until one year after the date of SEC approval. Therefore, the effective date of this requirement is April 25, 2005.

Until April 5, 2005, members remain obligated to provide the time of execution only in those circumstances specifically articulated in the Association's rules. To prevent confusion, Nasdaq has not modified the Association's rules to reflect the obligation to provide the time of execution in all circumstances. These language modifications will be made at

a time closer to the actual effective date of the obligation.]

* * * * *

6600. Over-the-Counter Equity Securities

* * * * *

6620. Transaction Reporting

(a) When and How Transactions are Reported

(1) OTC Market Makers shall, within 90 seconds after execution, transmit to the Nasdaq Market Center last sale reports of transactions in OTC Equity Securities executed between the hours of 9:30 a.m. and 4 p.m. Eastern Time. Transactions not reported within 90 seconds after execution shall be designated as late[and include the time of execution].

(2) Non-Market Makers shall, within 90 seconds after execution, transmit to the Nasdaq Market Center, or by telephone to the Nasdaq Market Operations Department if the Nasdaq Market Center is unavailable due to system or transmission failure, last sale reports of transactions in OTC Equity Securities executed between the hours of 9:30 a.m. and 4 p.m. Transactions not reported within 90 seconds after execution shall be designated as late[ and include the time of execution].

(3) Transaction Reporting Outside Normal Market Hours

(A) Last sale reports of transactions in OTC Equity Securities executed between 8 a.m. and 9:30 a.m. Eastern Time shall be transmitted to the Nasdaq Market Center within 90 seconds after execution and shall be designated as ''.T'' trades to denote their execution outside normal market hours. Transactions not reported within 90 seconds must be designated as .T trades[, and include the time of execution]. Transactions not reported before 9:30 a.m. shall be reported after 4 p.m. and before 6:30 p.m. as .T trades[, and include the time of execution].[1]

(B) Last sale reports of transactions in OTC Equity Securities executed between the hours of 4 p.m. and 6:30 p.m. Eastern Time shall be transmitted to the Nasdaq Market Center within 90 seconds after execution; trades executed and reported after 4 p.m. Eastern Time shall be designated as ''.T'' to denote their execution outside normal market hours. Transactions not reported within 90 seconds must be designated as .T trades[ and include the time of execution on the trade report]. Transactions not reported before 6:30 p.m. shall be reported on an ''as of'' basis the following day between 8 a.m. and 6:30 p.m.

(C) Last sale reports of transactions in OTC Equity Securities executed outside the hours of 8 a.m. and 6:30 p.m. Eastern Time shall be reported as follows:

(i) Last sale reports of transactions in American Depositary Receipts (ADRs), Canadian issues, or domestic OTC Equity Securities that are executed between midnight and 8 a.m. Eastern Time shall be transmitted to the Nasdaq Market Center between 8 a.m. and 9:30 a.m. Eastern Time on trade date[,] *and* be designated as ''.T'' trades to denote their execution outside normal market hours[, and be accompanied by the time of execution]. Transactions not reported before 9:30 a.m. shall be reported after 4 p.m. and before 6:30 p.m. as .T trades[, and include the time of execution].[2] The party responsible for reporting on trade date, the trade details to be reported, and the applicable procedures shall be governed, respectively, by paragraphs (b), (c), and (d) below;

(ii) Last sale reports of transactions in ADRs, Canadian issues, or domestic OTC Equity Securities that are executed between 6:30 p.m. and midnight Eastern Time shall be transmitted to the Nasdaq Market Center on the next business day (T+1) between 8 a.m. and 6:30 p.m. Eastern Time[,] *and* be designated ''as/of'' trades to denote their execution on a prior day[, and be accompanied by the time of execution]. The party responsible for reporting on T+1, the trade details to be reported, and the applicable procedures shall be governed, respectively, by paragraphs (b), (c), and (d) below; and

(iii) Last sale reports of transactions in foreign securities (excluding ADRs and Canadian issues) shall be transmitted to the Nasdaq Market Center on T+1 regardless of time of execution.[3] / Such reports shall be made between 8 a.m. and 1:30 p.m. Eastern Time in the same manner as described in subparagraph (3)([B]*C*)(ii) above.

(4)–(7) No change.

(8) All members shall append the .W trade report modifier to reports of Stop Stock Transactions, as such term is defined in Rule 6610, and include the time at which the member and the other party agreed to the Stop Stock Price, as such term is defined in Rule 6610, in lieu of including the time of execution on the trade report. The .W modifier shall not be appended to a report of a Stop Stock Transaction if the Stop Stock Transaction is executed and reported within 90 seconds of the time the member and the other party agree to the Stop Price.[4]2

(9) To identify late pre-opening and after-hours trades reported late, Nasdaq will convert the .T modifier to .ST for any report submitted to ACT more than 90 seconds after execution.[5]

(b) No change.

(c) Information To Be Reported

Each last sale report shall contain the following information:

(1)–(4) No change.

*(5) The time of execution expressed in hours, minutes, and seconds based on Eastern Time, unless another provision of the Association's rules requires that a different time must be included on the report.*

(d)–(f) No change.

[1 Until Nasdaq implements the use of the .ST modifier, which denotes the late reporting of a pre-opening or after-hours trade, members shall report on the following day on an ''as/of basis'' last sale reports of transactions in designated securities executed between 8 a.m. and 9:30 a.m. Eastern Time that are not reported to the Nasdaq Market Center prior to 9:30 a.m. These reports shall include the time of execution.]

[2 Until Nasdaq implements the use of the .ST modifier, which denotes the late reporting of a pre-opening or after-hours trade, members shall report on the following day on an ''as/of basis'' last sale reports of transactions in designated securities executed between midnight and 8 a.m. Eastern Time that are not reported to the Nasdaq Market Center prior to 9:30 a.m. These reports shall include the time of execution.]

[3]/ Member firms that have the operational capability to report transactions in foreign securities (excluding ADRs and Canadian issues) within 90 seconds of execution, between the hours of 8 a.m. and 5:15 p.m. Eastern time, may do so at their option. If a firm chooses this option, it need not report the same transaction(s) on T+1 as prescribed by subparagraph *(3)(C)*(ii)[(c)].

[4]2 Use of the .W modifier for Stop Stock Transactions for OTC Equity Securities is delayed until the necessary system changes can be made to accommodate the modifier. Nasdaq [expects these system changes to be completed in the fourth quarter of 2004, and] will issue a notice of the exact implementation date.

[5 Nasdaq expects to implement use of the .ST modifier for Nasdaq listed securities in the fourth quarter of 2004, and will issue a notice of the exact implementation date.] [IM–6620. Delayed Effective Date of Obligation to Include Time of Execution on All Reports Submitted to the Nasdaq Market Center

On April 19, 2004, the Securities and Exchange Commission (''SEC'') approved a proposed rule change filed by the Association (SR–NASD–2003–159) requiring members to include the time of execution on all reports

submitted to the Nasdaq Market Center reporting service (formerly known as the Automated Confirmation Transaction Service, or ''ACT''). In response to comments from the Association's Small Firm Advisory Board, Nasdaq agreed to delay the effective date of this requirement until one year after the date of SEC approval. Therefore, the effective date of this requirement is April 25, 2005.

Until April 25, 2005, members remain obligated to provide the time of execution only in those circumstances specifically articulated in the Association's rules. To prevent confusion, Nasdaq has not modified the Association's rules to reflect the obligation to provide the time of execution in all circumstances. These language modifications will be made at a time closer to the actual effective date of the obligation.]

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

In April 2004, the Commission approved a proposed rule change that contained numerous modifications to the trade reporting rules for the Nasdaq Market Center.[8] The original version of SR–NASD–2003–159 contained rule language that would have immediately required firms to include the time of execution on all trade reports submitted to Nasdaq, rather than in the handful of special circumstances previously required by the rules. In response to comments from the NASD's Small Firm Advisory Board, however, Nasdaq amended the filing to delay implementation of this generalized requirement until April 25, 2005. Accordingly, the amended filing approved by the Commission contained Interpretive Material appended to each trade reporting rule that informed firms of the delayed effective date and stated Nasdaq's intention to avoid confusion by maintaining the trade reporting rule language regarding time of execution in its current state until the time of implementation, at which point Nasdaq would submit an additional implementing filing.

In accordance with the full implementation of the reporting obligation approved by the Commission in SR–NASD–2003–159, Nasdaq now proposes to remove the Interpretive Material and to replace rule language reflecting an obligation to report time of execution in specified circumstances with clear language reflecting an obligation to do so in all circumstances.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[9] in general, and with Section 15A(b)(6) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaging in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to protect investors and the public interest. Nasdaq believes the proposed rule change will improve the regulation of the Nasdaq market by increasing the information made available to NASD's automated surveillance systems.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq 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, as amended.

### *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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and subparagraph (f)(3) of Rule 19b–4 thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, 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–NASD–2005–062 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303. All submissions should refer to File Number SR–NASD–2005–062. 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 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

[8] *See* Securities Exchange Act Release Nos. 49404 (March 11, 2004), 69 FR 12727 (March 17, 2004) (SR–NASD–2003–159) (proposing release) and 49581 (April 19, 2004), 69 FR 22578 (April 26, 2004) (SR–NASD–2003–159) (approval order).

[9] 15 U.S.C. 78*o*–3.

[10] 15 U.S.C. 78*o*–3(b)(6).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(3).

Number SR–NASD–2005–062 and should be submitted on or before July 12, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–3192 Filed 6–20–05; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51851; File No. SR–NASD–2005–060]**

## Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change to Create the ModelView Entitlement

June 14, 2005.

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 May 10, 2005, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), 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 Nasdaq. 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

Nasdaq proposes to modify NASD Rule 7010(q) to establish the ModelView entitlement, an historical data product containing delayed, aggregated information about displayed and reserve-size orders in Nasdaq securities. The text of the proposed rule change is below. Proposed new language is *italicized*.[3]

* * * * *

7010. System Services

(a)–(p) No change

(q) Nasdaq TotalView

(1)–(4) No change

*(5) Historical TotalView Information—ModelView*

Nasdaq will make historical TotalView information, under the ModelView entitlement package, available via NasdaqTrader.com. ModelView shall contain historical TotalView information regarding aggregate displayed and reserve liquidity at each price level in the Nasdaq Market Center. ModelView shall be available for a subscription fee of $2,000 per month.

(r)–(v) No Change.

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Nasdaq is proposing to create ModelView, an historical data product designed to provide more comprehensive historical information regarding the data disseminated via the Nasdaq TotalView data. ModelView is designed to facilitate more efficient trading activity in the Nasdaq Market Center in an environment where trading and order-routing become increasingly automated, and broker-dealers, institutional traders and technology providers are constantly seeking to improve the quality of information upon which trading and order-routing decisions are made. Firms are frequently turning to algorithms and other computer-based means by which to execute proprietary trading strategies and process customer order flow. As a result, the information used to create these automated trading models determines trading efficacy. Incremental data that could improve the execution quality of these models is considered valuable.

To respond to this demand, Nasdaq proposes to establish ModelView, a new near-historical product derived from TotalView data, that Nasdaq believes would provide greater insight than ever before into the liquidity typically available in the Nasdaq Market Center. Specifically, ModelView would provide the aggregate amount of both displayed and reserve size liquidity in the Nasdaq Market Center at each price level. With this information, Nasdaq believes developers of automated trading and order-routing models will improve their Nasdaq trading efficiency, and the providers of liquidity to the Nasdaq Market Center should find greater fill rates and execution quality.

Nasdaq has designed ModelView to protect the anonymity of the trading strategies of Nasdaq Market Center participants while improving the execution quality of their orders. ModelView will be a near-historical product only. No information will be available regarding Nasdaq Market Center liquidity until T+10 (*e.g.*, information about a day's liquidity will not be available until ten business days later). In addition, by providing aggregate liquidity information ModelView will not contain explicit or implicit information regarding the identity of market participants trading in Nasdaq at the relevant time. With the integration of Brut facility liquidity into the Nasdaq Market Center, there is significant non-attributed liquidity in the Nasdaq Market Center; thus, Nasdaq believes ModelView will preserve the anonymity of information presented in aggregate form.

Nasdaq will offer ModelView on a subscription basis via secure File Transfer Protocol over NasdaqTrader.com. ModelView will be available for $2,000 without any limitation on distribution of the data either internally or externally. This pricing is consistent with the general pricing structure of Nasdaq's proposed Distributor Fee.[4]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[5] in general, and with Section 15A(B)(5) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable charges among the persons distributing and purchasing this information. Nasdaq believes that this proposed rule change will encourage the broader redistribution of the Nasdaq Market Center depth of book order information, thus improving transparency and thereby benefiting the investing public.

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed changes are marked from NASD Rule 7010 as it appears in the NASD Manual available at *http://www.nasd.com*.

[4] *See* Securities Exchange Act Release No. 51598 (April 21, 2005), 70 FR 22162 (April 28, 2005) (Notice of Filing of SR–NASD–2004–185).

[5] 15 U.S.C. 78*o*–3.

[6] 15 U.S.C. 78*o*–3(b)(5).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq 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, as amended.

*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 Number SR–NASD–2005–060 on the subject line.

*Paper Comments*

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–060. 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 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–2005–060 and should be submitted on or before July 12, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–3193 Filed 6–20–05; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51836; File No. SR–NASD–2005–059]**

## Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Amend NASD Rule 7090 To Modify the Annual Listing and Administrative Fees

June 13, 2005.

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 May 10, 2005, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), 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 Nasdaq. On June 8, 2005, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] 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**

Nasdaq proposes to change the annual listing fees for mutual funds, money market funds, and unit investment trusts on the News Media List and Supplemental List of the Mutual Fund Quotation Service (''MFQS'').

Should the Commission approve the proposed rule change, Nasdaq plans to implement the increased annual fees on July 1, 2005 on a prorated basis for new fund listings (including funds moving from the Supplemental List to the News Media List). Should the Commission approve this proposed rule change after July 1, 2005, Nasdaq will implement the new annual listing fees for the MFQS system on a prorated basis as soon as practicable following Commission approval. For existing listings, the new annual fee shall become effective on January 1, 2006 during the 2006 annual maintenance process (or as soon as practicable thereafter, on a prorated basis, should the Commission approve the proposed rule change after January 1, 2006). For new and existing listings, the proposed new administrative fee shall become effective on July 1, 2005, or as soon as practicable if approved by the Commission thereafter.

The proposed rule change also corrects typographical errors and modifies the administrative fee for requests to change the name and/or symbol of a fund or trust.

The text of the proposed rule change is set forth below. Proposed new language is *italicized;* proposed deletions are in [brackets].

* * * * *

**7090. Mutual Fund Quotation Service**

(a) Funds and Unit Investment Trusts included in the Mutual Fund Quotation Service (''MFQS'') shall be assessed an annual fee of $[400]*475* per fund or trust authorized for the News Media Lists and $[275]*350* per fund or trust authorized for the Supplemental List. Funds authorized during the course of an annual billing period shall receive a proration of these fees but no credit or refund shall accrue to funds or trust terminated during an annual billing period. In addition, there shall be a one-time application processing fee of $325 for each new fund or trust authorized.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Nasdaq clarified that the proposed fee change for the News Media List also applies to unit investment trusts and made several non-substantive clarifications to the proposal.

(b) If a Unit Investment Trust expires by its own terms during an annual billing period and is replaced within three months by a trust that is materially similar in investment objective, the replacing trust shall be charged a one-time application fee of $150. In addition, the replacing trust shall not be charged an annual fee if the expiring trust has already paid an annual fee for that annual billing period.

(c) Funds included in [the]MFQS and pricing agents designated by such funds (''Subscriber''), shall be assessed a monthly fee of $100 *f*or each logon identification obtained by the Subscriber. A Subscriber may use a logon identification to transmit to Nasdaq pricing and other information that the Subscriber agrees to provide to Nasdaq.

(d) Funds included in [the]MFQS shall be assessed a $2[0]*5* administrative fee to process a request to amend the name and/or the symbol of a fund *or trust.*

(e) Distributors receiving MFQS shall pay a monthly fee of $1,000. For the purposes of this subsection only, the term ''distributor'' shall refer to any firm that receives the MFQS data feed and distributes it to third parties. All such firms must execute a Nasdaq Distributor Agreement.

* * * * *

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Nasdaq proposes to amend NASD Rule 7090 to change the annual listing fees and the administrative fee for MFQS. MFQS was created to collect and disseminate data pertaining to the value of open-end and closed-end mutual funds, money market funds, and unit investment trusts. Currently, MFQS disseminates valuation data for over 20,000 funds. Funds and trusts must meet minimum eligibility criteria in order to be included in the MFQS service. MFQS has two ''lists'' in which a fund or trust may be included: (1) The News Media List, and (2) the Supplemental List. The listing requirements for the News Media List are different than the listing requirements for the Supplemental List. If a fund or trust is listed on the News Media List, pricing information about the fund or trust is eligible for inclusion in the fund/trust tables of newspapers and is also eligible for dissemination over Nasdaq's Mutual Fund Dissemination Service (''MFDS'') data feed, which is distributed to market data vendors. If the fund or trust is listed on the Supplemental List, the pricing information about the fund or trust generally is not included in newspaper fund/trust tables, but is disseminated over Nasdaq's MFDS data feed. The Supplemental List, therefore, provides significant visibility for funds or trusts that do not otherwise qualify for inclusion on the News Media List.

The current annual listing fee is $400 for the News Media List and $275 for the Supplemental List. These annual listing fees were last increased in 2000, more than five years ago.[4] In order to provide the investment community with reliable and accurate information related to MFQS listings, Nasdaq has dedicated significant resources to the data processing, data display and administrative tasks performed for MFQS listings. In addition to the resources needed to operate and maintain the MFQS system, Nasdaq has also invested additional resources and funds for two significant improvements to the MFQS system that will be implemented in 2005 and 2006.

First, Nasdaq plans to add new functionality to the MFQS Web site that will allow MFQS participants to download fund and trust pricing information directly from the MFQS Web site. Currently, the MFQS Web site only displays fund and trust pricing information. With the new download functionality, MFQS participants will be able to track their daily updates to funds and trusts electronically on their personal computers, and thus become more efficient in their distribution of accurate pricing for their respective funds. Nasdaq plans to implement the new download functionality in August 2005. Second, Nasdaq plans to offer new functionality for MFQS participants that will significantly reduce the time and resources needed for fund families or their designated agents to validate the assets and shareholder accounts for funds and trusts during the annual maintenance process for continued listing on MFQS. The current validation process for the assets and shareholder accounts for each fund and trust is performed manually. The new functionality will allow Nasdaq to collect this data and the funds will only have to affirm it on an as needed basis. Nasdaq is currently working to offer this new functionality and plans to implement it in January 2006.

To reflect the increased costs associated with the development, implementation, and testing of the new functionalities, Nasdaq proposes to increase the annual listing fee for mutual funds, money market funds, and unit investment trusts on the News Media List from $400 per fund or trust per year to $475 per fund or trust per year. Nasdaq proposes to increase the annual listing fee for mutual funds, money market funds, and unit investment trusts on the Supplemental List of the MFQS system from $275 per fund per year to $350 per fund or trust per year.

Nasdaq also proposes to increase the administrative fee for processing requests to change the name and/or symbol of a fund or trust that is currently listed on MFQS from $20 to $25. The current $20 fee was introduced in October 2002 to compensate Nasdaq for the personnel and system costs associated with making over 2,000 name and symbol changes for listed funds and trusts.[5] Since 2002, the personnel and system costs associated with making these changes have increased because of overall increases in labor costs. Accordingly, Nasdaq believes that an increase of $5 is reasonable to compensate Nasdaq for the increased costs. The proposed rule change also corrects minor typographical errors in the rule text and clarifies that the administrative fee applies to both funds and trusts.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[6] in general, and with Section 15A(b)(5) of the Act,[7] in particular, which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the

[4] *See* Securities Exchange Act Release No. 42537 (March 16, 2000), 65 FR 15678 (March 23, 2000) (SR–NASD–99–77).

[5] *See* Securities Exchange Act Release No. 46549 (September 25, 2002), 67 FR 61705 (October 1, 2002) (SR–NASD–2002–101).

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(5).

NASD operates or controls. Nasdaq believes that the proposed increase in the annual listing fees and the administrative fee is a fair means of recovering the costs associated with the maintenance and operation of MFQS and the development costs associated with the planned enhancements to the MFQS system. Nasdaq also believes that the proposal is consistent with Section 15A(b)(5) because the fee changes will be imposed only on those funds that benefit from the operation of the MFQS system.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq 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, as amended.

*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, 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–NASD–2005–059 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–059. 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 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–2005–059 and should be submitted on or before July 12, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–3196 Filed 6–20–05; 8:45 am]

**BILLING CODE 8010–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51826; File No. SR–OCC–2004–17]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Calculating Net Capital Under OCC Rule 307

June 13, 2005.

**I.Introduction**

On September 27, 2004, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–OCC–2004–17 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on April 18, 2005.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

**II. Description**

The proposed rule change amends OCC Rule 307 by adopting Interpretation and Policy .01 (''IP .01'') thereunder that would require clearing members that could otherwise take advantage of Commission Rule 15c3–1(a)(6) under the Act to include the risk-based haircuts associated with proprietary securities positions in determining their compliance with OCC's minimum net capital requirements.

OCC Rule 307 requires a clearing member to compute its ''net capital,'' ''aggregate indebtedness,'' and ''debt-equity total'' in accordance with Commission Rule 15c3–1 under the Act for purposes of OCC Rules.[3] New IP .01 under OCC Rule 307 will require clearing members that could otherwise take advantage of Commission Rule 15c3–1(a)(6) to deduct the risk-based haircuts associated with proprietary securities positions in determining their compliance with OCC's minimum net capital requirements.[4] Although the exemption in Rule 15c3–1(a)(6) from the securities haircuts in Rule 15c3–1(c)(2)(vi) and Appendix A under Rule 15c3–1 ensures from a systemic standpoint that capital exists to support open positions, it does not ensure that capital is maintained in the entity to which OCC has credit exposure. As a result, OCC is exposed to the volatility of the positions relative to the clearing

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 51521, (April 11, 2005), 70 FR 20198.

[3] OCC Rule 307 provides that a clearing member that is registered as a futures commission merchant and is not otherwise required to calculate net capital in accordance with Rule 15c3–1 may instead calculate net capital as required under the rules of the Commodity Futures Trading Commission.

[4] Rule 15c3–1 requires that every broker or dealer maintain net capital no less than the minimum net capital as set forth by the rule. Paragraph (c) of the rule defines net capital as the net worth of a broker or dealer, adjusted by among other things, securities haircuts that are set forth in paragraph (c)(vi) and appendix A of the rule. Paragraph (a)(6) allows market makers, specialists, and certain other dealers to elect to apply paragraph (a)(6)(iii) in lieu of paragraph (c)(vi) or Appendix A under Rule 15c3–1. In general, paragraph (a)(6)(iii) requires that a dealer maintain a liquidating equity with respect to securities positions in his market maker or specialist account at least equal to 25 percent of the market value of the long positions and 30 percent of the market value of the short positions.

member's net income without any reserve against net capital. OCC believes that the exemption in Rule 15c3–1(a)(6) gives those clearing members added leverage enabling them to expand positions to several times their net capital.

In order to provide an adjustment period for those clearing members that may be affected by IP .01, IP .01 will not take effect until July 27, 2005, for firms that are clearing members at the time when it becomes effective.

### III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.[5] The proposed rule change imposes a more stringent net capital requirement than is currently in OCC's rules for the purpose of assuring that OCC has collected sufficient capital from its members in relation to such members' clearance and settlement activity. The Commission is satisfied with OCC's explanation that for purposes of OCC's minimum net capital requirement those members that qualify for the exemption in Rule 15c3–1(a)(6) should be required to deduct the risk based haircuts in Rule 15c3–1(c)(2)(vi) and Appendix A under Rule 15c3–1. This more conservative approach to minimum net capital requirements should better enable OCC to protect itself and its members from the potential losses associated with insolvency situations. Accordingly, the Commission finds that the proposed rule change is designed to assure the safeguarding of securities and funds which are in OCC's custody or control or for which OCC is responsible.

### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2004–17) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–3195 Filed 6–20–05; 8:45 am]

**BILLING CODE 8010–01–P**

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51816; File No. SR–Phlx–2005–23]**

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Retroactive Amendment of Exchange Rule 640(a) Pertaining to the Continuing Education Regulatory Element Requirement

June 9, 2005.

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 April 15, 2005 the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by Phlx. On May 10, 2005, the Exchange filed Amendment No. 1 to the proposed rule change to make the effective date of the proposed rule change April 4, 2005. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended from interested persons, and is approving the proposed rule change, as amended, on an accelerated basis.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Phlx Rule 640(a) to eliminate all exemptions from the requirement to complete the Regulatory Element of the Continuing Education Program. Below is the text of the proposed rule change. Proposed new language is in *italics.* Proposed deletions are in [brackets].

**Continuing Education for Registered Persons**

Rule 640. (a) Regulatory Element [—]

*(1) Requirements*—No member or participant organization shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the continuing education requirements of paragraph (a) of this Rule.

Each registered person shall complete the Regulatory Element of the continuing education program on the occurrence of their second registration anniversary date(s), and every three years thereafter or as otherwise prescribed by the Exchange. On each occasion[s], the Regulatory Element must be completed within 120 days after the person's registration anniversary date. A person's initial registration date, *also known as the ''base date,''* shall establish the cycle of anniversary dates for purposes of this Rule. The content of the Regulatory Element of the program shall be determined by the Exchange for each registration category of persons subject to the rule.

[(1) Persons who have been continuously registered for more than ten years as of the effective date of this Rule are exempt from the requirements of this rule relative to participation in the Regulatory Element of the continuing education program, provided such persons have not been subject to any disciplinary action within the last ten years as enumerated in subparagraph (a)(3)(i) and (ii) of this Rule. However, persons delegated supervisory responsibility or authority pursuant to PHLX Rule 748 and registered in such supervisory capacity are exempt from participation in the Regulatory Element under this provision only if they have been continuously registered in a supervisory capacity for more than ten years as of the effective date of this rule and provided such supervisory person has not been subject to any disciplinary action under paragraphs (a)(3)(i) and (ii) of this Rule.]

[In the event that a registered person who is exempt from participation in the Regulatory Element subsequently becomes the subject of a disciplinary action as enumerated in subsection (a)(3)(i) and (ii), such person shall be required to satisfy the requirements of the Regulatory Element as if the date the disciplinary action becomes final is the person's initial registration anniversary date.]

(2) No change.

(3) *Disciplinary Actions* [Re-entry into program]—Unless otherwise determined by the Exchange, a registered person will be required to *re-take* [re-enter] the Regulatory Element of the program and satisfy the program's requirements in their entirety in the event such person:

(i) Becomes subject to any statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934;

(ii) Becomes subject to suspension or to the imposition of a fine of $5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or

(iii) Is ordered as a sanction in a disciplinary action to *re-take* [re-enter] the *Regulatory Element* [continuing education program] by any securities governmental agency or securities self-regulatory organization.

*The retaking of the Regulatory Element* [Re-entry] shall commence with [initial] participation within 120 days of the registered person becoming subject to the statutory disqualification, in the case of (i) above, or the disciplinary action becoming final, in the case of (ii) or (iii) above. The date that the disciplinary action becomes final will be deemed the person's *new base* date [of initial registration anniversary date] for purposes of this Rule.

(4) No change.

(b) No change.

Commentary

.01 No change.

.02 No change.

.03 Any registered person who has terminated association with a registered broker or dealer and who has, within two years of the date of termination, become reassociated in a registered capacity with a registered broker or dealer shall participate in the Regulatory Element at such intervals that may apply (second registration anniversary and every three years thereafter) based on the initial registration *also known as the ''base date'',* anniversary date, rather than based on the date of reassociation in a registered capacity.

Any former registered person who becomes reassociated in a registered capacity with a registered broker or dealer more than two years after termination as such will be required to satisfy the program's requirements in their entirety, (second registration anniversary and every three years thereafter) based on the most recent registration date.

.04 No change.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of, and basis for the proposed rule change, as amended and discussed any comments it had received on the proposed rule change as amended. The text of these statements may be examined at the places specified in Item III below. Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Phlx represents that the purpose of the proposed rule change is to eliminate all exemptions from the Continuing Education Regulatory Element Program for registered representatives and, as such, to make Phlx Rule 640(a) consistent with applicable rules of other self-regulatory organizations (''SROs'').[3]

Currently, Phlx Rule 640(a) sets forth the rules governing the requirements for registered representatives to participate in the Continuing Education Regulatory Element Program (the ''Regulatory Element'').[4] The Regulatory Element is a computer-based education program administered by the National Association of Securities Dealers (''NASD'') to help ensure that registered persons are kept up-to-date on regulatory, compliance, and sales practice matters in the industry.[5] Unless exempt, each registered person is required to complete the Regulatory Element initially within 120 days after the person's second registration anniversary date and, thereafter, within 120 days after every third registration anniversary date.[6] There are three Regulatory Element programs: the S201 Supervisor Program for registered principals and supervisors, the S106 Series 6 Program for Series 6 representatives, and the S101 General Program for Series 7 and all other registrations.

According to the NASD, approximately 135,000 registered persons are exempt from the Regulatory Element. These include registered persons who, when the Continuing Education Program was adopted in 1995, had been registered for at least ten years and who did not have a significant disciplinary action[7] in their CRD record for the previous ten years (so-called ''grandfathered'' persons). These also include those persons who had ''graduated'' from the Regulatory Element by satisfying their tenth anniversary requirement before July 1998, when Phlx Rule 640 was amended and the graduation provision eliminated, and who did not have a significant disciplinary action in their CRD record for the previous ten years.[8]

At its December 2003 meeting, the Securities Industry/Regulatory Council on Continuing Education (''Council'')[9] discussed the current exemptions from the Regulatory Element and agreed unanimously to recommend that the SROs repeal the exemptions and require all registered persons to participate in the Regulatory Element. In reaching this conclusion, the Council was of the view that there is great value in exposing all industry participants to the benefits of the Regulatory Element, in part because of the significant regulatory issues that

[3] *See* Securities Exchange Act Release Nos. 50404 (September 16, 2004), 69 FR 57126 (September 23, 2004); 50456 (September 27, 2004), 69 FR 59285 (October 4, 2004); 50557 (October 18 2004), 69 FR 62311 (October 25, 2004); and 50651 (November 10, 2004) 69 FR 67374 (November 17, 2004).

[4] The Continuing Education Program also has a ''Firm Element.'' *See* Phlx Rule 640(b). The Firm Element of the Continuing Education Program applies to any person registered with an NASD member firm who has direct contact with customers in the conduct of the member's securities sales, trading and investment banking activities, any person registered as a research analyst pursuant to NASD Rule 1050, and to the immediate supervisors of such persons (collectively called ''covered registered persons''). The requirement stipulates that each member firm must maintain a continuing and current education program for its covered registered persons to enhance their securities knowledge, skill and professionalism. Each firm has the requirement to annually conduct a training needs analysis, develop a written training plan, and implement the plan.

[5] Phlx Rule 640(a)(4) permits a member firm to deliver the Regulatory Element to registered persons on firm premises (''In-Firm Delivery'') as an alternative to having persons take the training at a designated center provided that firms comply with specific requirements relating to supervision, delivery site(s), technology, administration, and proctoring. In addition, Phlx Rule 640(a)(4)(E)(iii) requires that persons serving as proctors for the purposes of In-Firm Delivery must be registered.

[6] This is the current Regulatory Element schedule, as amended in 1998.

[7] For purposes of Phlx Rule 640(a), a significant disciplinary action generally means a statutory disqualification, a suspension or imposition of a fine of $5,000 or more, or being subject to an order from a securities regulator to re-take the Regulatory Element. *See* Phlx Rule 640(a)(3).

[8] When Phlx Rule 640 was first adopted in 1995, the Regulatory Element required registered persons to satisfy the Regulatory Element on the second, fifth, and tenth anniversary of their initial securities registration. After satisfying the tenth anniversary requirement, a person was ''graduated'' from the Regulatory Element. A graduated principal re-entered the Regulatory Element if he or she incurred a significant disciplinary action. A graduated person who was not a principal re-entered if he or she acquired a principal registration or incurred a significant disciplinary action.

[9] As of the date of this filing, the Council consists of 17 individuals, six representing SROs, and 11 representing the industry. The Council was organized in 1995 to facilitate cooperative industry/regulatory coordination of the Continuing Education Program in keeping with applicable industry regulations and changing industry needs. Its roles include recommending and helping to develop specific content and questions for the Regulatory Element, defining minimum core curricula for the Firm Element, developing and updating information about the program for industry-wide dissemination, and maintaining the program on a revenue-neutral basis while assuring adequate financial reserves.

have emerged over the past few years. The Regulatory Element programs include teaching and training content that is continuously updated to address current regulatory concerns as well as new products and trading strategies. Exempt persons currently do not have the benefit of this material.

In addition, the Council introduced a new content module to the Regulatory Element programs that specifically addresses ethics and requires participants to recognize ethical issues in given situations. Participants are required to make decisions in the context of, for example, peer pressure, the temptation to rationalize, or a lack of clear-cut guidance from existing rules or regulations. The Council strongly believes that all registered persons, regardless of their years of experience in the industry, should have the benefit of this training.

Consistent with the Council's recommendation, the proposed rule change to Phlx Rule 640(a) would eliminate the current Regulatory Element exemptions. The other SRO members of the Council also supported eliminating the exemptions and are pursuing amendments to their respective rules.

Phlx will announce the April 4, 2005 effective date of the proposed rule change in a notice to membership to be published upon approval of the proposed rule change by the Commission.[10] Following approval of the proposed rule change, implementation will be based on the application of the existing requirements of the Regulatory Element (Phlx Rule 640(a)(1)) to all registered persons. The way in which CRD applies these requirements is as follows. CRD establishes a ''base date'' for each registered person and calculates anniversaries from that date. Usually, the base date is the person's initial securities registration. However, the base date may be revised to be the effective date of a significant disciplinary action in accordance with Phlx Rule 640(a)(3) or the date on which a formerly registered person re-qualifies for association with an NASD member by qualification exam. Using the base date, CRD creates a Regulatory Element requirement on the second anniversary of the base date and then every three years thereafter. Beginning on or after the effective date of the proposed rule change, registered persons formerly exempt from the Regulatory Element requirement must satisfy such requirement on the occurrence of a Regulatory Element base date anniversary (*i.e.,* the second anniversary of the base date and every three years thereafter). (*see* examples in the Table below)

| Registered person | Initial registration date | First regulatory element requirement of a registered person formerly exempt from the regulatory element (assuming an effective date of April 4, 2005) |
|---|---|---|
| A | [11] 4/4/85 | 4/4/05 |
| B | 7/1/83 | 7/1/06 |
| C | 8/1/84 | 8/1/07 |
| D | 4/3/85 | 4/3/08 |

In addition, the proposed rule amendment would replace references in Phlx Rule 640(a)(3) to ''re-entry'' in the Regulatory Element with a requirement to ''re-take'' the Regulatory Element to clarify that the significant disciplinary action provisions apply to all registered persons and not only to currently exempt persons. A person's base date may also be revised to be the date on which a formerly registered person re-qualifies for association with a member or member firm.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the provisions of Section 6(c) of the Act,[12] in general and furthers the objectives of Section 6(c)(3)(B) of the Act,[13] in particular, since under that section, it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations.

Additionally, under Section 6(c)(3)(B) of the Act,[14] the Exchange may bar a natural person from becoming a member or person associated with a member, if such natural person does not meet such standards of training, experience and competence as are prescribed by the rules of the Exchange. Pursuant to this statutory obligation, the Exchange is rescinding all currently effective exemptions from required participation in the Regulatory Element programs, as prescribed by Phlx Rule 640(a).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Phlx believes that the proposed rule change, as amended, 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*

Written comments were neither solicited nor received.

**III. 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–Phlx–2005–23 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR-Phlx-2005-23. 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 offices of Phlx. All comments received will be posted

[10] Telephone conversation between Edith H. Hallahan, Senior Vice President and Deputy General Counsel and Mia C. Zur, Attorney, Division of Market Regulation, Commission (June 7, 2005).

[11] A registered person with an initial registration date of April 4, 1985 will have a Regulatory Element anniversary date on April 4 of 1987, 1990, 1993, 1996, 1999, 2002 and 2005.

[12] 15 U.S.C. 78f(c).

[13] 15 U.S.C. 78f(c)(3)(B).

[14] *Id.*

without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2005–23 and should be submitted on or before July 12, 2005.

## IV. Commission's Finding and Order Granting Accelerated Approval of Proposed Rule Change

The Commission find good cause pursuant to Section 19(b)(2) of the Act [15] for approving the proposed rule change and Amendment No. 1 prior to the thirtieth day after publication in the **Federal Register**. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to Phlx and, in particular, the requirements of Section 6(c)(3)(B) and the rules and regulations thereunder.[16] After review the Commission finds that the proposed rule change is consistent with the requirements of Section 6(c)(3)(B) of the Act[17] because under this section the Exchange must prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations.[18] Specifically, the Commission believes that the proposed rule change should help to ensure that all registered persons are kept up-to-date on regulatory, compliance, and sales practice-related industry issues. The Commission also believes that the proposed rule change, as amended, will reinforce the importance of compliance with just and equitable principles of trade by exposing all registered industry participants to the full benefits of the Regulatory Element programs, which include a new Regulatory Element module that focuses specifically on ethics.

The Commission further believes that accelerating the approval of the proposed rule change and allowing for retroactive effectiveness of the Exchange's proposed rule change to April 4, 2005 is necessary to make Phlx rules consistent with respect to elimination of exemptions from the continuing education requirement and to have a consistent implementation date.[19]

Based on the above, the Commission believes that there is good cause, consistent with Section 19(b)(2) of the Act [20] to approve the proposal, as amended, on an accelerated basis.

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–Phlx–2005–23) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–3191 Filed 6–20–05; 8:45 am]

**BILLING CODE 8010–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51820; File No. SR–Phlx–2005–28]**

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Split Price Priority

June 10, 2005.

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 April 28, 2005, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Phlx. On May 23, 2005, the Exchange amended the proposed rule change (''Amendment No. 1'').[3] The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission.[6] 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

The Phlx proposes to adopt new Phlx Rule 1014(g)(i)(C) governing purchase or sale priority for orders of 100 option contracts or more. The proposed rule would afford priority to members that purchase (sell) fifty or more contracts at a particular price at the next lower (higher) price in purchasing (selling) the equivalent number of contracts in the same series. Such priority would only apply to orders that represent the same transaction or order as the previous purchase (sale), and would only apply to transactions in equity options and options overlying Exchange Traded Fund Shares (''ETFs'') that are effected in open outcry. The proposal is subject to a pilot program until December 31, 2005.

The text of the proposed rule change, as amended, is set forth below. Proposed new language is in *italics.*

* * * * *

### Obligations and Restrictions Applicable to Specialists and Registered Options Traders

Rule 1014. (a)–(f) No change.

(g) Equity Option and Index Option Priority and Parity

(i) (A)–(B) No change.

*(C) Purchase or sale priority for orders of 100 contracts or more. If a member purchases (sells) 50 or more option contracts of a particular series at a particular price or prices, he shall, at the next lower (higher) price have priority in purchasing (selling) up to the equivalent number of option contracts of the same series that he purchased (sold) at the higher (lower) price or prices, but only if his bid (offer) is made promptly and the purchase (sale) so effected represents the opposite side of a transaction with the same order or offer (bid) as the earlier purchase or purchases (sale or sales). The Options Committee may increase the ''minimum qualifying order size'' above 100 contracts for all products under its jurisdiction. Announcements regarding changes to the minimum qualifying order size shall be made via an Exchange circular. This paragraph shall only apply to transactions in equity options and options overlying Exchange Traded Fund Shares (''ETFs'') and only to such transactions that are effected in open outcry.*

(ii)–(vii) No change.

(h) No change.

Commentary: .01–.18 No change.

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[15] 15 U.S.C. 78s(b)(2).

[16] 15 U.S.C. 78f(b)(3)(B).

[17] *Id.*

[18] In approving this proposed rule change, as amended, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] *See infra,* note 6.

[20] 15 U.S.C. 78s(b)(2).

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made a few technical corrections to the purpose section and the rule text of the proposed rule change and marked the box on the cover page of Form 19b–4 to indicate that the proposed rule change is subject to a pilot program.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] The Exchange requested the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

*.19 Floor brokers are able to achieve split price priority in accordance with Rule 1014(g)(i)(C), provided, however, that a floor broker who bids (offers) on behalf of a non-market-maker Phlx member broker-dealer (''Phlx member BD'') must ensure that the Phlx member BD qualifies for an exemption from Section 11(a)(1) of the Exchange Act or that the transaction satisfies the requirements of Exchange Act Rule 11a2–2(T), otherwise the floor broker must yield priority to orders for the accounts of non-members.*

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change, as amended, is to establish rules that would facilitate the execution of large orders, which by virtue of their size and the need to execute them at multiple prices may be difficult to execute without a limited exception to current Exchange priority rules.

The proposed rule change, adopting Rule 1014(g)(i)(C), would establish a new priority rule regarding open outcry split price transactions in equity options and options overlying ETFs generally to permit a member who is responding to an order [7] for at least 100 contracts [8] who buys (sells) at least 50 contracts at a particular price to have priority over all others in purchasing (selling) up to an equivalent number of contracts of the same order at the next lower (higher) price without being required to yield to existing customer interest in the limit order book. Absent this proposed rule, such orders would be required to yield priority.[9]

For example, when a floor broker (''Floor Broker'') is representing a customer's order for 100 contracts and a member executes a purchase of 50 of those contracts at a price of $.30, the member would have priority over all market participants to purchase the remaining 50 contracts in the order at $.25.[10] Two trades would be reported to the tape, one a purchase of 50 contracts at $.30, and the other a purchase of 50 contracts at $.25. The effect to the customer would be a net purchase price of $.275 for 100 contracts. The Exchange believes that the proposal should lead to more aggressive quoting by crowd participants, which in turn could lead to better executions. A crowd participant might be willing to trade at a better price for a portion of an order if he/she were assured of trading with the balance of the order at the next pricing increment. As a result, Floor Brokers representing orders in the trading crowd might receive better-priced executions.

Under the proposal, the Exchange's Options Committee [11] would have the ability to increase the minimum qualifying order size to a number larger than 100 contracts. Any changes, which would have to apply to all products under the committee's jurisdiction, would be announced to the membership via an Exchange Circular.

One possible limitation on the ability of crowd participants to use the split price priority rule is the current requirement that orders for controlled accounts [12] must yield priority to orders for customer accounts. Using the example above, if the $.25 represents orders for customer accounts, those orders would have priority over orders for controlled accounts at $.25. This means that a holder of a controlled account who is willing to trade at $.30 and $.25 may be unwilling to trade at the price of $.30 if he/she cannot trade the balance of the order at $.25 because of the requirement to yield to orders for customer accounts. The Exchange believes that this jeopardizes the member's willingness to execute the first part of the order at a price of $.30 (using the above example), thereby potentially making it difficult to achieve price improvement for the Floor Broker's customer on the Phlx.[13] Instead, the order might trade at another exchange that has no impediments, *i.e.*, no customer interest at those price levels. Accordingly, one significant purpose of this proposal is to adopt a limited exception to the existing priority requirement concerning controlled accounts.

The Exchange believes that it would be reasonable to make a limited exception to the rule requiring controlled accounts to yield priority to non-controlled accounts in order to allow split price trading. In this regard, the proposed exception would be similar in operation to the current limited ''spread-type'' priority exception [14] under Exchange rules. This exception (which is established in the rules of many options exchanges) was intended to facilitate the trading of spread, or ''hedge'' order,[15] which by virtue of their multi-legged composition could be more difficult to trade without a limited exception to the priority rule for one of the legs. The purpose behind the proposed split-price priority exception is the same—to bring about the execution of large orders, which by virtue of their size and the need to execute them at multiple prices may be difficult to execute without a limited exception to the priority rules. The proposed exception would operate in the same manner as the hedge order exception by allowing a member effecting a trade that betters the market to have priority on the balance of that trade at the next pricing increment, even if there are orders in the book at the same price.

In order to address potential concerns regarding Section 11(a) of the Act,[16] the Exchange proposes to adopt new Commentary .19 to Phlx Rule 1014. Section 11(a) of the Act generally prohibits members of national securities exchanges from effecting transactions for the member's own account, absent an exemption. Under the proposal, there

[7] Clarification provided in telephone conference call on June 8, 2005, among Richard Rudolph, Vice President and Counsel, Phlx, and Ira Brandriss, Special Counsel, Ann Leddy, Special Counsel, and Mitra Mehr, Staff Attorney, Division of Market Regulation (''Division''), Commission (''June 8th Telephone Conference'').

[8] Orders for a size of less than 100 contracts would not be affected by this proposed rule.

[9] *See, e.g.*, Phlx Rule 119(a).

[10] Clarification provided in June 8th Telephone Conference.

[11] The Options Committee has general supervision of the dealings of members on the options trading floor. *See* Phlx By-Law Article X, Section 10–20.

[12] A controlled account includes any account controlled by or under common control with a broker-dealer. Customer accounts are all other accounts. Equity option and index option orders of controlled accounts are required to yield priority to customer orders when competing at the same price. Orders of controlled accounts generally are not required to yield priority to other controlled account orders. *See* Phlx Rule 1014(g)(i)(A).

[13] Clarification provided in June 8th Telephone Conference.

[14] Currently, a member that executes at least one option leg of a spread order at a better price than the established bid or offer for that option contract, and no option leg of the spread order is executed at a price outside of the established bid or offer for that option contract, has priority over all other orders at the same price. *See* Phlx Rule 1033(d).

[15] The Exchange defines a ''hedge order'' as any spread type order for the same account. *See* Phlx Rule 1066(f).

[16] 15 U.S.C. 78k(a).

could be situations where because of the proposed limited exception to customer priority, orders on behalf of members could trade ahead of orders of nonmembers in violation of Section 11(a). Proposed Commentary .19 would make clear that Floor Brokers may avail themselves of the split-price priority rule, but that they would be obligated to ensure compliance with Section 11(a). Specifically, a Floor Broker bidding (offering) on behalf of a Phlx member broker-dealer that is not a specialist or Registered Options Trader (''ROT'') on the Exchange would be required to ensure that the order he/she represents qualifies for an exemption from Section 11(a)(1) of the Act or that the transaction satisfies the requirements of Rule 11a2–2(T) [17] under the Act.[18] Otherwise, the Floor Broker would be required to yield priority to order(s) for the account(s) of non-members.

2. Statutory Basis

The Exchange believes that its proposed rule change, as amended, is consistent with Section 6(b) of the Act [19] in general, and furthers the objectives of Section 6(b)(5) of the Act [20] in particular, in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade, by establishing a limited priority rule regarding split-price transactions.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change, as amended, does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act,[21] and Rule 19b–4(f)(6) thereunder.[22] At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[23]

A proposed rule change filed under Rule 19b–4(f)(6) [24] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay.[25] The Commission believes that such waiver is consistent with the protection of investors and the public interest because it would allow the Phlx to implement immediately a rule similar to rules already in place at other options exchanges and thus would permit the Exchange to be better able to compete for larger-sized orders. For these reasons, the Commission designates the proposed rule change, as amended, to be effective upon filing with the Commission.[26]

**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–Phlx–2005–28 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–Phlx–2005–28. 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 Phlx. All comments received will be posted without change; the Commission does not edit personal identifying

[17] 17 CFR 240.11a2–2T. Rule 11a2–2T generally states that a member of a national securities exchange (the ''initiating member'') may not effect a transaction on that exchange for its own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion unless:

(i) The transaction is executed on the floor, or through use of the facilities, of the exchange by a member (the ''executing member'') which is not an associated person of the initiating member;

(ii) the order for the transaction is transmitted from off the exchange floor;

(iii) neither the initiating member nor an associated person of the initiating member participates in the execution of the transaction at any time after the order for the transaction has been so transmitted; and

(iv) in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof retains any compensation in connection with effecting the transaction; provided, however, that this condition shall not apply to the extent that the person or persons authorized to transact business for the account have expressly provided otherwise by written contract referring to Section 11(a) of the Act and this section executed on or after March 15, 1978, by each of them and by such exchange member or associated person exercising investment discretion.

[18] The Exchange notes that there are other exemptions from the requirements of Section 11(a).

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(6).

[23] The effective date of the original proposal is April 28, 2005, and the effective date of the amendment is May 23, 2005. For purposes of calculating the 30-day operative delay and the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on May 23, 2005, the date the Exchange filed Amendment No. 1 to the proposed rule change. *See* 15 U.S.C. 78s(b)(3)(C).

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] For purposes only of accelerating the operative date of this proposal, the Commission has considered the rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2005–28 and should be submitted on or before July 12, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–3194 Filed 6–20–05; 8:45 am]

**BILLING CODE 8010–01–P**

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**AGENCY:** Small Business Administration.

**ACTION:** Notice of Reporting Requirements Submitted for OMB Review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATES:** Submit comments on or before July 21, 2005. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

*Copies:* Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

**ADDRESSES:** Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *David_Rostker@omb.eop.gov,* fax number 202–395–7285, Office of Information and Regulatory Affairs, Office of Management and Budget.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline White, Agency Clearance Officer, *jacqueline.white@sba.gov,* (202) 205–7044.

**SUPPLEMENTARY INFORMATION:**

*Title:* Request for Borrowers (Financial Statement).

*Form No:* 770.

*Frequency:* On Occasion.

*Description of Respondents:* SBA Borrowers of guarantor's who request compromise.

*Responses:* 5,000.

*Annual Burden:* 2,500.

**Jacqueline K. White,**

*Chief, Administrative Information Branch.*

[FR Doc. 05–12163 Filed 6–20–05; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**AGENCY:** Small Business Administration.

**ACTION:** Notice of Reporting Requirements Submitted for OMB Review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATES:** Submit comments on or before July 21, 2005. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

*Copies:* Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

**ADDRESSES:** Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *David_Rostker@omb.eop.gov*, fax number 202–395–7285 Office of Information and Regulatory Affairs, Office of Management and Budget.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline White, Agency Clearance Officer, *jacqueline.white@sba.gov* (202) 205–7044.

**SUPPLEMENTARY INFORMATION:**

*Title:* Impact of Credit Scoring on Lending.

*Form No.:* 2269.

*Frequency:* On occasion.

*Description of Respondents:* Senior Executives in banks and thrifts who are knowledgeable about credit risk and lending practices for small businesses.

*Responses:* 1,200.

*Annual Burden:* 300.

**Jacqueline K. White,**

*Chief, Administrative Information Branch.*

[FR Doc. 05–12164 Filed 6–20–05; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**AGENCY:** Small Business Administration.

**ACTION:** Notice of reporting requirements submitted for OMB Review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATES:** Submit comments on or before July 21, 2005. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

*Copies:* Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

**ADDRESSES:** Address all comments concerning this notice to: *Agency Clearance Officer*, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and David_Rostker@omb.eop.gov, fax number 202–395–7285 Office of Information and Regulatory Affairs, Office of Management and Budget.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline White, Agency Clearance Officer, *jacqueline.white@sba.gov* (202) 205–7044.

**SUPPLEMENTARY INFORMATION:**

*Title:* ''25–Model Corp. Resol. or GP Certif., 33–Model Letter to Selling Agent 34-Bank ID, 1065 Appl. Lic. Assure, of Compliance.''

*Form No:* 23, 33, 34, 1065.

*Frequency:* On Occasion.

*Description of Respondents:* Applicants for SBA-guaranteed leverages.

*Annual Responses:* 50.

*Annual Burden:* 45.

**Jacqueline K. White,**

*Chief, Administrative Information Branch.*

[FR Doc. 05–12166 Filed 6–20–05; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

### Public Federal Regulatory Enforcement Fairness Hearing; Region VIII Regulatory Fairness Board

The U.S. Small Business Administration Region VIII Regulatory

[27] 17 CFR 200.30–3(a)(12).

Fairness Board and the SBA Office of the National Ombudsman will hold a public hearing on Tuesday, June 28, 2005, at 8:30 a.m. at the North Dakota State University (NDSU), Research I—Research & Technology Park, Inc., 1735 NDSU Research Park Drive, Fargo, ND 58102, phone (701) 231–6698, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by federal agencies.

Anyone wishing to attend or to make a presentation must contact Nadine Phillips in writing or by fax, in order to be put on the agenda. Nadine Phillips, Administrative Officer, SBA North Dakota District Office, 657 2nd Avenue North, Room 218, Fargo, ND 58102, phone (701) 239–5131 ext. 208, fax (701) 239–5645, e-mail: *Nadine.phillips@sba.gov.*

For more information, see our Web site at *http://www.sba.gov/ombudsman.*

**Matthew K. Becker,**

*Committee Management Officer.*

[FR Doc. 05–12165 Filed 6–20–05; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Advisory Circular Number AC 23–25]**

### Advisory Circular on Standard Airworthiness Compliance Checklists for Part 23 Projects

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** This notice announces a Federal Aviation Administration (FAA) proposed advisory circular that provides a standard compliance checklist for Title 14 of the Code of Federal Regulations (14 CFR) part 23 Type Certificate, Amended Type Certificate, and Supplemental Type Certificate projects. This checklist shows the typical methods of compliance with the regulations and provides a cross-reference to other related guidance material. The checklists created using the information in this AC complement the guidance in the Guides for Certification of Part 23 Airplanes (ACs 23–8B, 23–16A, 23–17B, and 23–19) and other more project specific guidance. This checklist is a starting place when applying for certification. This AC describes an acceptable means, but not the only means, of compliance with 14 CFR part 23. The material in this AC is neither mandatory nor regulatory in nature and does not constitute a regulation.

**DATES:** Send your comments by August 22, 2005.

*Discussion:* We are making this proposed advisory circular available to the public and all manufacturers for their comments.

**ADDRESSES:** Copies of the proposed advisory circular, AC 23–25, may be requested from the following: Small Airplane Directorate, Standards Office (ACE–110), Aircraft Certification Service, Federal Aviation Administration, 901 Locust Street, Room 301, Kansas City, MO 64106. The proposed advisory circular is also available on the Internet by selecting the Regulatory Guidance Library (RGL) link at *http://www.faa.gov/certification/aircraft* and then selecting the Draft Advisory Circulars link, or at *http://www.faa.gov/aircraft/draft__docs/.* Send all comments on this proposed advisory circular to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

**FOR FURTHER INFORMATION CONTACT:** Mark S. Orr, Federal Aviation Administration, Small Airplane Directorate, Regulations & Policy, ACE–114, 901 Locust Street, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4151; fax: 816–329–4090; e-mail: *mark.orr@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

We invite your comments on this proposed advisory circular. Send any data or views as you may desire. Identify the proposed Advisory Circular Number AC 23–25 on your comments, and if you submit your comments in writing, send two copies of your comments to the above address. The Small Airplane Directorate will consider all communications received on or before the closing date for comments. We may change the proposal contained in this notice because of the comments received.

Comments sent by fax or the Internet must contain ''Comments to proposed advisory circular AC 23–25'' in the subject line. You do not need to send two copies if you fax your comments or send them through the Internet. If you send comments over the Internet as an attached electronic file, format it in either Microsoft Word 97 for Windows or ASCII text.

State what specific change you are seeking to the proposed advisory circular and include justification (for example, reasons or data) for each request.

Issued in Kansas City, Missouri, on June 13, 2005.

**John R. Colomy,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05–12147 Filed 6–20–05; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Availability of Changes to Advisory Circular 27–1B, Certification of Normal Category Rotorcraft, and Advisory Circular 29–2C, Certification of Transport Category Rotorcraft

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of availability of proposed Advisory Circular (AC) material and request for comments.

**SUMMARY:** This notice announces the availability of and requests comments on proposed changes to AC 27–1B, Certification of Normal Category Rotorcraft, and AC 29–2C, Certification of Transport Category Rotorcraft. These proposed changes will revise AC paragraph 27.351 and AC paragraph 29.351B, Yawing Conditions, dated 2/12/03. This notice is necessary to give all interested persons an opportunity to comment on the proposed AC change.

**DATES:** We must receive your comments by July 21, 2005.

**ADDRESSES:** Send all comments on the proposed AC changes to the Federal Aviation Administration, Attn: Kathy Jones, ASW–111, 2601 Meacham Boulevard, Fort Worth, TX 76193–0111, telephone (817) 222–5359; fax (817) 222–5961; or e-mail: *http://www.Kathy.L.Jones@faa.gov.* You may inspect comments at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jim Grigg, FAA, AEU–100, c/o American Embassy, PSC 82 Box 002, APO AE 09170, telephone 011.32.2.508.2710; fax 011.32.2.230.68.99; e-mail *http://www.Jim.Grigg@FAA.GOV.*

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

We invite all interested persons to comment on the proposed AC changes by submitting such written data, views, or arguments as they desire. If you have comments, you should identify AC 27–1B, AC paragraph 27.351 or AC 29–2C, AC paragraph 29.351B, and submit your

comments, in duplicate, to the address specified above. We will consider all communications received by the closing date before issuing the final AC. You can get a copy of the proposed material by contacting the person named under the caption **ADDRESSES** or by downloading the proposed AC from the following Internet Web site: *http://www.airweb.faa.gov/rgl.*

**Background**

A harmonized working group developed this material. When these AC paragraphs are finalized, they will be posted on the Internet Web site as accepted, and they will be published in the next updates to AC 27–1B and AC 29–2C.

Issued in Fort Worth, Texas on June 10, 2005.

**S. Frances Cox,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 05–12142 Filed 6–20–05; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### RTCA Special Committee 189/EUROCAE Working Group 53: Air Traffic Services (ATS) Safety and Interoperability Requirements

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of RTCA Special Committee 189/EUROCAE Working Group 53 meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 189/EUROCAE Working Group 53: Air Traffic Services (ATS) Safety and Interoperability Requirements.

**DATES:** The meeting will be held June 28–30, 2005 starting at 9 a.m.

**ADDRESSES:** The meeting will be held at Airbus France, M01—Rm S175, 316 Route de Bayonne, 31060 Toulouse Cedex 06, France.

**FOR FURTHER INFORMATION CONTACT:** (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036, (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org;* (2) Airbus France—Julien Le BARS; (Phone) +33 5 61 18 69 16; e-mail: *julien.lebars@airbus.com.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 189/EUROCAE Working Group 53 meeting.

**Note:** A security clearance must be submitted. Please contact Julien Le BARS for details. People that will not have filled and sent back the security clearance by June 18, will not be allowed to enter in Airbus facilities during the course of the meeting.

The plenary agenda will include:

- June 28–30:
- Opening Plenary Session (Welcome and Introductory Remarks, Review/Approval of Meeting Agenda, Review/Approval of Meeting Minutes)
- SEC–189/WG–53 co-chair progress report
- Progress work on PU–24, Version 4.0 (Approx. 1 day and 2 hours)
- Progress work on PU–40, Revision G (Approx. 1 day and 2 hours)
- Closing Plenary Session
- Debrief on progress of the week
- Review schedule and action items

Breakout sessions, if necessary, will be arranged on Monday morning.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 13, 2005.

**Natalie Ogletree,**

*FAA General Engineer, RTCA Advisory Committee.*

[FR Doc. 05–12141 Filed 6–20–05; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### RTCA Special Committee 202: Portable Electronic Devices

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of RTCA Special Committee 202 Portable Electronic Devices meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 202: Portable Electronic Devices.

**DATES:** The meeting will be held on July 5–8, 2005 from 9 a.m. to 4:30 p.m.

**ADDRESSES:** The meeting will be held at Transport Canada, Boardrooms 027–030, Tower C, Place de Ville, 330 Sparks Street, Ottawa, Ontario, Canada.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http//www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 202 Portable Electronic Devices meeting. The agenda will include:

- July 5 and July 8:
- Working Groups (WG) 1 through 4 meet.
- WG–1, PED Characterization, boardroom 027
- WG–2, Aircraft Path Loss and Test, boardroom 028
- WG–3, Aircraft Susceptibility, boardroom 029
- WG–4, Risk Assessment, Mitigation, and process, boardroom 030
- July 6:
- Opening Plenary Session (Welcome and Introductory Remarks, Review Agenda, Review/Approve previous Common Plenary Summary, Review Open Action Items)
- Update from CEA PEDs Working Group
- Update from Regulatory Agencies (FAA, UK-CAA, Canadian TSB, or other members present)
- Report on CRJ testing by WG–2 and Air Wisconsin
- Transport Canada PED approval process experience: DO–294 versus testing by Yehia Elghawaby of Transport Canada
- ''Where did the values in Table 6–1 come from?'' by Chuck LaBerge of Honeywell
- RF Emissions Testing: FRID Tags, GSM Mobile Phones, and WLAN by Bruce Donham of Boeing
- Backdoor Coupling Airplane test proposal by Robert Kebel of Airbus
- Connexion by Boeing plan for allowance of cellphone operations work by Frank Whetten of Connexion
- Phase 2 work break out sessions for work groups
- July 7:
- Opening Remarks and Process Check

Working Groups Report out on (Phase 2 work statement, Revision of Terms of Reference (TOR), Revisions to committee structure, work plan for Phase 2, and schedule for Work Plan)

WG–1(PEDs characterization, test and evaluation)

WG–2 (Aircraft test and analysis)

WG–3 (Aircraft systems susceptibility)

Proposal for assessing aircraft systems susceptibility to Phase 2 technologies.

WG–4 (Risk Assessment, Practical application, and final documentation)

Collaboration with EUROCAE WG58

Proposal for completion of Phase 2 document

Potential to complete a first draft simplified process early—end of 2005 or early 2006

Human Factors sub-group

Phase 2 work statement, committee structure, work plan, and schedule planning

Closing Session (Other Business, Date and Place of Next Meeting (October 11–13, 2005 Twelfth Plenary at RTCA, January 24–26 Thirteenth Plenary at RTCA, Closing Remarks, Adjourn)

Working Groups to complete action items and Phase 2 work planning.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 13, 2005.

**Natalie Ogletree,**

*FAA General Engineer, RTCA Advisory Committee.*

[FR Doc. 05–12144 Filed 6–20–05; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application 05–01–C–00–EAR To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Kearney Municipal Airport, Kearney, NE

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Kearney Municipal Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before July 21, 2005.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: 901 Locust, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Colin English, Airport Manager, Kearney Municipal Airport, 5139 Airport Road, Kearney, NE 69967.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Kearney under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Lorna K. Sandridge, PFC Program Manager, 901 Locust, Kansas City, MO 64106, (816) 329–2641. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Kearney Municipal Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On June 13, 2005, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Kearney was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 27, 2005.

The following is a brief overview of the application.

*Proposed charge effective date:* March 1, 2005.

*Proposed charge expiration date:* March 1, 2010.

*Level of the proposed PFC:* $4.00.

*Total estimated PFC revenue:* $150,000.

*Brief description of proposed project(s):* Study, design and build terminal expansion or replacement.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: 901 Locust, Kansas City, MO 64106.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Kearney Municipal Airport.

Issued in Kansas City, Missouri on June 13, 2005.

**George A. Hendon,**

*Manager, Airports Division, Central Region.*

[FR Doc. 05–12143 Filed 6–20–05; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2005–21050]**

### Notice of Request for Extension of a Currently Approved Data Collection: Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for approval and comment. The ICR describes the nature of the information collection and its expected cost and burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on January 12, 2005 (70 FR 2209). Two comments were received.

**DATES:** Comments must be submitted on or before July 21, 2005. A comment to OMB is most effective if OMB receives it within 30 days of this publication.

**ADDRESSES:** You may submit comments identified by Docket Number FMCSA–2005–21050 by any of the following methods:

- Web site: *http://dms.dot.gov.*

Follow the instructions for submitting comments on the DOT electronic docket site.

- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System (DMS) Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on plaza level of the Nassif Building, 400 Seventh Street, SW., Washington DC, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking process. Note that all comments received will be posted without change to *http://dms.dot.gov* including any

personal information provided. Please see the Privacy Act heading under Regulatory Notes.

*Docket:* For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11 65 FR 19477) or you may visit *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Angeli Sebastian, Division Chief, Information Systems, (202) 366–4023, Federal Motor Carrier Safety Administration (MC-RIS), 400 7th Street SW., Suite 8214, Washington, DC 20590. Office hours are from 7 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

*Title:* Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers.

*OMB Control Number:* 2126–0019.

*Type of Request:* Extension of a currently approved collection.

*Abstract:* Title 49 U.S.C. 13902(c) contains basic licensing procedures for registering foreign motor carriers to operate across the Mexico-U.S. border into the United States. Title 49 CFR part 368 contains related regulations. The FMCSA carries out this registration program under authority delegated by the Secretary of Transportation. Foreign (Mexico-based) motor carriers use Form OP–2 to apply for registration authority at the FMCSA. The form requests information on the motor carrier's name, address, U.S. DOT Number, form of business (*e.g.*, corporation, sole proprietorship, partnership, etc.), locations where the applicant plans to operate, types of registration requested (*e.g.*, for-hire motor carrier, motor private carrier), insurance, safety certifications, household goods arbitration certifications, and compliance certifications.

*Respondents:* Foreign (Mexico-based) motor carriers.

*Estimated Number of Respondents:* 2,800.

*Average Burden Per Response:* The estimated average burden per response is 4 hours.

*Estimated Total Annual Burden:* The estimated total annual burden is 11,200 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended; 49 U.S.C. 13902(c); and 49 CFR 1.73.

Issued on: June 13, 2005.

**Annette M. Sandberg,**

*Administrator.*

[FR Doc. 05–12110 Filed 6–20–05; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2005–21203]**

### Notice of Request for Renewal of a Currently Approved Information Collection: Financial Responsibility, Trucking and Freight Forwarding

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of FMCSA to request the Office of Management and Budget (OMB) to renew its clearance of the currently approved information collection identified below under Supplementary Information. This information collection provides registered motor carriers, property brokers, and freight forwarders a means of meeting financial security documentation requirements.

**DATES:** Comments must be submitted on or before August 22, 2005.

**ADDRESSES:** You may submit comments identified by Docket Number FMCSA-2005–21203 by any of the following methods:

• Web site: *http://dms.dot.gov.*

Follow the instructions for submitting comments on the DOT electronic docket site.

• *Fax:* 1–202–493–2251.

• *Mail:* Docket Management System (DMS) Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.

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

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

*Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking process. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Notes.

*Docket:* For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 at 65 FR 19477 or you may visit *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Joy Dunlap, (202) 385–2428, Commercial Enforcement Division (MC-ECC), Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

*Title:* Financial Responsibility, Trucking and Freight Forwarding.

*OMB Number:* 2126–0017.

#### Background

The Secretary of Transportation (Secretary) is authorized to register for-

hire motor carriers of regulated commodities under the provisions of 49 U.S.C. 13902, surface freight forwarders under the provisions of 49 U.S.C. 13903, and property brokers under the provisions of 49 U.S.C. 13904. These persons may conduct transportation services only if they are registered pursuant to 49 U.S.C. 13901. The Secretary has delegated authority pertaining to these registrations to the FMCSA. Registration remains valid only as long as the transportation entities maintain, on file with the FMCSA, evidence of the required levels of insurance coverage pursuant to 49 U.S.C. 13906. Regulations governing financial responsibility requirements are found at 49 CFR part 387.

Forms BMC–91, 91X, and 82 provide evidence of the required coverage for bodily injury and property damage (BI&PD) liability. Forms BMC–34 and 83 establish compliance with cargo liability requirements. Forms BMC–84 and 85 are filed by brokers to comply with the requirement for a $10,000 surety bond or trust fund agreement. Forms BMC–35, 36, and 85 cancel prior filings. Forms BMC–90 and 32 are endorsements that must be attached to BI&PD and cargo insurance policies, respectively, but are not filed with the FMCSA.

Motor carriers can also apply to self-insure BI&PD and/or cargo liability in lieu of filing certificates of insurance or surety bonds with the FMCSA. Form BMC–40 is the application used to apply for self-insurance authority.

*Respondents:* Motor carriers, freight forwarders, and brokers.

*Estimated Average Burden Per Response:* The estimated average burden per response for the BMC–40 is 40 hours. The estimated average burden per response for each of the other forms (BMC–32, 34, 35, 36, 82, 83, 84, 85, 90, 91, and 91X) is 10 minutes per form.

*Estimated Total Annual Burden:* The estimated total annual burden is 600 hours for the BMC–40 based on 15 filings per year [15 filings per year × 40 hours to complete = 600 hours]. The estimated total annual burden for all of the other forms described above is 50,170 hours based on 301,022 filings per year [301,022 filings per year × 10 minutes to complete divided by 60 minutes = 50,170 total burden hours]. Therefore, the total burden hour request is 50,770 [600 estimated annual burden hours for the BMC–40 + 50,170 hours for the other forms = 50,770 total burden hours].

*Frequency:* Certificates of insurance, surety bonds, and trust fund agreements are required when the transportation entity first registers with the FMCSA and then when such coverages are replaced. Notices of cancellation are required only when such certificates of insurance, surety bonds or trust fund agreements are canceled. Form BMC–40 is generally filed only when a carrier seeks approval to self-insure its BI&PD and/or cargo liability.

*Public Comments Invited:* Interested parties are invited to send comments regarding any aspect of this information collection, including but not limited to: (1) the necessity and utility of the information collection for the proper performance of the functions of the FMCSA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance for a renewal of this information collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended; 49 U.S.C. 13901, 13902, 13903, 13904 and 13906; and 49 CFR 1.73.

Issued on: June 13, 2005.

**Annette M. Sandberg,**

*Administrator.*

[FR Doc. 05–12111 Filed 6–20–05; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2005–21083]**

### Notice of Request for Extension of a Currently Approved Data Collection: Licensing Applications for Motor Carrier Operating Authority

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for approval and comment. The ICR describes the nature of the information collection and it's expected cost and burden. On January 12, 2005, FMCSA published a **Federal Register** notice (70 FR 2210) with a 60-day comment period to solicit the public's views on the information collection noted below. FMCSA received three comments expressing concerns about the substance abuse professional (SAP) services that are available to applicants, the need to augment the information required of new applicants on the Form OP–1, and the desire to obtain administrative reforms to eliminate unnecessary paperwork burdens. These comments were submitted to the appropriate FMCSA program managers for consideration and action.

**DATES:** Comments must be submitted on or before July 21, 2005. A comment to OMB is most effective if OMB receives it within 30 days of this publication.

**ADDRESSES:** You may submit comments identified by Docket Number FMCSA–2005–21083 by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System (DMS) Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on plaza level of the Nassif Building, 400 Seventh Street, SW., Washington DC, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking process. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Notes.

*Docket:* For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register**

published on April 11, 2000 at 65 FR 19477 or you may visit *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Angeli Sebastian, Division Chief, Information Systems, (202) 366–4023, Federal Motor Carrier Safety Administration (MC–RIS), 400 7th Street SW., Suite 8214, Washington, DC 20590. Office hours are from 7 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

*Title:* ''Licensing Applications for Motor Carrier Operating Authority,'' formerly titled ''Revision of Licensing Application Forms, Application Procedures, and Corresponding Regulations.''

*OMB Control Number:* 2126–0016.

*Type of Request:* Extension of a currently-approved data collection.

*Abstract:* The FMCSA is authorized to register for-hire motor carriers of regulated commodities and of passengers under the provisions of 49 U.S.C. 13902(a); freight forwarders under the provisions of 49 U.S.C. 13903; property brokers under the provisions of 49 U.S.C. 13904; and certain Mexican motor carriers under the provisions of 49 U.S.C. 13902(c) and the North American Free Trade Agreement (NAFTA) motor carrier access provision. The forms used to apply for registration authority with the FMCSA are: Form OP–1 for motor property carriers and brokers; Form OP–1(P) for motor passenger carriers; Form OP–1(FF) for freight forwarders; and Form OP–1(MX) for those Mexican motor carriers that will file applications to operate within the United States beyond the U.S.-Mexico border municipalities and commercial zones. These forms request information on the applicant's identity, location, familiarity with safety requirements, ability to meet the minimum financial responsibility requirements, and type of transportation operations the registrant plans to provide. There are some differences on the forms due to specific statutory standards for registration of the different types of transportation entities.

*Respondents:* Motor carriers, freight forwarders, brokers and certain Mexican motor carriers.

*Estimated Number of Respondents:* 21,262.

*Average Burden Per Response:* The current estimated average time to complete the OP–1, OP–1(P) and OP–1 (FF) registration application forms is 2 hours each, and 4 hours to complete the OP–1(MX) form.

*Estimated Total Annual Burden:* The estimated total annual burden is 55,738 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended; 49 U.S.C. 13902, 13903 and 13904; and 49 CFR 1.73.

Issued on: June 13, 2005.

**Annette M. Sandberg,**

*Administrator.*

[FR Doc. 05–12112 Filed 6–20–05; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2005–20946]**

### Notice of Request for Approval of a New Information Collection: Best Motor Carrier Safety Management Technology Practices

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for approval and comment. The ICR is related to a study of how information technology is being used to improve safety management in the motor carrier industry. On February 25, 2005, the agency published a **Federal Register** notice (70 FR 9440) with a 60-day comment period to solicit the public's views on the information collection noted below.

**DATES:** Comments must be submitted on or before July 21, 2005. A comment to OMB is most effective if OMB receives it within 30 days of this publication.

**ADDRESSES:** You may submit comments identified by Docket Number FMCSA–2005–20946 by any of the following methods:

- Web site: *http://dms.dot.gov.*

Follow the instructions for submitting comments on the DOT electronic docket site.

- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System (DMS) Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on plaza level of the Nassif Building, 400 Seventh Street, SW., Washington DC, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking process. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Notes.

*Docket:* For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 at 65 FR 19477 or you may visit *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Angeli Sebastian, Division Chief, Information Systems, (202) 366–4023, Federal Motor Carrier Safety Administration (MC–RIS), 400 7th Street SW., Suite 8214, Washington, DC 20590. Office hours are from 7 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

*Title:* ''Motor Carrier Industry Profile.''

*OMB Control Number:* None.

*Type of Request:* New information collection.

*Abstract:* The FMCSA is responsible for enhancing the safety of motor carrier operations and the nation's highway system through fair, uniform and consistent enforcement of the Federal Motor Carrier Safety Regulations and applicable Hazardous Materials Regulations, and through other innovative programmatic approaches. A complicating factor is the sheer size and diversity of the motor carrier industry, and a less than thorough understanding of its diversity. Detailed information about the safety performance differences among segments, and the practices, policies, and programs undertaken by safety leaders within each segment will assist FMCSA in its policy and program development and improve the safety of the industry. This project is being conducted on behalf of FMCSA through a cooperative agreement with the University of Maryland's Smith School of Business.

This project is being conducted in three phases as follows:

Phase 1 (now completed) involved three analyses of the motor carrier industry segmented into its major components. The first analysis consisted of developing financial and operating performance profiles for each of the 13 for-hire commodity segments (Refrigerated; Bulk Materials—Non Tank; Tank Carriers, Moving/Household Goods; Building Materials; Heavy Equipment, General Freight Truck-Load (subdivided into small, medium and large-sized carriers), General Freight Less-Than-Truck-Load, and Other Specialized (subdivided into small, medium and large-sized carriers). The second analysis evaluated detailed safety performance data for 10 commodity segments, including Building Materials, Moving/Household Goods, General Freight (TL and LTL), Heavy Equipment, Produce, Intermodal, Passenger, Refrigerated (non-produce), Tank Carriers and Bulk Materials Carriers. Each commodity segment was subdivided into its for-hire and private components, and each of the 30 segments was evaluated on recent crash, vehicle, driver and safety management factors. The third analysis combined the financial and safety performance data from the first two analyses to create a profile of the financial and safety performance relationship. Correlation coefficients were calculated for various financial-safety performance measures, and each correlation coefficient was calculated for various financial-safety performance measures and tested for its statistical significance. Phase 1 results are located on the FMCSA Analysis and Information (A&I) online Web site (*http://ai.fmcsa.dot.gov*) under ''Analysis Results and Reports.''

The safety performance results from Phase 1 provided the basis for Phase 2 of this study (also complete).

Phase 2 of the study is an investigation of the safety programs, policies, and procedures undertaken by safety leaders in each commodity segment (commonly known as the ''Best Practices'' Study). Phase 2 included individual interviews with several safety leaders in each segment. Detailed information was collected on driver screening and hiring practices, pre-service and in-service training procedures, incentive awards programs and vehicle maintenance policies. Phase 2 results are also located on FMCSA's A&I Web site (*http://ai.fmcsa.dot.gov*) under Analysis Results and Reports.''

Phase 3: Results from Phase 2 are being shared with FMCSA safety investigators and disseminated to many carriers within the industry, including new entrants and poor performers. Specifically, copies of the ''Best Practices'' final report were provided to national-level industry associations and FMCSA field offices. Summarized brochures have been developed for distribution to the associations, FMCSA field offices, and new entrants upon initial registration with FMCSA. The hope is that these new motor carriers will incorporate these practices into their own safety management programs while they are still in the development stage. Additionally, FMCSA hopes to incorporate the results in material provided at compliance reviews, so that carriers who rate poorly have access to specific, concrete examples of how to revise or improve their safety management programs.

As part of Phase 3, FMCSA and the University of Maryland will seek more detailed information from the motor carrier industry on how technology is being used to improve safety management. FMCSA and the University of Maryland propose to send questionnaires to approximately 1,000 of the largest for-hire and private carriers in the United States. The University of Maryland will also post the questionnaires on-line so that the selected carriers can complete the survey via the Internet, if desired.

*Respondents:* 1,000. The respondents will be from the ten largest for-hire and private motor carriers in each State.

*Average Burden Per Response:* The estimated average time to complete the questionnaire is 45 minutes.

*Estimated Total Annual Burden:* The estimated total annual burden is 750 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended; Pub. L. 106–159, 113 Stat. 1748 (December 9, 1999); and 49 CFR 1.73.

Issued on: June 13, 2005.

**Annette M. Sandberg,**

*Administrator.*

[FR Doc. 05–12113 Filed 6–20–05; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Notice and Request For Comments

**AGENCY:** Federal Railroad Administration, DOT.

**ACTION:** Notice and Request for Comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected burdens. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on April 12, 2005 (70 FR 19142).

**DATES:** Comments must be submitted on or before July 21, 2005.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Mr. Victor Angelo, Office of Support Systems, RAD–20, Federal Railroad Administration, 1120 Vermont

Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6470). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On April 12, 2005, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 70 FR 19142. FRA received no comments in response to this notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

*Title:* Supplemental Qualifications Statement for Railroad Safety Inspector Applicants.

*OMB Control Number:* 2130–0517.

*Type of Request:* Extension of a currently approved collection.

*Affected Public:* Individuals or Households.

*Form Number:* FRA–F–120.

*Abstract:* The Supplemental Qualifications Statement for Railroad Safety Inspector Applicants is an information collection instrument used by FRA to gather additional background data so that FRA can evaluate the qualifications of applicants for the position of Railroad Safety Inspector. The questions cover a wide range of general and specialized skills, abilities, and knowledge of the five types of railroad safety inspector positions.

*Annual Estimated Burden:* 6,000 hours.

*Title:* Railroad Worker Protection (49 CFR 214).

*OMB Control Number:* 2130–0539.

*Type of Request:* Extension of a currently approved collection.

*Affected Public:* Railroads.

*Form Number:* FRA F 6180.119.

*Abstract:* This rule establishes regulations governing the protection of railroad employees working on or near railroad tracks. The regulation requires that each railroad devise and adopt a program of on-track safety to provide employees working along the railroad with protection from the hazards of being struck by a train or other on-track equipment. Elements of this on-track safety program include an on-track safety manual; a clear delineation of employers' responsibilities, as well as employees' rights and responsibilities thereto; well-defined procedures for communication and protection; and annual on-track safety training. The program adopted by each railroad is subject to review and approval by FRA. Part 214 regulations have been deemed different enough from the Part 213 regulations as to require a separate and distinct reporting form (new Form FRA F 6180.119). Regardless of discipline, the FRA inspector will complete the new Roadway Workplace Safety Violation Report Form (FRA F 6180.119) when recommending civil penalties for Part 214 infractions.

*Annual Estimated Burden:* 589,840 hours.

*Addressee:* Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, Attention: FRA Desk Officer.

*Comments are invited on the following:* Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

**Authority:** 44 U.S.C. 3501–3520.

Issued in Washington, DC on June 10, 2005.

**D.J. Stadtler,**

*Director, Office of Budget, Federal Railroad Administration.*

[FR Doc. 05–12116 Filed 6–20–05; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety regulations. The individual petition is described below including, the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

**BNSF Railway Company**

[Docket Number FRA–2004–19949]

The BNSF Railway Company (BNSF) seeks a waiver of compliance from certain provisions of 49 CFR Part 232, Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment. Specifically, § 232.215(a), transfer train brake tests for trains moving from Old South Yard to New South Yard in Houston, Texas, a distance of approximately ¼ mile.

New South Yard is located approximately one-fourth of a mile south of Old South Yard. Both yards are approximately one mile in length. The two yards are separated by a one-fourth mile section of main track. Train speed in both yards is 10 mph. Maximum speed on the main track is 20 mph, but trains operating between the two yards operate at 10 mph and must be prepared to stop within one-half the range of vision. The grade of the main track is level, sight distance is unobstructed, and there are no at-grade road crossings or grade separations on the main track.

After a review of the particulars at this location, FRA determined that any cars moved between Old South Yard and New South Yard constitutes a train movement, thus requiring an air brake test. BNSF contends that an air brake test is not required at this particular

location for cars being moved from one yard to the other. They base their opinion on the multi-factor analysis as presented in the preamble to the Power Brake Regulations published in the **Federal Register**, January 17, 2001. See 66 FR 4148. BNSF believes all of the moves between the two yards are switching moves.

Based on FRA's ruling, BNSF is requesting that a waiver be granted for cars moving from Old South Yard to New South Yard without performing an air brake test, to facilitate the movement of cars through this already congested area. BNSF claims they have been operating within and between the yards since 1998, using only the locomotive's brakes to control the movement. In addition to moving cars between the two yards, the main track is often used while switching service is occurring within each yard, due to the small size of the yards. BNSF does not believe that there are any inherent safety risks or additional costs involved if the petition is granted.

Interested parties are invited to submit written comments to FRA. All written communications concerning this petition should identify the appropriate docket number (*e.g.*, Docket Number FRA–2004–19949) and must be submitted in triplicate to the Associate Administrator for Safety, Federal Railroad Administration, 400 7th Street, SW., Washington, DC 20590–0001. Comments received within *30 days* of the date of this notice will be considered by FRA before any final action is taken. Although FRA does not anticipate scheduling a public hearing in connection with these proceedings, if any interested party desires an opportunity for oral comment, they should notify FRA in writing before the end of the comment period and specify the basis for their request. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site *http://dms.dot.gov.* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (Volume 65, Number 70; Pages 19477–78) at *http://dms.dot.gov.*

Issued in Washington, DC on June 13, 2005.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 05–12117 Filed 6–20–05; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

**Hillsborough Area Regional Transit**

*(Renewal With Amendment to Waiver Petition Docket Number FRA–2002–13398)*

Hillsborough Area Regional Transit (HARTLine), located in Tampa, Florida, seeks renewal, with amendment, of the conditions of its permanent waiver of compliance from Title 49 of the CFR for continued operation of its TECO Line streetcar system at a ''limited connection'' with the CSXT Railroad. See Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment, 65 FR 42529 (July 10, 2000); see also Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems, 65 FR 42626 (July 10, 2000).

In September 2004 the FRA Railroad Safety Board granted an extension of HARTLine's original waiver and its conditions for a period of eight months. HARTLine is now notifying the FRA of some modifications to its operating plan and equipment, and is requesting a permanent waiver of compliance, to include these modifications.

Based on the foregoing and with some modifications, HARTLine is seeking to renew its existing waiver of compliance from the provisions of the Code of Federal Regulations, 49 CFR part 219-Control of Alcohol and Drug Use, 49 CFR part 223 Safety Glazing Standards, and 49 CFR part 238-Passenger Equipment Safety Standards.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communication concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2002–13398) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC, on June 13, 2005.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 05–12120 Filed 6–20–05; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

**Union Pacific Railroad**

*(Docket Number FRA–2005–21241)*

The Union Pacific Railroad (UP) seeks a permanent waiver of compliance from *Control of Alcohol and Drug Use*, 49 CFR 219.601(b)(1)(2), which requires every covered employee subject to random testing to have ''a substantially equal statistical chance of being selected within a specified time frame.'' At UP's current random testing rate of 50 percent, the drug and alcohol positive rates for each of its 25 testing pools range from 2.9 percent to 0.0 percent. UP seeks permission to increase or decrease the random testing rate for each employee testing pool in accordance with that pool's previous positive rate to allow it to devote testing resources to where they are most needed. In no case would UP establish a pool's random testing rate below FRA's minimum annual testing rates, which for 2005, are 25 percent for drugs and 10 percent for alcohol.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2005–21241) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC 20590–0001. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Issued in Washington, DC, on June 13, 2005.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 05–12121 Filed 6–20–05; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### Environmental Impact Statement for Improved Transportation Access Between Lower Manhattan, Jamaica Station, and John F. Kennedy International Airport (JFK), New York

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The FTA, in cooperation with the Metropolitan Transportation Authority (MTA), the Port Authority of New York & New Jersey (PANYNJ) and the Lower Manhattan Development Corporation (LMDC), and supported by the New York City Economic Development Corporation (NYCEDC), will prepare an Environmental Impact Statement (EIS) to evaluate alternatives that provide improved commuter and airport access connecting Lower Manhattan with the Long Island Rail Road (LIRR) Jamaica Station in Queens and with JFK International Airport. The project sponsors, MTA, PANYNJ, LMDC and NYCEDC, are undertaking a New Starts Alternatives Analysis (AA) concurrently with the EIS.

The FTA is the lead federal agency under the National Environmental Policy Act of 1969 (NEPA). The EIS will be prepared in accordance with NEPA and the regulations implementing NEPA set forth in 23 CFR part 771 and 40 CFR parts 1500–1508. As co-sponsors of the proposed project, MTA, PANYNJ, LMDC and NYCEDC will ensure that the EIS and the environmental review process will also satisfy the requirements of the New York State Environmental Quality Review Act (SEQRA).

The EIS will evaluate one or more Build Alternatives, a No Action Alternative, and a Transportation System Management (TSM) Alternative. The scoping process for the EIS will include an analysis and screening of all feasible rail and non-rail based transportation alternatives that will improve travel in the corridor between the Lower Manhattan, Jamaica and JFK Airport travel hubs. The project sponsors may designate a ''locally preferred alternative'' either prior to the preparation of the Draft EIS if a clear choice emerges from the screening analysis, or following public circulation of the Draft EIS.

Scoping will be accomplished through meetings and correspondence with interested persons, organizations, and Federal, State, regional, and local agencies. FTA, MTA, PANYNJ, and LMDC, supported by NYCEDC, seek public and interagency input on the scope of the EIS for this project including the alternatives to be considered and the environmental and community impacts to be evaluated.

**DATES:** The public is invited to participate in project scoping meetings on July 18, July 19 and July 20 at the locations identified under **ADDRESSES.** On July 18, the project sponsors will hold an information session at 2 p.m., followed by a formal presentation by the project sponsors at 4 p.m. and 6 p.m. On July 19 and July 20, information sessions will be held at 4 p.m. and formal presentations will be made at 6 p.m.

At the scoping meetings, the sponsors will display conceptual project information on poster boards for public review. Project staff will be available for informal questions and comments during the information sessions. Those wishing to make formal comments are requested to register at the meeting location before 7 p.m. A Scoping Document has been prepared and will be available at the scoping meetings or by contacting the Project Manager identified under **ADDRESSES.**

Written comments on the scope of the EIS should be sent to the Mr. Chris Bastian, MTA Project Manager, by September 15th, 2005 at the address given under **ADDRESSES.**

**ADDRESSES:** The public scoping meetings will be held:

- Monday, July 18th, 2005 at 2 Broadway, 20th Floor Conference Room, Manhattan (at Bowling Green)
- Tuesday, July 19th, 2005 at Brooklyn Borough Hall, 209 Joralemon Street, Brooklyn
- Wednesday, July 20th, 2005 at 94–20 Guy R. Brewer Blvd, York College of the City University of New York, Jamaica Queens

The scoping meeting sites are accessible to mobility-impaired people and interpreter services will be provided for hearing-impaired upon request. Written comments will be taken at the meeting or may be sent to the

following address thru September 15, 2005: Mr. Chris Bastian, Project Manager, MTA, 347 Madison Avenue, New York, New York, 10017.

The scoping document may also be requested by writing to the Project Manager at the above address or by calling (212) 266–8363. Requests to be placed on the project mailing list may also be made by calling this number or by writing to the Project Manager.

Subsequent opportunities for public involvement will be announced on the Internet, by mail, and through other appropriate mechanisms, and will be conducted throughout the study area. Additional project information may be obtained from the following Web sites:

- MTA (*http://www.mta.info;* click ''MTA Home'' then ''Planning Studies'' and ''Lower Manhattan-Jamaica/JFK Transportation Study'')
- LMDC (*http://www.renewnyc.com*)
- PANYNJ (*http://www.panynj.gov*)

**FOR FURTHER INFORMATION CONTACT:** Ms. Nancy Danzig, AICP, Community Planner, Federal Transit Administration, 212–668–2180.

**SUPPLEMENTARY INFORMATION:**

## I. Scoping

FTA, MTA, PANYNJ, and LMDC with NYCEDC invite interested individuals, organizations, and federal, state, and local agencies to provide comments on the scope of the EIS. During the scoping process, comments should focus on identifying specific travel, economic, or environmental needs to be evaluated, and on proposing alternatives that address those needs, including alternatives that may be less costly or have fewer environmental impacts while achieving similar transportation objectives. To assist interested parties in formulating their comments, a scoping document has been prepared and is available on the MTA, PANYNJ and LMDC Web sites noted above, or upon request from the Project Manager identified in **ADDRESSES** above. The scoping document includes the project's purpose and need, goals and objectives, information about prior studies, a preliminary list of alternatives, environmental areas that will be addressed during the course of the study, and an outline of the ongoing public participation program.

## II. Description of Project Area

The project area is roughly defined by a fourteen mile travel corridor between the transportation hubs of Lower Manhattan, the Jamaica Long Island Railroad (LIRR)/AirTrain JFK complex in Queens and John F. Kennedy International Airport. This area is served by the Long Island Rail Road Atlantic Branch between Jamaica, Queens and MTA's Atlantic Terminal in Brooklyn; the Atlantic Avenue arterial road; NYCT's Fulton Street Subway line on which the A train connects to the AirTrain JFK at Howard Beach; and multiple NYCT subway lines connecting Brooklyn and Lower Manhattan. Intermediate communities between the eastern and western hubs include the Downtown Brooklyn Business District, Fort Greene, Bedford-Stuyvesant, East New York, Woodhaven, Ozone Park and Howard Beach. In addition, commuters from communities in Eastern Queens, and Nassau and Suffolk Counties travel through the Jamaica hub on their way to Downtown Brooklyn and Lower Manhattan.

## III. Problem Identification

The Lower Manhattan Central Business District (Manhattan south of Canal Street) is the nation's third largest business district, and the center of the international financial industry. The area is served by multiple subway lines; the PATH rail system from New Jersey; passenger ferry services; and local and express buses. However, rail access from Eastern Queens and the Long Island suburbs requires multiple modes, including either: (a) A transfer at the Jamaica LIRR station to Atlantic Branch trains and then an additional transfer at the LIRR Atlantic Terminal to a subway connecting to Lower Manhattan; (b) a long subway trip from Jamaica (via J Z subway lines) to Lower Manhattan; or (c) continuing travel via the LIRR to Midtown Manhattan's Penn Station and then a southbound connection on heavily used subway lines (either the 1, 2, 3, A or C train) to Lower Manhattan.

Approximately three miles south of the Jamaica LIRR station (and about 18 miles southeast of Lower Manhattan) is JFK International Airport, the metropolitan area's primary international air gateway, and a growing market for domestic air travel. At the present time, a one-seat ride to JFK International Airport from Lower Manhattan is limited to private cars, taxis and ''black cars,'', and shuttle vans, while rail access is provided via the NYC subway system (A train) which makes several intermediate stops en-route to Howard Beach, where a transfer is required to the Port Authority's AirTrain JFK. Additional access to JFK International Airport is possible from Midtown Manhattan by either a) taking a subway from Lower Manhattan to Penn Station, then taking a LIRR train to Jamaica, and finally transferring to the AirTrain JFK, or b) taking a subway (4 or 5) to Grand Central Terminal, then private bus service to JFK International Airport via the city's crowded highway system.

Lower Manhattan's transportation system was severely impaired by the attacks of September 11, 2001. The World Trade Center PATH Terminal and NYCT 1 9 Cortlandt Street Station were destroyed. PATH service to Lower Manhattan was interrupted and subway service disrupted. The attacks also accentuated significant inefficiencies in the area's extensive transportation infrastructure, largely constructed prior to World War I, which jeopardize the area's sustainability as a central business district (CBD), emerging residential area, and key tourist destination.

## IV. Purpose and Need for the Proposed Action

The purpose of the proposed Lower Manhattan and Jamaica/JFK International Airport Transportation Project is to improve mobility among the three hubs for both commuters and air travelers by reducing travel times, eliminating or reducing transfers, increasing reliability, providing additional capacity and service flexibility into Lower Manhattan from the east, and reducing congestion on other transportation services currently used by travelers in the corridor.

As a result of the attacks on the World Trade Center complex in 2001, elected officials and the Downtown business community have identified both improvements in commuter access between Jamaica, Downtown Brooklyn and Lower Manhattan and improvements in access to JFK International Airport as key elements needed to support the Lower Manhattan area's economic recovery and its ability to compete with other world economic centers such as London, Frankfurt and Tokyo.

## V. Alternatives

The project sponsors will follow the Alternatives Analysis (AA) procedures of FTA's Section 5309 New Starts process. The alternatives to be considered during the AA phase will address the defined corridor problem and study goals and objectives. Through evaluation and screening of conceptual alternatives, the project sponsors will narrow the range of viable alternatives to a manageable number to carry forward into a detailed analysis in the EIS. The EIS will evaluate the following alternatives:

- Build Alternative(s), which will include any rail or non-rail alternative that survives the scoping and New Starts Alternatives Analysis;

• Future No Action Alternative, which will include the existing system and planned transportation improvements (other than the proposed project) included in the official metropolitan long-range transportation plan; and

• Transportation System Management (TSM) Alternative, which will attempt to satisfy the project's purpose and need with lower cost improvements beyond those in the long-range plan, such as more effective operating practices, increased rolling stock, and station improvements.

The project sponsors may designate a ''locally preferred alternative'' either prior to the preparation of the Draft EIS or following public circulation and comment on the Draft EIS.

The New Starts Alternatives Analysis for this project will draw upon previous planning studies including the Lower Manhattan Airport and Commuter Access Alternatives Analysis, completed in 2004 (the results of which are available on the LMDC Web site) and the MTA's Lower Manhattan Access Alternatives Study, completed in 2001 (the results of which are available upon request from the MTA). The 2004 study recommended two rail alternatives for further study in the EIS phase. Both alternatives use the same alignment, the LIRR Atlantic Branch, from Jamaica to Atlantic Terminal in Downtown Brooklyn, with AirTrain JFK service connecting to the Atlantic Branch at Jamaica. Both alternatives, in order to access Lower Manhattan, break out of the LIRR Atlantic Branch tunnel east of the LIRR/NYCT Atlantic Terminal. One alternative would connect to a new rail tunnel under the East River into Lower Manhattan and the other would connect to the existing Montague Street Tunnel, currently used for NYCT subway service (M R subway lines).

## VI. Potential Effects

Upon completion, the proposed transportation improvements are anticipated to reduce travel times, eliminate or reduce transfers, improve service reliability, provide additional capacity and service flexibility into Lower Manhattan from the east, and reduce congestion on other transit lines currently used by travelers in the corridor.

Impacts that may occur as a result of the improvements will be evaluated in the EIS. The project sponsors have identified several areas of concern, some of which will be temporary during the construction phase, including: Property acquisition and displacement; historic, archaeological, and cultural resources; wetlands and water quality; visual and aesthetic qualities; air quality; noise and vibration; safety and security; utilities; and transportation impacts.

The EIS will describe the methodology used to assess impacts; identify the affected environment; and identify and adopt measures for mitigating adverse impacts, if any. Principles of environmental construction management, resource protection and mitigation measures, such as NYCT's Green Design for the Environment Guidelines (2002) and LIRR's Sustainable Design/Design for the Environment ''Generic Guidelines (March 2003), developed pursuant to New York State Executive Order No. 111 ''Green and Clean,'' will be considered for incorporation into the selected Alternative.

## VII. FTA Procedures

During the NEPA process, FTA will comply with the requirements of Section 106 of the National Historic Preservation Act, Section 4(f) of the Department of Transportation Act (49 U.S.C. 303), the conformity requirements of the Clean Air Act, Executive Order 12898 on Environmental Justice and, to the maximum extent practicable, all other applicable federal environmental statutes, regulations, and executive orders, in accordance with FTA policy and regulations.

A Draft EIS will be prepared and made available for public and agency review and comment. One or more public hearings will be held on the Draft EIS. On the basis of the AA or Draft EIS and the public and agency comments thereon, a locally preferred alternative will be selected and will be fully described and further developed in the Final EIS.

Issued on: June 15, 2005.

**Letitia Thompson,**

*Regional Administrator, Region II.*

[FR Doc. 05–12153 Filed 6–20–05; 8:45 am]

**BILLING CODE 4910–57–P**

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA 2004–19991; Notice 2]**

### Coupled Products, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

Coupled Products, Inc. (Coupled Products) has determined that certain hydraulic brake hose assemblies that it produced do not comply with S5.3.4 and S5.3.6 of 49 CFR 571.106, Federal Motor Vehicle Safety Standard (FMVSS) No. 106, ''Brake hoses.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Coupled Products has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of a petition was published, with a 30-day comment period, on January 14, 2005, in the **Federal Register** (70 FR 2708). NHTSA received no comments.

A total of approximately 7,417 brake hose assemblies are affected, utilizing a fitting identified as Part Number 12271 which was incorporated into 6,075 assemblies bearing Part Number 3381, and into 1,244 assemblies bearing Part Number 3381A; plus 98 assemblies bearing a fitting with Part Number 380653.

S5.3.4 of FMVSS No. 106, tensile strength, requires that ''a hydraulic brake hose assembly shall withstand a pull of 325 pounds without separation of the hose from its end fittings.'' S5.3.6 of FMVSS No. 106, water absorption and tensile strength, requires that ''a hydraulic brake hose assembly, after immersion in water for 70 hours, shall withstand a pull of 325 pounds without separation of the hose from its end fittings.''

The potentially affected hoses were manufactured during the time period of January 30, 2004 through September 10, 2004, using a ''straight cup'' procedure rather than the appropriate ''step cup'' procedure. Compliance testing by the petitioner of sample hose assemblies from each of the affected part numbers revealed that they failed the tensile strength tests of S5.3.4 and S5.3.6.

Coupled Products believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. The petitioner states the following:

> Part number 12217 is used in assemblies for SUV and pick-up truck applications. Part number 380653 is utilized for suspension lift kits * * * [T]he hose assemblies in these applications are located * * * above significant pieces of vehicle hardware including the driveshaft, differential case, and fuel tank (hardware). This configuration is such that a linear, end-to-end ''straight pull'' on the hose assembly, as that contained in the FMVSS No. 106 tensile strength test procedure, is not a real-life scenario. Rather than a ''straight pull,'' it is more likely (albeit remote) that the free length of the hose itself could be entangled or caught on a piece of road debris or other obstruction, resulting in a ''side pull'' on the assembly. This scenario itself is remote because the underlying hardware shields the hose assembly. Therefore, if debris were to become entangled

in the hose assembly, it would first have to bypass the hardware. If that were to occur, the impact would need to be so great as to make the concern of braking potential irrelevant.

Despite the fact that tensile stress on the assembly is an unlikely real life scenario, to assess the impact of this unlikely scenario, petitioner conducted a side pull tensile test on a sample of the subject brake hose assemblies to simulate the possible effect of a side pull on the integrity of the hose assembly * * *. The ''side pull'' test results show that the tensile load achieved prior to the ends separating from the hose exceeded 538 pounds in each of the samples analyzed for tensile results—well in excess of the 325 pound requirement.

Coupled Products further states:

Because the braking system on the vehicles in question utilizes a dual chamber master cylinder, any failure of the hose assembly due to excessive tensile force—unlikely as that may be—will not result in a loss of braking capability of the vehicle. Depending on the assembly affected, front or rear braking capability would still exist, although additional stopping distance might be required. Furthermore, the vehicle's emergency braking system would also exist.

Coupled Products indicates that the problem has been corrected.

NHTSA agrees with Coupled Products that the noncompliance is inconsequential to motor vehicle safety. As the petitioner indicates, the configuration for the specific application of these brake hoses is such that a linear, end-to-end straight pull on the hose assembly is unlikely to occur. Further, the petitioner's testing for a more likely scenario, *i.e.*, a side-pull on the assembly, produced results that far exceeded the 325 pound requirement of the standard.

Also, as Couple Products points out, this noncompliance would not result in a loss of braking capability. Either front or rear braking capability would still exist, and the vehicle's emergency braking system would remain operational. Coupled Products has corrected the problem. It should be noted that NHTSA recently granted a similar inconsequential noncompliance petition by Coupled Products where, because of the specific vehicle application (which is also the case here), the brake hose assemblies would not be subject to the type of forces specified in the standard (70 FR 32397).

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Coupled Products' petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

**Authority:** (49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8).

Issued on: June 14, 2005.

**Ronald L. Medford,**

*Senior Associate Administrator for Vehicle Safety.*

[FR Doc. 05–12115 Filed 6–20–05; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

**AGENCY:** Pipeline and Hazardous Materials Safety Administration, DOT.

**ACTION:** List of applications for modification of exemption.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions 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 exemptions (*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. There applications have been separated from the new application for exemption to facilitate processing.

**DATES:** Comments must be received on or before July 6, 2005.

*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 exemption 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 exemption 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 June 15, 2005.

**R. Ryan Posten,**

*Exemptions Program Officer, Office of Hazardous Materials Exemptions & Approvals.*

MODIFICATION EXEMPTIONS

| Application No. | Docket No. | Applicant | Regulation(s) affected | Modification of exemption | Nature of exemption thereof |
|---|---|---|---|---|---|
| 11321–M ..... | ..... | E.I. DuPont, Wilmington, DE. | 49 CFR 172.111, Column 7, Special Provisions B14, T38. | 11321 | To modify the exemption to authorized the use of UN specification portable tanks for the transportation of a Class 8 material. |
| 11606–M ..... | ..... | Safety-Kleen Systems, Inc., Humble, TX. | 49 CFR 173.28(b)(2) | 11606 | To modify the exemption to authorize the transportation of an additional Class 3 material in UN Standard 1A1, 1A2 and non-DOT specification steel drums. |

MODIFICATION EXEMPTIONS—Continued

| Application No. | Docket No. | Applicant | Regulation(s) affected | Modification of exemption | Nature of exemption thereof |
|---|---|---|---|---|---|
| 11770–M ..... | ..... | Gas Cylinder Technologies, Inc., Tecumseh, ON. | 49 CFR 173.302a; 173.304a. | 11770 | To modify the exemption to authorize maximum internal capacity of 65 cubic inches for the non-DOT specification cylinders and eliminating the 2.5 inch maximum outside diameter requirement. |
| 11911–M ..... | RSPA–97–2735 ..... | Transfer Flow, Inc., Chico, CA. | 49 CFR 178.700 thru 178.819. | 11911 | To modify the exemption to authorize the use of a new refueling tank design that is not required to be dismantled during transportation of Class 3 materials. |
| 12412–M ..... | RSPA–00–6827 ..... | Los Angeles Chemical Company, South Gate, CA. | 49 CFR 177.834(h); 172.203(a); 172.302(c). | 12412 | To modify the exemption to allow the transportation and unloading of certain UN IBC and DOT Specification portable tanks containing incompatible materials on the same motor vehicle. |
| 13616–M ..... | ..... | U.S. Department of Commerce, Anchorage, AK. | 49 CFR 172.101, Column 9B. | 13616 | To reissue the exemption originally issued on an emergency basis for the transportation of a Division 2.2 material in DOT Specification cylinders that are manifolded together and exceed the quantity limitations for cargo aircraft only. |
| 14170–M ..... | PHMSA–05–20714 | General Dynamics Armament & Technical Products, Lincoln, NE. | 49 CFR 173.301 and 173.306. | 14170 | To reissue the exemption originally issued on an emergency basis for the transportation of certain compressed gases in non-DOT specification fiberglass reinforced plastic cylinders. |

[FR Doc. 05–12131 Filed 6–20–05; 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 Exemptions

**AGENCY:** Pipeline and Hazardous Materials Safety Administration, DOT.

**ACTION:** List of Applications for Exemption.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions 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 exemption 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 July 21, 2005.

*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 exemption number.

**FOR FURTHER INFORMATION CONTACT:** Copies of the application 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 exemption 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 June 14, 2005.

**R. Ryan Posten,**

*Exemption Program Officer, Office of Hazardous Materials Safety Exemptions & Approvals.*

| Application No. | Docket No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| **NEW EXEMPTION** | | | | |
| 14196–N ..... | ..... | Union Pacific Railroad, Omaha, NE. | 49 CFR 174.67(i) and (j) ..... | To authorize rail cars containing a combustible liquid to remain attached to unloading connectors without the physical presence or an unloader. (mode 2). |
| 14197–N ..... | ..... | GATX Rail Corporation, Chicago, IL. | 49 CFR 173.31(b)(5) ..... | To authorize the transportation in commerce of tank cars containing certain hazardous materials without bottom discontinuity protection. (mode 2). |

| Application No. | Docket No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 14199–N ..... | ..... | RACCA Plymouth, MA | 49 CFR 175.33 ..... | To authorize the transportation in commerce by air of certain hazardous materials with alternative notification to the pilot in command. (modes 4, 5). |
| 14201–N ..... | ..... | Murray Air, Inc., Ypsilanti, MI. | 49 CFR 172.101 Column (9B); 172.204(c)(3); 173.27(b)(2)(3); 175.30. | To authorize the transportation in commerce by cargo only aircraft of Class 1 explosive which are forbidden or exceed quantities presently authorized. (mode 4). |
| 14204–N ..... | ..... | Great lakes Chemicals Corporation, Lafayette, IN. | 49 CFR 173.226(b) and (d) ..... | To authorize the transportation in commerce of bromine in single Monel packagings. (mode 1). |
| 14205–N ..... | ..... | The Clorox Company, Pleasanton, CA. | 49 CFR 173.306(a)(1) and 173.306(a)(3)(v). | To authorize the transportation in commerce of Division 2.2 aerosols in plastic packagings. (modes 1, 2). |
| 14206–N ..... | ..... | Digital Wave Corporation, Englewood, CO. | 49 CFR 180.205 ..... | To authorize the transportation in commerce of certain cylinders that have been ultrasonically retested for use in transporting Division, 2.1, 2.2, 2.3 materials (modes 1, 2, 4). |
| 14207–N ..... | ..... | GATX Rail Corporation, Chicago, IL. | 49 CFR 179.13 ..... | To authorize the transportation in commerce of Sodium hydroxide solution in DOT specification 111A100W–1 tank car tanks that exceed the maximum allowable gross weight on rail (263,000 lbs.). (mode 2). |

[FR Doc. 05–12132 Filed 6–20–05; 8:45 am]
BILLING CODE 4909–60–M

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–6 (Sub-No. 428X)]**

### BNSF Railway Company—Abandonment Exemption—in Colfax County, NM

BNSF Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 36.90-mile line of railroad between milepost 0.00 near French, and milepost 36.90 near York Canyon, in Colfax County, NM. The line traverses United States Postal Service Zip Codes 87747, 87728, and 87740.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 21, 2005, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 1, 2005. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 11, 2005, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to BNSF's representative: Michael Smith, Freeborn & Peters, 311 S. Wacker Drive, Suite 3000, Chicago, IL 60606–6677.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

BNSF has filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by June 24, 2005. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by June 21, 2006, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,200. *See* 49 CFR 1002.2(f)(25).

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: June 14, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 05–12194 Filed 6–20–05; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8308

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8308, Report of a Sale or Exchange of Certain Partnership Interests.

**DATES:** Written comments should be received on or before August 22, 2005.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Report of a Sale or Exchange of Certain Partnership Interests.

*OMB Number:* 1545–0941.

*Form Number:* 8308.

*Abstract:* Form 8308 is an information return that gives the IRS the names of the parties involved in an exchange of a partnership interest under Internal Revenue Code section 751(a). It is also used by the partnership as a statement to the transferor and transferee. It alerts the transferor that a portion of the gain on the sale of a partnership interest may be ordinary income.

*Current Actions:* There are no changes being made to Form 8308 at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, individuals, and farms.

*Estimated Number of Respondents:* 200,000.

*Estimated Time Per Respondent:* 7 hrs., 18 minutes.

*Estimated Total Annual Burden Hours:* 1,460,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 14, 2005.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. E5–3189 Filed 6–20–05; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 1099–G

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–G, Certain Government Payments.

**DATES:** Written comments should be received on or before August 22, 2005 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Certain Government Payments.

*OMB Number:* 1545–0120.

*Form Number:* 1099–G.

*Abstract:* Form 1099–G is used to report government payments such as unemployment compensation, state and local income tax refunds, credits, or offsets, discharges of indebtedness by the Federal Government, taxable grants, subsidy payments from the Department of Agriculture, and qualified state tuition program payments.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Federal, state, local or tribal governments.

*Estimated Number of Responses:* 61,000,000.

*Estimated Time Per Response:* 12 min.

*Estimated Total Annual Burden Hours:* 12,200,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal

revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 14, 2005.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. E5–3190 Filed 6–20–05; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday,
June 21, 2005

## Part II

# Department of Education

**34 CFR Parts 300, 301, and 304**

**Assistance to States for the Education of Children With Disabilities; Preschool Grants for Children With Disabilities; and Service Obligations Under Special Education—Personnel Development To Improve Services and Results for Children With Disabilities; Proposed Rule**

## DEPARTMENT OF EDUCATION

### 34 CFR Parts 300, 301 and 304

**RIN 1820–AB57**

### Assistance to States for the Education of Children With Disabilities; Preschool Grants for Children With Disabilities; and Service Obligations Under Special Education—Personnel Development To Improve Services and Results for Children With Disabilities

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The Secretary proposes to amend the regulations governing the Assistance to States for Education of Children with Disabilities Program, the Preschool Grants for Children With Disabilities Program, and Service Obligations under Special Education Personnel Development to Improve Services and Results for Children with Disabilities. These amendments are needed to implement recently enacted changes made to the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004.

**DATES:** To be considered, comments must be received at one of the addresses provided in the **ADDRESSES** section no later than 5 p.m. Washington, DC Time on September 6, 2005. Comments received after this time will not be considered.

We will hold public meetings about this NPRM. The dates and times of the meetings and the cities in which the meetings will take place are in *Public Meetings* under *Invitation to Comment* elsewhere in this preamble.

**ADDRESSES:** Address all comments about these proposed regulations to Troy R. Justesen, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, room 5126, Washington, DC 20202–2641. 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: *IDEAComments@ed.gov.*

You must include the term IDEA–Part B in the subject line of your electronic message. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies.

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 those comments to the U.S. Department of Education (Department) representative named in this section.

All first-class and Priority mail sent to the Department is put through an irradiation process, which can result in lengthy delays in mail delivery. Please keep this in mind when sending your comments and please consider using commercial delivery services or e-mail in order to ensure timely delivery of your comments.

**FOR FURTHER INFORMATION CONTACT:** Troy R. Justesen. Telephone: (202) 245–7468.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay System (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 provide to reduce the potential costs or increase potential benefits while preserving the effective and efficient administration of these programs.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 5126, Potomac Center Plaza, 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, such as a reader, or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for 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**.

#### Public Meetings

The dates and cities where the meetings about this NPRM will take place are listed below. Each meeting will take place from 1 to 4 p.m. and from 5 to 7 p.m.

Friday, June 17, 2005 in Nashville, TN;

Wednesday, June 22, 2005 in Sacramento, CA;

Friday, June 24, 2005 in Las Vegas, NV;

Monday, June 27, 2005 in New York, NY;

Wednesday, June 29, 2005 in Chicago, IL;

Thursday, July 7, 2005 in San Antonio, TX; and

Tuesday, July 12, 2005 in Washington, DC.

We provided more specific information on meeting locations in a notice published in the **Federal Register** (70 FR 30917).

#### Assistance to Individuals With Disabilities at the Public Meetings

The meeting sites are accessible to individuals with disabilities, and sign language interpreters will be available. If you need an auxiliary aid or service other than a sign language interpreter (*e.g.*, interpreting service such as oral, cued speech, or tactile interpreter, assisted listening device, or materials in an alternative format), notify the contact person listed in this NPRM at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

#### Background

On December 3, 2004, the Individuals with Disabilities Education Improvement Act of 2004 was enacted into law as Pub L. 108–446. The statute, as passed by Congress and signed by the President, reauthorizes and makes significant changes to the Individuals with Disabilities Education Act.

The Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004 (Act or IDEA), is intended to help children with

disabilities achieve to high standards—by promoting accountability for results, enhancing parental involvement, and using proven practices and materials; and, also, by providing more flexibility and reducing paperwork burdens for teachers, States, and local school districts. Enactment of the new law provides an opportunity to consider improvements in the current regulations that would strengthen the Federal effort to ensure every child with a disability has available a free appropriate public education that—(1) is of high quality, and (2) is designed to achieve the high standards reflected in the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (NCLB) and its implementing regulations.

Changes to the current Part B regulations (34 CFR parts 300 and 301) and Part D regulations (34 CFR part 304) are necessary in order for the Department to appropriately and effectively address the provisions of the new law and to assist State and local educational agencies in implementing their responsibilities under the new law. Changes to the current Part C regulations (part 303) also are necessary in order for the Department to appropriately and effectively address the provisions in Part C of the Act and to assist States in completing their responsibilities under the new law. The NPRM for the Part C regulations will be published soon.

On December 29, 2004, the Secretary published a notice in the **Federal Register** requesting advice and recommendations from the public on regulatory issues under the Act, and announcing a series of seven public meetings during January and February of 2005 to seek further input and suggestions from the public for developing regulations based on the new statute.

Over 6000 public comments were received in response to the **Federal Register** notice and at the seven public meetings, including letters from parents and public agency personnel, and parent-advocate and professional organizations. The comments addressed each major provision of the new law (such as discipline procedures, provisions on personnel qualifications and highly qualified teachers, provisions related to evaluation of children and individualized education programs, participation of private school children with disabilities, and provisions on early intervening services). These comments were reviewed and considered in developing this NPRM. The Secretary appreciates the interest and thoughtful attention of the commenters responding to the December 29, 2004 notice and participating in the seven public meetings.

**General Proposed Regulatory Plan and Structure**

In developing this NPRM, we have elected to construct one comprehensive, freestanding document that incorporates virtually all requirements from the new law along with the applicable regulations, rather than publishing a regulation that does not include statutory provisions. The rationale for doing this is to create a single reference document for parents, State personnel, school personnel, and others to use, rather than being forced to shift between one document for regulations and a separate document for the statute. This approach was used in developing the current regulations. Although this approach will result in a larger document, it is our impression that various groups strongly support continuing this practice.

In addition, we have reorganized the regulations by following the general order and structure of provisions in the statute, rather than using the arrangement of the current regulations. We believe this change in organization will be helpful to parents, State and local educational agency personnel, and the public both in reading the regulations, and in finding the direct link between a given statutory requirement and the regulation related to that requirement. Thus, in general, the requirements related to a given statutory section (e.g., *State eligibility* in section 612 of the Act) will be included in one location (subpart B) and in the same general order as in the statute, rather than being spread throughout four or more subparts, as the statutory sections are in the current regulations.

As restructured in this NPRM, the proposed regulations are divided into eight major subparts, each of which is directly linked to, and comports with, the general order of provisions in a specific section of the Act. For example, we have revised subpart G of the regulations to include all provisions regarding the allotment and use of funds from section 611 of the Act, rather than having those provisions dispersed among several different subparts, as they are in the current regulations.

In addition, we have removed part 301 (Preschool Grants for Children with Disabilities) from title 34 and placed the Preschool Grants provisions from section 619 of the Act into a new subpart H under part 300. This restructuring and consolidation of the financial requirements from both the statute and regulations into a specific location in the regulations should be useful to State and local administrators and others in finding the relevant statutory and regulatory provisions regarding both the Assistance to States and Preschool Grants programs.

In reviewing the current regulations, we considered their continued necessity and relevance in light of a number of factors: Whether statutory changes required changes to existing regulations; whether changes in other laws, or the passage of time and changed conditions rendered the regulations obsolete or unnecessary; whether less burdensome alternatives or greater flexibility was appropriate; and whether the regulation could be changed in light of section 607(b) of the Act (section 607(b) of the Act provides that the Secretary may not publish final regulations that would procedurally or substantively lessen the protections provided to children with disabilities in the regulations that were in effect on July 20, 1983, except to the extent that such regulation reflects the clear and unequivocal intent of the Congress in legislation). In the following discussion of proposed regulatory changes, we identify the changes that would be made to existing regulations after consideration of these factors.

**Proposed Regulatory Changes**

*Subpart A—General*

Purposes and Applicability

Proposed § 300.1 would be revised only to add, consistent with a change to section 601(d)(1)(A) of the Act, the words ''further education'' in paragraph (a).

Except for the section heading, proposed § 300.2 would be unchanged from the existing provision.

Section 300.3 of the current regulations would be removed as unnecessary, because the regulations listed in this section already apply, by their own terms, to States and local agencies under Part B of the Act.

**Definitions Used in This Part**

As in the current regulations, proposed § 300.4 (Act) would refer to the Individuals with Disabilities Education Act, as amended.

Proposed § 300.5 (*Assistive technology device*) would retain the current definition, and include the new language from section 602(1) of the Act that the term does not include a medical device that is surgically implanted, or the replacement of that device.

Proposed § 300.6 (*Assistive technology service*) would be consistent with the current regulatory definition of that term.

Proposed § 300.7 (*Charter school*) would define the term to have the meaning given that term in section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C 6301 *et seq.* (ESEA).

Proposed § 300.8 (*Child with a disability*) would make the following changes to the current regulatory definition in § 300.7: In paragraphs (a)(1) and (a)(2) cross-references to evaluation procedures would be updated to reflect the placement of those procedures in these proposed regulations. The parenthetical following ''serious emotional disturbance'' in paragraph (a)(1) would be revised to read ''referred to in this part as emotional disturbance.'' The cross-reference regarding related services in the definition of special education in paragraph (a)(2)(ii) would be updated. In paragraph (b), a parenthetical phrase would be added following the reference to children aged three through nine to clarify that ''developmental delay'' could be used for any subset of that age range, including children three through five. This reflects a change in section 602(3)(B) of the Act. Paragraph (c)(8) (*Orthopedic impairment*) would revise current § 300.7(c)(8) by removing the parenthetical listing of examples, because these examples are outdated.

Finally, in paragraph (c)(10)(i) of proposed § 300.8, which contains a definition of the term *specific learning disability,* the word ''the'' would be substituted for ''an'' before the phrase ''imperfect ability to listen, think, * * *'' reflecting the addition of ''the'' in section 602(30)(A) of the Act.

Proposed § 300.9 would incorporate the regulatory definition of *Consent* that appears in § 300.500(b)(1) of the current regulations. The current provision in § 300.8 that cross-references the § 300.500 definition of consent, would be removed.

Consistent with section 602(4) of the Act, proposed § 300.10 would add the new definition of *Core academic subjects* as that term is defined in section 9101 of the ESEA.

Proposed § 300.11 would revise the definitions of *Day; business day; school day* in current § 300.9 only by updating the cross-reference to the regulatory requirement in proposed § 300.148(c) concerning a limitation on reimbursement for private school placements.

The regulatory definition of *Educational service agency* currently in § 300.10 would be moved to proposed § 300.12 and revised by adding the word ''schools'' after ''public elementary'' in paragraph (a)(2) of this section to conform with the language in section 602(5) of the Act. In proposed paragraph (c), the provision concerning entities that meet the definition of *intermediate educational unit* in section 602(23) of the Act as in effect prior to June 4, 1997 would be retained. There are entities still providing special education and related services to preschool children with disabilities that meet the definition of *intermediate educational unit,* but may not meet the definition of *educational service agency* because they are not responsible for the provision of special education and related services provided within public elementary schools of the State.

Proposed § 300.13 would reflect the definition of *Elementary school* in section 602(6) of the Act, including the new language specifying that the term includes a public elementary charter school.

Proposed § 300.14 would reflect the current statutory definition of *Equipment* and would be substantially the same as § 300.11 of the current regulations.

Proposed § 300.15 would incorporate the regulatory definition of *Evaluation* that appears in the current regulations in § 300.500(b)(2), with the cross-reference to the evaluation procedures updated to reflect their placement in these proposed regulations and to include the additional procedures regarding specific learning disability. The current regulation, regarding evaluation in § 300.12, which cross-references the definition in current § 300.500, would be removed as duplicative and unnecessary.

Proposed § 300.16 (*Excess costs*), defined in the current regulations in § 300.184, would be revised consistent with changes in section 602(8) of the Act. This provision is substantially the same as the current definition in § 300.184(b).

Proposed § 300.17 (*free appropriate public education* or *FAPE*) would incorporate the provisions of section 602(9) of the Act and be the same as the definition in § 300.13 of the current regulations, except that § 300.17(d) would be updated to add a cross-reference to the individualized education program (IEP) requirements.

A new definition of *highly qualified special education teacher* would be added in proposed § 300.18, reflecting the addition of a definition of this term to the statute in section 602(10) of the Act, with the following modifications: Paragraph (a)(1) of this section would specify that the term ''highly qualified'' applies only to public elementary school and secondary school special education teachers, consistent with the definition of that term in section 9101 of the ESEA, which is incorporated into the Act and applied to special education teachers in section 602(10) of the Act. We do not believe that the ''highly qualified'' requirements of the ESEA, or, by statutory cross-reference, the Act, were intended to apply to private school teachers, even in situations where a child with a disability is placed in, or referred to, a private school by a public agency in order to carry out the public agency's responsibilities under this part, consistent with section 612(a)(10)(B) of the Act and proposed § 300.146. This issue also is addressed in proposed § 300.156.

Proposed § 300.18(b)(2) would specify that a teacher participating in an alternate route to certification program would be considered to be fully certified under certain circumstances. The standard to be applied to an alternate route to certification program would be the same as for those programs under the regulations implementing title I of the ESEA in 34 CFR § 200.56(a)(2)(ii). This would provide for consistency in the interpretation and application of the alternate route to certification provisions across these programs.

In proposed § 300.18(b)(3), a provision would be added to clarify that a public elementary or secondary school teacher who is not teaching a core academic subject would be considered *highly qualified* if the teacher meets the requirements of proposed § 300.18(b)(1) and (2). This provision would reflect note 21 in U.S. House of Representatives Conference Report No. 108–779, (Conf. Rpt.) that special education teachers who are only providing consultative services to other teachers who are highly qualified to teach particular academic subjects, could be highly qualified by meeting the special education qualifications alone. Proposed § 300.18(c)(2) would clarify that all special education teachers who are exclusively teaching students who are assessed based on alternate academic achievement standards, as permitted under the regulations implementing title I of the ESEA, at a minimum, have subject matter knowledge at the elementary level or above, as determined by the State, needed to effectively teach to those standards. Note 21 in the Conf. Rpt. calls for teachers exclusively teaching students who are assessed based on alternate academic achievement standards above the elementary level to have a high level of competency in each of the core academic subjects taught.

The proposed regulation would not specifically address the use of a separate ''high objective uniform State standard of evaluation'' (HOUSSE) for special

education teachers. However, note 21 in the Conf. Rpt. recognized that some States have developed HOUSSE standards for special education teachers, and indicated that those separate HOUSSE standards should be permitted, including single HOUSSE evaluations that cover multiple subjects, as long as those adaptations of a State's HOUSSE for use with special education teachers would not establish a lesser standard for the content knowledge requirements for special education teachers. We request comment on whether additional regulatory action is needed on this point. Proposed § 300.18(g) would clarify that the requirements in proposed § 300.18 regarding highly qualified special education teachers do not apply with respect to teachers hired by private elementary and secondary schools.

Proposed § 300.19 would reflect the definition of *Homeless children* added to the statute in section 602(11) of the Act.

The definition of *include* in proposed § 300.20 is substantively unchanged from the current regulatory provision in § 300.14.

The proposed definitions of *Indian* and *Indian tribe* in § 300.21 would incorporate the definitions of those terms currently in § 300.264 and reflect the language in sections 602(12) and 602(13) of the Act. The Department of Education seeks comment on the definition of *Indian tribe* because the current definition includes state tribes. The Department of the Interior is only authorized to provide services to Federally Recognized tribes, therefore, States should provide comments on how they would provide these services to State recognized tribes. Nothing in this definition is intended to require the BIA to provide services or funding to a State Indian tribe for which BIA is not responsible.

The definition of *Individualized education program* or *IEP* in proposed § 300.22 would incorporate the regulatory definition of that term currently in § 300.340(a), and would reflect the language in section 602(14) of the Act. The current § 300.15 cross-referencing the § 300.340 definition would be removed as duplicative and unnecessary.

Proposed § 300.23 (*Individualized education program team*) would be the same as § 300.16 of the current regulations. The definition in proposed § 300.24 of *Individualized family service plan* would be the same as the current regulatory definition in § 300.17, except that proposed § 300.24 would appropriately refer to the current statutory definition of IFSP in section 636 of the Act and not to the regulatory definition in 34 CFR 303.340(b).

Proposed § 300.25 (*Infant or toddler with a disability*), § 300.26 (*Institution of higher education*), and § 300.27 (*Limited English proficient*) would reflect statutory definitions of those terms in sections 602(16), 602(17), and 602(18) of the Act, respectively.

Proposed § 300.28 (*Local educational agency* or *LEA*) is substantively unchanged from the current regulatory definition in § 300.18, and would reflect the definition of that term in section 602(19) of the Act.

Proposed § 300.29 (*Native language*) is substantively unchanged from the current regulatory definition of that term in § 300.19.

Proposed § 300.30 (*Parent*) would revise the current regulatory definition of that term in § 300.20 to better reflect the revised statutory definition of Parent in section 602(23) of the Act. Proposed § 300.30(a)(2) would reflect the provision regarding a State law prohibition on when a foster parent can be considered a parent, but would add language to recognize that similar restrictions may exist in State regulations or in contractual agreements between a State or local entity and the foster parent, and should be accorded similar deference. Proposed § 300.30(b)(1) would provide that the natural or adoptive parent would be presumed to be the parent for purposes of the regulations if that person were attempting to act as the parent under proposed § 300.30 and more than one person is qualified to act as a parent, unless that person does not have legal authority to make educational decisions for the child, or there is a judicial order or decree specifying some other person to act as the parent under Part B of the Act. Proposed § 300.30(b)(2) would provide that if a person or persons is specified in a judicial order or decree to act as the parent for purposes of § 300.30, that person would be the parent under Part B of the Act. Proposed § 300.30(b)(2) would, however, exclude an agency involved in the education or care of the child from serving as a parent, consistent with the statutory prohibition that applies to surrogate parents in sections 615(b)(2) and 639(a)(5) of the Act. The provisions in proposed § 300.30(b) should assist schools and public agencies in identifying the appropriate person to serve as the parent under Part B of the Act, especially in those difficult situations in which more than one individual wants to make educational decisions.

Proposed § 300.31 would add a new definition of *Parent training and information center* reflecting section 602(25) of the Act. This term would be used in proposed § 300.506.

Proposed §§ 300.32 (*Personally identifiable*) and 300.33 (*Public agency*) are substantively unchanged from current regulatory definitions of these terms in § 300.500(b)(3) and § 300.22, respectively. We note that throughout these proposed regulations, *public agency* has been used to make clear where the requirements do not apply only to States and LEAs.

The current regulatory definition of *Qualified personnel* in § 300.23 would be removed, because personnel qualifications would be adequately addressed in proposed § 300.156.

Proposed § 300.34 (*Related services*), reflecting changes in section 602(26) of the Act, would amend the current regulatory definition in § 300.24 in the following ways: In proposed § 300.34(a) ''interpreting services'' and ''school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the IEP of the child'' would be added. Proposed § 300.34(b) would be added to address the statutory limitation on surgically implanted medical devices. Paragraph (b) also would specify that *related services* would not include the costs of maximizing the functioning of a surgically implanted device or the maintenance of a surgically implanted device. School districts should not be required to bear these costs, which are integral to the functioning of the implanted device. Proposed paragraph (c) would include new definitions of *Interpreting services* and *School nurse services.* The list is not intended to be exhaustive and other therapies, as well as other services not listed, may be included in a child's IEP if the IEP Team determines that a particular service is needed for a child to benefit from special education. In all cases concerning related services, the IEP Team's determination about appropriate services must be reflected in the child's IEP and those listed services must be provided in accordance with the IEP at public expense and at no cost to the parents. Nothing in the Act or in the definition of *related services* requires the provision of a related service to a child unless the child's IEP Team has determined that the service is required in order for the child to benefit from special education and has included the service on the child's IEP.

Proposed § 300.35 (*Secondary school*) would revise the current regulatory definition of this term in § 300.25 to add the new statutory language specifying

that the term includes a public secondary charter school.

Proposed § 300.36 (*Services plan*) would add a new definition that would describe the content, development, and implementation of plans for parentally-placed private school children with disabilities who have been designated to receive services. The definition would cross-reference the specific requirements for the provision of services to parentally-placed private school children with disabilities in proposed §§ 300.132 and 300.137 through 300.139.

Proposed § 300.37 (*Secretary*) would reflect the statutory definition of that term in section 602(28) of the Act.

Proposed §§ 300.38 (*Special education*), 300.39 (State), and 300.41 (*Supplementary aids and services*) would be substantively unchanged from current regulatory provisions in §§ 300.26, 300.27 and 300.28, respectively, except that *State* would be revised to reference an exception when the term is used in subparts G and H of these regulations. Proposed § 300.38(b)(5) would revise the definition of *vocational education* in current § 300.26(b)(5) to include the definition of *vocational and technical education* and the definition of *vocational and technical education* in the Carl D. Perkins Vocational and Applied Technology Act of 1988, as amended, 20 U.S.C. 2301, 2302(29) would be added in proposed § 300.38(b)(6).

Proposed § 300.42 (*Transition services*) would revise the current regulatory definition of the term in § 300.29, reflecting new statutory language in section 602(34) of the Act.

New proposed definitions would be added in §§ 300.43 and 300.44 reflecting the statutory definitions of *Universal design* and *Ward of the State,* respectively. The definition of Ward of the State underscores that the determination of whether a child is a ward of the State is limited to applicable State law. Finally, the current list of definitions found in the Education Department General Administrative Regulations (EDGAR) in § 300.30 would be removed as unnecessary, as these definitions already apply by their own terms, except that the definition of *Secretary* in proposed § 300.37 and *State educational agency* in proposed § 300.40, which are included in the current EDGAR list, would be included in the proposed regulation because they also are defined in section 602(28) and (32) of the Act.

*Subpart B—State Eligibility*

General

Revised subpart B would incorporate current provisions from other subparts that, under the current regulations, are cross-referenced in subpart B. These changes would be consistent with the statutory structure. Some of the provisions that are consolidated in proposed subpart B would include: certain provisions related to FAPE, currently in subpart C; provisions regarding private school children with disabilities, currently in subpart D; the least restrictive environment (LRE) provisions, currently in subpart E; and the State complaint procedures, currently in subpart F.

Proposed § 300.100 would revise current § 300.110 to provide for the submission of a plan that includes assurances related to the conditions of eligibility for assistance. The requirement that States submit copies of all State statutes, regulations, and other documents would be removed from current § 300.110, consistent with the changes in Section 612(a) of the Act. Consistent with this approach, these proposed regulations would eliminate from the current regulations throughout subpart B all provisions requiring that policies and procedures be on file with the Secretary.

**FAPE Requirements**

Proposed § 300.101 would incorporate the current general FAPE provision in § 300.121(a), and would include a reference to the SEA's obligation to make FAPE available to children who have been suspended or expelled from school, consistent with proposed § 300.530(d). Consistent with changes to the statute, the current provisions in § 300.121(b) regarding submission of State documentation, such as statutes and court orders, would be removed. The current provisions in § 300.121(c), regarding FAPE beginning at age three, generally would be retained. The current provisions in § 300.121(e), regarding children advancing from grade to grade, also would be retained. These provisions provide useful information on appropriate implementation of public agency responsibilities under Part B. Section 300.121(d) of the current regulations would not be retained in these proposed regulations. Instead, the obligation to ensure the right to FAPE for children who have been suspended or expelled from school would be addressed in proposed § 300.530(d) in subpart E.

Proposed § 300.102 would retain the current exceptions to FAPE in § 300.122. For consistency with the statute, references to ''students'' would be changed to ''children.'' The proposed regulation would contain a new provision regarding children who are eligible for services under section 619 of the Act, but who are receiving early intervention services under Part C, consistent with the statutory language in section 612(a)(1)(c) of the Act. Proposed § 300.102(b) also would include a new provision that would require that information regarding exceptions to FAPE be current and accurate. This information is necessary for the Department to allocate funds accurately among the States.

**Other FAPE Requirements**

Proposed §§ 300.103, 300.104, and 300.105(b), regarding methods and payments; residential placement; and proper functioning of hearing aids would retain the provisions from §§ 300.301 through 300.303 of the current regulations, respectively. Proposed § 300.105(a), regarding assistive technology, would retain the provisions in current § 300.308.

Proposed §§ 300.106 through 300.108, regarding extended school year services, nonacademic services, and physical education, would retain the current provisions in § 300.309, § 300.306, and § 300.307, respectively. Proposed § 300.109, regarding a full educational opportunity goal, generally would retain the current provisions in §§ 300.123 and 300.124, but would combine them, consistent with section 612(a)(2) of the Act.

Proposed § 300.110, regarding program options, would retain the current provisions in § 300.305.

Proposed § 300.111, regarding child find, generally would retain the current provisions in § 300.125 and, consistent with changes in section 612(a)(3) of the Act, would specifically reference children who are homeless or are wards of the State. In addition, proposed § 300.111(b) would incorporate the provisions related to developmental delay currently in § 300.313(a). The proposed regulation would remove the current provisions in § 300.313(b) regarding use of individual disability categories and § 300.313(c) regarding a common definition of developmental delay as they are unnecessary. States have the option of using developmental delay and other eligibility categories for children with disabilities aged three through nine and subsets of that age range and of using a common developmental delay definition for Parts B and C of the Act. The proposed regulations generally would retain the current provisions in § 300.125(a)(2) and (d), regarding other children included in

child find and the construction of Part B of the Act as not requiring that children be classified by their disability, as long as each child who needs special education and related services is regarded as having a disability under the Act. Consistent with other changes in these regulations to remove eligibility documentation requirements, the proposed regulation would remove the provision in § 300.125(b) of the current regulations that the State must have policies and procedures on file with the Secretary. The proposed regulation also would remove the provision in § 300.125(c) of the current regulations, regarding child find for children from birth through age two when the SEA is the lead agency for the Part C program, because this is a clarification that does not need to be in the regulations. The child find requirement under these regulations has traditionally been interpreted to mean identifying and evaluating children from birth. While child find under Part C of the Act overlaps, in part, with Part B of the Act, the coordination of child find activities under Part B and Part C is an implementation matter that would be best left to each State. Nothing in the Act prohibits the Part C lead agency's participation, with the agreement of the SEA, in the actual implementation of child find activities for infants and toddlers with disabilities.

Proposed § 300.112, regarding individualized education programs (IEPs), would revise the current provisions in § 300.128 by adding an exception that references the requirement in proposed § 300.300(b)(3)(ii). That exception would provide that if the parent of a child with a disability refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the public agency is not required to convene an IEP meeting to develop an IEP for the child for which the public agency requests such consent. Consistent with other changes in these proposed regulations, the proposed regulation would remove § 300.128(b), which requires the State to have policies and procedures on file with the Secretary.

**Least Restrictive Environment**

Proposed § 300.114, regarding LRE, generally would retain the current provisions in § 300.550(b). The proposed regulation would remove the documentation requirements of § 300.130(a) and § 300.550(a) and (b), consistent with other changes in these proposed regulations. The current provision related to an assurance regarding a State's funding mechanism in § 300.130(b)(2) would be retained in proposed § 300.114(b)(1). This section would provide that a State funding mechanism must not result in placements that violate the LRE provisions and that the State must not use a funding mechanism that distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability FAPE according to the unique needs of the child, as described in the child's IEP. This change is consistent with language in section 612(a)(5)(B)(i) of the Act.

With regard to section 612(a)(5)(B)(i) of the Act, note 89 in the Conf. Rpt. states that some States continue to use funding mechanisms that provide financial incentives for, and disincentives against, certain placements and these new provisions in the statute were added to prohibit States from maintaining funding mechanisms that violate appropriate placement decisions, not to require States to change funding mechanisms that support appropriate placement decisions. Note 89 of the Conf. Rpt. indicates that it is the intent of the changes to section 612(a)(5)(B) of the Act to prevent State funding mechanisms from affecting appropriate placement decisions for children with disabilities. As also set out in note 89, the law requires that each public agency ensure that a continuum of alternative placements (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions) is available to meet the needs of children with disabilities for special education and related services. The note further explains that State funding mechanisms must be in place to ensure funding is available to support the requirements of this provision, not to provide an incentive or disincentive for placement and that the LRE principle is intended to ensure that a child with a disability is served in a setting where the child can be educated successfully in the least restrictive setting. Proposed paragraph (b)(2) would replace § 300.130(b)(2) and require a State that does not have policies and procedures to this effect to provide an assurance as soon as feasible to ensure that the mechanism does not result in placements that violate the LRE principle. The other provisions regarding LRE would be retained with appropriate updating of cross-references, as described in the following paragraphs.

Proposed § 300.115, regarding continuum of placements, would retain the language currently in § 300.551. Proposed § 300.116, regarding placements, would retain the language currently in § 300.552, except that paragraph (b)(3) would be revised to clarify that a child's placement must be as close as possible to the child's home unless the parent agrees otherwise. Finally, § 300.116(c) would be revised to require that each public agency ensure that, unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school he or she would attend if not disabled, unless the parent agrees otherwise. This additional language, ''unless the parent agrees otherwise,'' in paragraphs (b)(3) and (c) would clarify that parents can choose to send their child to a charter school, magnet school, or other specialized school without causing a violation of the LRE mandate.

Proposed § 300.117, regarding nonacademic settings, would retain the current provisions in § 300.553. Proposed § 300.118, regarding children in public or private institutions, would retain the current provisions in § 300.554.

Proposed § 300.119, regarding technical assistance and training, would retain the current provisions in § 300.555.

Proposed § 300.120, regarding LRE monitoring activities, would retain the current provisions in § 300.556.

**Additional Eligibility Requirements**

Proposed § 300.121, regarding procedural safeguards, would retain the current provision in § 300.129(a), but would remove the provision in § 300.129(b) regarding having the safeguards on file with the Secretary, consistent with statutory changes eliminating requirements that States file documentation with the Secretary.

Proposed § 300.122 would remove the current requirement in § 300.126 that evaluation policies and procedures be on file with the Secretary, consistent with statutory changes discussed previously. Consistent with the provision in section 612(a)(7) of the Act, proposed § 300.122 would require that children with disabilities be evaluated consistent with the requirements in subpart D of these proposed regulations. The relevant requirements are addressed elsewhere in this preamble in the discussion of subpart D.

Proposed § 300.123 would remove the current requirement in § 300.127 that policies and procedures related to confidentiality be on file with the Secretary and the criteria the Secretary uses to evaluate those policies and

procedures, consistent with statutory changes discussed previously. Instead, the proposed regulation would require that public agencies comply with subpart F of these regulations relating to the confidentiality of records and information. The relevant requirements are addressed elsewhere in this preamble in the discussion of subpart F.

Proposed § 300.124, regarding the transition of children from the Part C program to preschool programs under Part B, would remove the current requirement in § 300.132 that policies and procedures related to confidentiality be on file with the Secretary, as discussed previously. The proposed regulation generally would retain the other provisions of § 300.132. Proposed § 300.124(c) would clarify that only affected LEAs must participate in transition planning conferences arranged by the designated lead agency under Part C of the Act.

**Children in Private Schools**

Proposed § 300.129, concerning State responsibilities regarding children in private schools, would revise the current requirements in § 300.133, by removing the requirement that a State must have on file with the Secretary policies and procedures that ensure that the requirements of current §§ 300.400 through 300.403 and current §§ 300.460 through 300.462 are met. Proposed § 300.129 would make clear that the State must have in effect policies and procedures that ensure that LEAs and, if appropriate, the SEA, meet the private school requirements in proposed §§ 300.130 through 300.148.

**Children With Disabilities Enrolled by Their Parents in Private Schools**

Proposed § 300.130, regarding the definition of parentally-placed private school children with disabilities, would incorporate the current provisions in § 300.450.

Proposed § 300.131, regarding child find for parentally-placed private school children with disabilities, generally would retain the current requirements in § 300.451, but would clarify, consistent with the changes in proposed §§ 300.132 and 300.133, that the provisions governing parentally-placed private school children with disabilities apply to children who are enrolled in private schools located in the school district served by the LEA. The new statutory requirements in section 612(a)(10)(A)(ii) of the Act should ensure that parentally-placed private school children will not be denied the opportunity to receive services that would otherwise be available to them because of practical obstacles posed when they attend a private school located outside their district of residence.

Proposed regulations in § 300.131(b) through (e) also would include new provisions that incorporate the new requirements in section 612(a)(10)(A)(ii) of the Act, designed to ensure that child find for parentally-placed private school children suspected of having disabilities is comparable to child find for public school children suspected of having disabilities. Proposed § 300.131 would require that the participation in child find for parentally-placed private school children with disabilities be equitable, the counts be accurate, the activities undertaken be similar to child find activities for public school children with disabilities, and the period for completion of the child find process be comparable to the period for completion for public school children with disabilities when a parent consents to the evaluation. Similar to the current provision in § 300.453(c), and consistent with section 612(a)(10)(A)(ii)(IV) of the Act, proposed § 300.131(d) would provide that the costs of carrying out the child find requirements for parentally-placed private school children with disabilities, including individual evaluations, may not be considered in determining whether an LEA has met its obligations under proposed § 300.133.

The proposed regulation would remove current § 300.453(d), regarding the permissibility of additional services, as it merely provides clarification for which a regulation is not necessary. Nothing in the Act prohibits SEAs and LEAs from providing other services to parentally-placed private school children with disabilities in addition to the services that are required under Part B of the Act.

Proposed § 300.132(a), regarding the provision of services for parentally-placed private school children with disabilities, would revise current § 300.452(a) in light of changes in section 612(a)(10)(A) of the Act, which refers to children ''enrolled in private elementary schools and secondary schools in the school district served by a local educational agency.'' Therefore, proposed § 300.132(a) would clarify that the provision of services under the proposed regulations refers only to children with disabilities enrolled by their parents in private schools located in the school district served by the LEA. The proposed regulation also would add a reference to the by-pass provisions in proposed §§ 300.190 through 300.198. Proposed § 300.132(b) generally would retain current § 300.452(b), regarding a services plan for each private school child with a disability designated to receive special education and related services under Part B. Proposed § 300.132(c) would require each LEA to maintain and provide to the SEA records on the number of private school children with disabilities evaluated, the number determined to be children with disabilities, and the number of private school children with disabilities served, consistent with section 612(a)(10)(A)(i)(V) of the Act.

Proposed § 300.133, regarding expenditures for providing special education and related services to parentally-placed private school children with disabilities, would revise current § 300.453(a), regarding the formula used in determining the proportionate amount of expenditures, in light of changes in section 612(a)(10)(A)(i)(II) of the Act. Proposed § 300.133(a) would provide that the calculation of the proportionate amount of funds allocated for services for parentally-placed private school children be based on the count of parentally-placed private school children attending private schools located in the LEA. The proposed regulation would establish the formula as the number of children with disabilities, ages 3 through 21, who are enrolled by their parents in private schools located in the school district served by the LEA, divided by the total number of children with disabilities, ages 3 through 21, in the LEA's jurisdiction. Proposed § 300.133(b) would incorporate the provision in section 612(a)(10)(A)(i)(II) of the Act regarding a thorough and complete child find process. Proposed § 300.133(c), regarding child count, generally would retain the current provision in § 300.453(b), but for clarity, would use the term parentally-placed private school children with disabilities. The existing provision in § 300.453(c) would be removed, as similar content would be more fully addressed in proposed § 300.131(d). Proposed § 300.133(d) would incorporate the statutory provision regarding supplementing not supplanting in section 612(a)(10)(A)(i)(IV) of the Act.

Proposed §§ 300.134 and 300.135 would incorporate new provisions in section 612(a)(10)(A)(iii) and (iv) of the Act, regarding timely and meaningful consultation with private school representatives and representatives of parents of parentally-placed private school children with disabilities, including a discussion of: How parentally-placed children identified through the child find process can meaningfully participate; how, where, and by whom special education and related services will be provided; and

how, if the LEA disagrees with the views of the private school officials and the services to be provided, the LEA will provide a written explanation of why the LEA chose not to provide services directly or through a contract. Proposed § 300.135 would require, in accordance with section 612(a)(10)(A)(iv) of the Act, a written affirmation signed by the representatives of the participating private schools that timely and meaningful consultation has occurred. The current provisions in § 300.454(b)(1) through (3), regarding the consultation process, would be removed because they were superceded by new statutory requirements related to consultation in section 612(a)(10)(A)(v) of the Act.

Proposed § 300.136, regarding the right of a private school official to submit to the SEA a complaint related to the LEA's compliance with the timely and meaningful consultation requirements, would incorporate the new provisions in section 612(a)(10)(A)(v) of the Act.

Proposed § 300.137(b) and (c), regarding determination of services to parentally-placed private school children with disabilities, generally would retain the current provisions in § 300.454(a), (b)(4), and (c). Proposed § 300.137(a) also would include language from current § 300.455(a)(3), providing that a parentally-placed private school child with a disability has no individual entitlement to receive some or all of the special education and related services that the child would receive if enrolled in a public school. This is an important clarification of the different responsibilities that public schools have for providing special education and related services to parentally-placed private school children with disabilities. Under the Act, LEAs have an obligation to provide the group of parentally-placed private school children with disabilities with equitable participation in the services funded with Federal IDEA funds. Because Federal funding constitutes only a portion of the excess costs of providing special education and related services to a child with disabilities, LEAs, in consultation with representatives of the private schools, will have to make decisions about how best to use the available Federal funds to address the needs of the parentally-placed private school children with disabilities as a group. In some LEAs, geography, school location, and the needs of the parentally-placed private school children with disabilities may make it possible for most, or even all of those children to receive some services under section 612(a)(10)(A) of the Act. In other cases, the Federal funds available may not be sufficient to provide all of these children with special education and related services. Decisions about how best to use the available Federal funds to ensure equitable participation of the group of parentally-placed private school children with disabilities are left to LEA personnel, in consultation with the private school representatives, who understand what is feasible and appropriate in particular situations.

Proposed § 300.138, regarding equitable services provided to parentally-placed private school children with disabilities, would retain the current provisions in § 300.455(a)(1) and (2), and (b), regarding standards for personnel who provide services to parentally-placed private school children, different amounts of services that may be provided to parentally-placed private school children as compared with those provided to children in public schools, and the provision of services for each parentally-placed private school child who has been designated to receive services in accordance with a services plan. The proposed regulation also would include language from section 612(a)(10)(A)(vi) of the Act, which provides that the special education and related services be provided directly by employees of the public agency or through contract and that special education and related services, including materials and equipment, be secular, neutral and nonideological.

Proposed § 300.139, regarding the location of services and transportation, generally would retain the current provisions in § 300.456 that clarify that LEAs may provide special education and related services funded under Part B of the Act on site at the private, including religious, schools to the extent consistent with law. It should be noted that LEAs should provide such services for parentally-placed private school children with disabilities on site at their school, unless there is a compelling rationale for these services to be provided off site.

Proposed § 300.140, regarding the unavailability of due process complaints, except for child find and the availability of State complaints, would retain the current provisions in § 300.457. Proposed § 300.140(b) would clarify that the State complaint procedures would be used to address complaints about the implementation of the consultation process in proposed § 300.134. Proposed § 300.141, regarding the requirement that funds not benefit a private school, would retain the current provisions in § 300.459. Proposed § 300.142 would combine the requirements of current §§ 300.460 and 300.461 regarding the use of public school personnel and private school personnel. Proposed § 300.143, regarding the prohibition of separate classes, would retain the requirements in current § 300.458.

Proposed § 300.144 would incorporate provisions in section 612(a)(10)(A)(vii) of the Act regarding property, equipment, and supplies for the benefit of private school children with disabilities and would replace the current provisions in § 300.462(a). The proposed regulation would retain the current provisions in § 300.462(b) through (e).

**Children With Disabilities in Private Schools Placed or Referred by Public Agencies**

Proposed §§ 300.145, 300.146, and 300.147, regarding children with disabilities placed in or referred to private schools by public agencies, generally would retain the current provisions in §§ 300.400, 300.401, and 300.402, which provide that children so placed or referred receive special education and related services in conformity with an IEP at no cost to the parents. This would be consistent with the requirement in section 612(a)(10)(B)(ii) of the Act, which provides that the SEA determine whether such private schools meet the standards that apply to the SEA and LEAs and that children served have all the rights the children would have if served by these agencies. Proposed § 300.146(b) would continue to provide that publicly-placed children with disabilities be provided an education that meets the standards that apply to education provided by the SEA and LEAs, including the requirements of part 300, except for the requirements of §§ 300.18 and 300.156(c). This provision is intended to ensure that children with disabilities who are publicly-placed in or referred to a private school or facility as a means of providing these children with special education and related services would continue to retain the same right to FAPE that they would have if served directly by a public agency. However, because of statutory language in the ESEA that the requirements regarding highly qualified teachers apply only to public school teachers, as well as related language in section 602(10) of the Act and proposed § 300.18, we do not read proposed § 300.146(b) as requiring teachers of children with disabilities who are placed in or referred to private schools by a public agency to meet either the

''highly qualified teacher'' standard in the ESEA or the ''highly qualified special education teacher'' standard in the Act. Proposed § 300.147, regarding implementation by the SEA, would incorporate, without change, the provisions in current § 300.402.

**Children With Disabilities Enrolled by Their Parents in Private Schools When FAPE Is at Issue**

Proposed § 300.148, relating to placement of children with disabilities in private schools when the provision of FAPE is at issue, generally would retain the current provisions in § 300.403(a), (c), and (d). Proposed § 300.148 would remove, as unnecessary, language currently in § 300.403(b), which provides that disagreements regarding the availability of an appropriate program for the child and the question of financial responsibility are subject to due process procedures. Disputes about these matters would be subject to the due process procedures even without this provision, because the central issue in such disputes is whether the public agency has made FAPE available to the child. Consistent with statutory language, proposed § 300.148(b) would include the term ''school'' after ''elementary.'' Proposed § 300.148(d) would modify current § 300.403(e), based on the specific provisions in section 612(a)(10)(C)(IV) of the Act.

The current provision on documentation of SEA responsibility for general supervision in § 300.141(a) and (b) would be removed consistent with statutory changes regarding documentation. Proposed § 300.149, regarding SEA responsibility for general supervision, would replace current § 300.600(a) and incorporate language in section 612(a)(11) of the Act to include a new provision referencing the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431. We also are adding a phrase to § 300.149(a)(2) to clarify that the SEA is not responsible for exercising general supervision for education programs for children with disabilities in elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior. Current § 300.600(b) also would be removed as a result of statutory changes regarding submission of State information.

New language referencing the State monitoring and enforcement responsibilities in proposed §§ 300.602 and 300.606 through 300.608 would be added in § 300.149(b) because State monitoring and enforcement are central to the SEA's exercise of general supervision. Proposed § 300.149(c) and (d) respectively, would incorporate current § 300.600(c), clarifying that Part B does not limit the responsibility of agencies other than educational agencies to provide or pay for some or all of the cost of FAPE and § 300.600(d), regarding the ability of a Governor or other individual to assign to a public agency, other than the SEA, responsibility for ensuring that the requirements of Part B are met for students with disabilities convicted as adults and incarcerated in adult prisons. As a general matter, for educational purposes, students who had been enrolled in a BIA funded school and are subsequently convicted as an adult and incarcerated in an adult prison are the responsibility of the State where the adult prison is located. The Secretary is seeking comment on whether further clarification on this issue is warranted.

Proposed § 300.150 would incorporate language from current § 300.143 regarding SEA implementation of procedural safeguards, with a revision. Consistent with other changes to remove State documentation requirements, proposed § 300.150 would require States to have policies in effect, rather than on file with the Department. The cross-reference also would be updated. Current § 300.145, regarding recovery of funds for misclassified children, would be removed. Under section 611 of the Act, funds are no longer distributed based on a count of the children with disabilities served in a given fiscal year.

**State Complaint Procedures**

In 1992, the Department moved these procedures into part 300 from 34 CFR 76.780 through 76.782 based on a decision to place the complaint procedures into the specific program regulations to which they relate. Proposed § 300.151, regarding the adoption of State complaint procedures, would incorporate the current provisions in § 300.660, with one substantive change. Proposed § 300.151(b)(1) would remove the reference to monetary reimbursement, so as not to imply that reimbursement would be appropriate in the majority of State complaints. Proposed § 300.152, regarding minimum State complaint procedures, would retain the current provisions in § 300.661, with several changes. Proposed § 300.152(a)(3) would be added in order to incorporate into the State complaint procedures an opportunity for a public agency to respond to a complaint, including a chance to make a proposal to resolve the complaint, and, with the consent of the parent, to engage the parent in mediation or other alternative means of dispute resolution. This change would encourage meaningful informal resolution of disputes between the parties to the dispute. Proposed § 300.152(b)(1) would add a provision that would allow extensions of the 60-day time limit if the parties agree to extend the timelines so that they can engage in mediation or other alternative means of dispute resolution. This change is intended to support cooperative dispute resolution efforts, and not to result in uniform extensions. Proposed § 300.152(c)(1) would revise the language in current § 300.661(c)(1) to provide a simplified process for setting aside complaints that also are the subject of a due process hearing, which should aid State implementation of the State complaint process. Finally, current § 300.661(c)(3) regarding a complaint involving a public agency's failure to implement a due process decision would be removed. The enforcement and implementation of due process hearing decisions are matters in the province of State and Federal courts.

Proposed § 300.153, regarding the filing of a complaint, would retain the current provisions in § 300.662, with some changes. Proposed § 300.153(b)(3) and (4) would add new information requirements for complaints, similar to the basic notice requirement for filing a due process complaint, in order to give the public agency the information that would allow it to attempt to resolve the complaint at the earliest opportunity. Proposed § 300.153(c) would revise the language in current § 300.662(c) to require that the complaint must allege a violation that occurred not more than one year prior to the date the complaint is received, removing references to longer periods for continuing violations and for compensatory services claims, to ensure expedited resolution for public agencies and children with disabilities. A one-year timeline is reasonable, and will assist in smooth implementation of the State complaint procedures. Finally, proposed § 300.153(d) would add a new requirement that the party filing a complaint forward a copy to the public agency involved at the same time as the party files the complaint with the SEA. This will ensure that the public agency involved has knowledge of the issues raised, and an opportunity to resolve them directly with the complaining party.

**Methods of Ensuring Services**

Proposed § 300.154, regarding methods of ensuring services, generally would retain the current provisions in § 300.142. Consistent with changes in section 612(a)(11) of the Act, the proposed regulation would clarify in § 300.154(b)(1)(i), that a public agency

may fulfill its obligation to ensure FAPE either directly or through contracts or other arrangements pursuant to § 300.154(a) or (c). Likewise, the proposed regulation would clarify, in § 300.154(b)(2), that the LEA or State agency is authorized to claim reimbursement and, in § 300.154(c)(3), that other appropriate written methods also must be approved by the Secretary. Consistent with statutory changes regarding submission of State information, the proposed regulation would remove the current regulatory language in § 300.142(d), that the State have on file with the Secretary, information to demonstrate that the requirements of this regulation are met. However, as reflected in proposed § 300.704(a)(3), section 611(e)(1)(C) of the Act requires that States certify to the Secretary that agreements to establish responsibility for services are current before the State may expend section 611 funds for State administration.

Proposed § 300.154(d)(2)(iv) would include a new provision that to access the parent's public insurance proceeds, the public agency must obtain parental consent, in accordance with proposed § 300.622 the first time that access is sought, and notify parents that refusal to allow access to their public insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents. Under Part B of the Act, special education and related services, as well as supplementary aids and services and supports that an IEP Team determines a child with a disability needs in order to receive FAPE, must be provided at no cost to the parents or the child. Use of a parent's insurance often imposes costs to the parent that are not, and often cannot be known at the time the costs are billed to the insurance provider. Under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA), a child's records cannot be released without parental consent, except for a few specified exceptions. No FERPA exception permits public agencies to release educational records for insurance billing purposes without a parent's consent. We must ensure that a parent consents to the release of a child's records for that purpose and that the parents are informed that refusing to give consent to the release of education records for that purpose will not prevent a child from receiving the services that are in the child's IEP.

Proposed § 300.154(e) would retain the current requirements regarding children with disabilities who are covered by private insurance. Proposed § 300.154(f), (g), and (h), respectively, regarding use of Part B funds, proceeds from public and private insurance, and construction are essentially the same as paragraphs (g), (h), and (i) of § 300.142 of the current regulations.

**Additional Eligibility Requirements**

Proposed § 300.155, regarding hearings for LEA eligibility, would remove the current requirements in § 300.144 that States have procedures on file with the Secretary, but generally would retain the requirement that States have procedures to give an LEA notice and an opportunity for a hearing prior to a final determination that it is not eligible for funds under Part B.

Current §§ 300.135 and 300.136, regarding a comprehensive system of personnel development and personnel standards, would be removed consistent with the statutory removal of these provisions in the Act (see section 612(a)(14) and (15) of the Act in effect before December 3, 2004) relating to the comprehensive system of personnel development and personnel standards.

Proposed § 300.156, regarding personnel qualifications, would include the statutory provisions related to States' establishment and maintenance of personnel qualifications for special education teachers that align Part B of the Act with the highly qualified teacher provisions in section 1119(a)(2) of the ESEA; and also address personnel qualifications for related services providers and paraprofessionals. As provided in note 21 of the Conf. Rpt., the incorporated provisions require that special education teachers obtain full State certification as special education teachers, but it does not prevent regular education and other teachers who are highly qualified in particular subjects from providing instruction in core academic subjects to children with disabilities in those subjects. For example, a reading specialist who is highly qualified in reading instruction, but who is not certified as a special education teacher, would not be prohibited from providing reading instruction to children with disabilities. Proposed § 300.156(a) contains the general requirement that a State's qualifications ensure that personnel carrying out the purposes of part 300 are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

Proposed § 300.156(b) would incorporate the provisions in section 612(a)(14)(B) of the Act regarding personnel qualifications for related services providers and paraprofessionals. This would include the requirement that the State's standards must ensure that related services personnel and paraprofessionals meet qualifications that are consistent with any State-approved or recognized certification, licensing, registration or other comparable requirements for their professional discipline. These procedures also must ensure that related services personnel who deliver services meet applicable qualification standards and have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis. Proposed § 300.156(b) reflects the comment in note 97 of the Conf. Rpt. that the current regulations requiring related services providers to meet the highest State standard applicable to their profession across all State agencies have established an unreasonable standard for SEAs to meet, and as a result, have led to a shortage of the availability of related services for students with disabilities. Conferees intended for SEAs to establish rigorous qualifications for related services providers to ensure that students with disabilities receive the appropriate quality and quantity of care. SEAs are encouraged to consult with LEAs, other State agencies, the disability community, and professional organizations to determine the appropriate qualifications for related services providers, including the use of consultative, supervisory, and collaborative models to ensure that students with disabilities receive the services described in their individual IEPs. To that end, proposed § 300.156(b)(2)(iii), similar to the current regulation in § 300.136(f), generally would permit States to allow paraprofessionals and assistants who are appropriately trained and supervised to assist in providing special education and related services under Part B of the Act to children with disabilities.

Proposed § 300.156(c) would incorporate the new requirement in section 612(a)(14)(C) of the Act that all special education teachers be highly qualified by the deadline established in the ESEA (the end of the 2005–2006 school year). It would also specify that this requirement applies only to public school special education teachers, in light of the statutory definition of ''highly qualified'' in section 602(10) of the Act. Proposed § 300.156(d) would include the statutory authorization for a State to adopt a policy requiring LEAs to take measurable steps to recruit, hire, train, and retain highly qualified personnel.

Proposed § 300.156(e) would incorporate the language in section 612(a)(14)(E) of the Act, regarding the

rule of construction that these provisions do not create a right of action on behalf of an individual student for the failure of a particular SEA or LEA staff person to be highly qualified or prevent a parent from filing a State complaint with the SEA about staff qualifications under §§ 300.151 through 300.153 of the proposed regulations.

Proposed § 300.157, regarding performance goals and indicators, would revise the current § 300.137, consistent with the revised provisions in section 612(a)(15) of the Act. Proposed § 300.157(a)(2) would include a new provision that aligns the goals and indicators with the State's definition of adequate yearly progress, including progress by children with disabilities, under section 1111(b)(2)(C) of the ESEA. Proposed § 300.157(a)(3) would retain the current provision in § 300.137(b), that public agencies must address graduation and dropout rates. In order to conform to the language in section 612(a)(15) of the Act, the proposed regulation would contain the following changes: proposed § 300.157(a)(4) would remove from the current provision in § 300.137(a)(2), the term ''maximum'' before ''extent appropriate'' and add the word ''any'' before ''other goals and standards for all children established by the State.'' Likewise, proposed § 300.157(b) would remove from the current provision in § 300.137(b), the words appearing after the word, ''achieving'' and add, in their place, the words, ''the goals described in paragraph (a) of this section, including measurable annual objectives for progress by children with disabilities under section 1111(b)(2)(C)(v)(II)(cc) of the ESEA; and''. Proposed § 300.157(c) would change the requirement for reporting to the public and to the Secretary in current § 300.137(c) from every two years to annually and would provide that elements of the report under section 1111(h) of the ESEA may be included in the annual report under Part B of the Act.

Proposed § 300.160, regarding participation in assessments, would replace §§ 300.138 and 300.139 of the current regulations and would incorporate the changes in section 612(a)(16) of the Act. For reasons of burden reduction described throughout this preamble, the proposed regulation would remove the current requirement in § 300.138 that the State have information on file with the Secretary.

Consistent with language in section 613(a)(16) of the Act, proposed § 300.160(a) would add to the current provision in § 300.138(a) the word ''all'' before the word ''children'', and before the phrase ''general State and districtwide assessment programs'' and would clarify that this requirement includes assessments described in section 1111 of the ESEA. Proposed § 300.160(a) also would remove, from the current provision in § 300.138(a), ''modifications in administration'' and add, in its place, ''alternate assessments'' and would add after the word ''necessary'', the words, and ''as indicated in their respective IEPs.''

Proposed § 300.160(b) would require that States, (or, in the case of districtwide assessments, LEAs) develop guidelines for providing appropriate accommodations in assessments. Proposed § 300.160(c)(1) would address guidelines for participation in alternate assessments for those children who cannot participate in regular assessments as indicated in their IEPs. Proposed § 300.160(c)(2) would include a provision that, in the case of assessments of student academic progress, alternate assessments and guidelines under proposed § 300.160(c)(1) are aligned with the State's challenging academic content and challenging student academic achievement standards or the alternate achievement standards, if adopted under the regulations implementing section 1111(b)(1) of the ESEA. Proposed § 300.160(c)(3) would require that the State conduct the alternate assessments described in section 1111(b)(1) of the ESEA.

Proposed § 300.160(d) would incorporate the requirement in section 612(a)(16)(D) of the Act for the SEA, in the case of a statewide assessment, and the LEA, in the case of a districtwide assessment, to report to the public on the assessment of children with disabilities with the same frequency and in the same detail that it reports on the assessment of nondisabled children, and replace the current requirements in § 300.139.

Proposed § 300.160(e) would incorporate the new requirement in section 612(a)(16)(E) of the Act that the SEA, in the case of statewide assessments, and the LEA, in the case of districtwide assessments, to the extent possible, use universal design in developing and implementing assessments.

Consistent with section 612(a)(17) of the Act, the current provisions in § 300.155, regarding use of funds; § 300.152, regarding non-commingling; and § 300.153, regarding State-level nonsupplanting, would be combined into proposed § 300.162. The proposed regulation generally would retain the requirements that Part B funds be expended in accordance with Part B of the Act, that Part B and State funds not be commingled, and that Part B funds be used to supplement, and in no case to supplant other Federal, State, and local funds expended for special education and related services. Consistent with statutory changes discussed previously, the proposed regulation would eliminate the current provision in § 300.155, that States have policies and procedures on file with the Secretary; would replace the current provisions in § 300.152(a), that States provide the Secretary an assurance; and would replace the current provision in § 300.153(a)(2), that the State have information on file with the Secretary demonstrating compliance with the use of Part B funds to supplement and not supplant, with straightforward statements of the statutory requirements. These changes would be consistent with changes in section 612(a) of the Act regarding State submission of information. Proposed § 300.162(b)(2) would retain the current provision in § 300.152(b) clarifying that use of a separate accounting system including an audit trail of expenditures of Part B funds would satisfy the prohibition on commingling.

Proposed § 300.162(c)(1) would retain the current provision in § 300.153(a)(1), regarding the basic non-supplanting requirement. Proposed § 300.162(c)(2) would retain the current provision in § 300.153(b), regarding the Secretary's ability to waive, in whole or in part, the State-level nonsupplanting requirement if the State provides clear and convincing evidence regarding the availability of FAPE to all children with disabilities. This waiver would be addressed further in proposed § 300.164.

Proposed § 300.163 generally would retain the current provisions in § 300.154, regarding maintenance of State financial support. However, consistent with the language in section 612(a) of the Act, the proposed regulation would eliminate the provision regarding information that States must have on file with the Secretary demonstrating, on either a total or per-capita basis, that the State will not reduce the amount of State financial support for special education and related services for children with disabilities.

Proposed § 300.164, regarding waiver of the requirement regarding supplementing and not supplanting Part B funds, would retain the current provisions in § 300.589, except that to reduce regulatory burden, proposed § 300.164(c)(4) would reduce the number of entities with which a State must consult when determining that FAPE is currently available to all

eligible children with disabilities in the State, and eliminate the requirement for a summary of the input of the entities consulted.

Proposed § 300.165(a) would incorporate the language in section 612(a)(19) of the Act regarding public participation in the adoption of policies and procedures to implement Part B of the Act, which is the same as the current provision in § 300.148(a)(1). Current § 300.148(a)(2) and (b), regarding alternate ways of meeting the public participation requirement and the requirement that the State documentation be on file with the Secretary, would be removed. The current provisions in §§ 300.280 through 300.284 regarding public participation also would be removed. Removing the requirement for States to submit extensive documentation to the Secretary on how the public participation requirements are met should reduce regulatory burden on States. States are required to comply with the public participation requirements of the General Education Provisions Act, in 20 U.S.C. 1232d(b)(7), as provided for in proposed § 300.165(b), as well as State-specific requirements, in adopting policies and procedures relating to Part B of the Act, which should provide sufficient opportunities for public participation.

Proposed § 300.166 would incorporate the language in section 612(a)(20) of the Act, regarding the rule of construction on use of Federal funds to satisfy State-mandated funding of obligations to LEAs for purposes of complying with proposed §§ 300.162 and 300.163.

**State Advisory Panel**

Proposed § 300.167, regarding State advisory panels, would incorporate the provisions in section 612(a)(21)(A) of the Act and would remove from current § 300.650, language regarding information on file with the Secretary. The proposed regulation also would remove the provision from current § 300.650 permitting modification of existing advisory panels to be consistent with section 612(a)(21)(A) of the Act.

Proposed § 300.168, regarding the membership of State advisory panels, generally would retain the current provisions in § 300.651. In addition, proposed § 300.168(a)(5) and (10), would incorporate the statutory references to officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431 *et seq.*, and a representative from the State child welfare agency responsible for foster care, respectively. Consistent with the Act, proposed § 300.168(b) would include a provision in the special rule that clarifies that for panel membership a majority of the members of the panel must be individuals with disabilities or parents of children with disabilities (ages birth through 26).

Proposed § 300.169, regarding duties of the advisory panel, generally would retain the current provisions of § 300.652, except that the current language in § 300.652(b), regarding advising on eligible students with disabilities in adult prisons, would be removed. Given the breadth of its statutory responsibilities, nonstatutory mandates on the State advisory panels would be removed.

To provide greater flexibility for States in the operations of advisory panels, the current provision in § 300.653, regarding procedures of the advisory panel, would be removed.

**Other Provisions Required for State Eligibility**

Proposed § 300.170, regarding suspension and expulsion rates, would retain most of the current provisions in § 300.146, but would remove the language that the States have information on file with the Secretary, consistent with statutory changes on State submission of information. In addition, consistent with section 612(a)(22) of the Act, proposed § 300.170(b) would replace, from the current § 300.146(b), ''behavioral interventions'' with ''positive behavioral interventions and supports.''

Proposed § 300.171, regarding the annual description of the use of Part B funds, would clarify the current § 300.156(a)(1) that addresses the amounts retained for State administration and State-level activities, generally would retain the current provisions in § 300.156(a)(2) and (b), and would remove the current provision in § 300.156(c) regarding percentages distributed to LEAs since this information does not assist the Department in determining whether an SEA is complying with Part B of the Act in this regard. Proposed § 300.171 also would add a new paragraph (c) to clarify that, based on section 611(g)(2) of the statute, the provisions of this section do not apply to the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the freely associated States.

Proposed § 300.172, regarding access to instructional materials, would incorporate the new language in section 612(a)(23) of the Act regarding the timely provision of instructional materials to blind persons or other persons with print disabilities. Proposed § 300.172 uses ''persons'' to conform to the language in the Act. However, in the context of this regulatory provision, ''persons'' means ''children.'' Proposed § 300.172(a) would repeat the requirement from section 612(a)(23)(A) of the Act that the State must adopt the National Instructional Materials Accessibility Standard (NIMAS) in a timely manner after its publication in the **Federal Register** by the Department. The NIMAS will be the subject of a separate rulemaking process. In that proposed rulemaking document, we will propose to add the NIMAS to part 300 as an appendix.

Proposed § 300.172(b) would incorporate the provision in section 612(a)(23)(B) of the Act that a State is not required to coordinate with the National Instructional Materials Accessibility Center (NIMAC) and the requirements that apply if an SEA chooses not to coordinate with the NIMAC. Proposed § 300.172(b)(3) would provide that nothing in this section would relieve an SEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats, but who do not fall within the category of children for whom the SEA may receive assistance from NIMAC, receive those instructional materials in a timely manner. Timely access to appropriate and accessible instructional materials is an inherent component of public agencies' obligations under the Act to ensure that FAPE is available for children with disabilities and that they participate in the general education curriculum as specified in their IEPs. The provisions in section 612(a)(23) of the Act will assist SEAs in carrying out that responsibility for most children with disabilities who need accessible instructional materials. Section 674(e)(3)(A) of the Act limits the authority of the NIMAC to provide assistance to SEAs and LEAs in acquiring instructional materials for children who are blind, have visual disabilities, are unable to read or use standard printed materials because of physical limitations, and children who have reading disabilities that result from organic dysfunction, as provided for in 36 CFR § 701.10(b). Clearly, SEAs and LEAs that choose to use the services of the NIMAC will be able to assist blind persons or other persons with print disabilities who need accessible instructional materials through this mechanism. However, SEAs and LEAs still have an obligation to provide accessible instructional materials in a timely manner to other children with disabilities, who also may need accessible materials even though SEAs

and LEAs may not receive assistance for these children from NIMAC.

Proposed paragraph § .172(c) would incorporate the provision in section 612(a)(23)(C) of the Act regarding preparation and delivery of files if an SEA chooses to coordinate with the NIMAC.

In accordance with section 612(a)(23)(D) of the Act, § 300.172(d) would require an SEA, to the maximum extent possible, to collaborate with the State agency responsible for assistive technology programs. Proposed § 300.172(e) contains, in accordance with section 612(a)(23)(E) of the Act, definitions of blind persons or other persons with print disabilities, NIMAC, NIMAS, and specialized formats.

Proposed § 300.173, regarding State policies and procedures designed to prevent inappropriate overidentification and disproportionality, would incorporate the new provision in section 612(a)(24) of the Act. This proposed regulation would require the State to have in effect, consistent with section 618(d) of the Act, policies and procedures to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment.

Proposed § 300.174 would incorporate the new provision in section 612(a)(25) of the Act and would prohibit State and LEA personnel from requiring parents to obtain prescriptions for controlled substances for a child as a condition of the child's school attendance, the child's receipt of a Part B evaluation, or the child's receipt of services. Proposed paragraph § 300.174(b) would contain the statutory rule of construction in section 612(a)(25)(B) of the Act and would clarify that this provision does not create a Federal prohibition against teachers and other school personnel consulting or sharing with parents their observations on the student's functional or academic performance, and behavior in the classroom or school, or the child's possible need for an initial evaluation for special education and related services.

Proposed § 300.175, regarding the SEA as provider of FAPE or direct services, generally would retain the current provisions in § 300.147. The proposed regulation would remove the provision that States must have information on file with the Secretary demonstrating that they meet these requirements, consistent with statutory changes discussed previously.

Consistent with the statutory changes, proposed § 300.176, regarding exceptions for prior State plans and modifications to the plans, generally would combine and retain the current provisions in §§ 300.111 and 300.112, with some minor changes. The date in proposed § 300.176(a) would be changed to December 3, 2004, the date on which the Act was signed into law. Consistent with the statute, proposed § 300.176(b)(1) would revise the current language from ''State decides are necessary'' to ''State determines necessary.'' Consistent with the Act, proposed § 300.176(b)(2) would replace references to ''policies and procedures'' with ''application'' and ''original'' State plan. Consistent with the Act, proposed § 300.176(c)(1) would reference December 3, 2004, the date on which the Act was signed into law.

**Department Procedures**

Proposed § 300.178, regarding the Secretary's determination of State eligibility to receive a grant, would retain the current requirements in §§ 300.113(a) and 300.580.

Proposed § 300.179, regarding notice and hearing before determining a State is not eligible to receive a grant, would retain the current requirements in §§ 300.113(b) and 300.581.

Proposed § 300.180, regarding the hearing official or panel, would retain the current requirements in § 300.582.

Proposed § 300.181, regarding the hearing procedures, would retain the current requirements in § 300.583.

Proposed § 300.182, regarding the initial and final hearing decisions, would retain the current requirements in § 300.584 except proposed § 300.182(h) would be revised to clarify that the Secretary rejects or modifies the initial decision of the Hearing Official or Hearing Panel if the Secretary finds that it is clearly erroneous.

Proposed § 300.183, regarding filing requirements, would retain the current requirements in § 300.585.

Proposed § 300.184, regarding judicial review, would retain the current requirements in § 300.586.

Proposed § 300.186, regarding assistance under other Federal programs, would incorporate the provisions in section 612(e) of the Act. Proposed § 300.186 would clarify the current requirements in § 300.601, regarding the relation of Part B to assistance under other Federal programs, and would continue to provide that Part B of the Act may not be construed to permit a State to reduce or alter eligibility for medical or other assistance for children with disabilities under titles V and IX of the Social Security Act, but would reference ''with respect to the provision of FAPE for children with disabilities'' instead of ''services that are part of FAPE.''

**By-pass for Children in Private Schools**

The proposed regulations regarding by-pass for children in private schools would incorporate changes in section 612(f) of the Act and would represent the first amendments to these regulations since they were adopted in 1984. Because the statutory changes related to the participation of parentally-placed private school children with disabilities should make it more likely that these procedures will be implemented, these proposed revisions would align the by-pass provisions from Part B of the Act with the general by-pass procedures in the Department's general administrative regulations in 34 CFR 76.670 through 76.677 that apply to other Department programs, including programs under titles I and IX of the ESEA. This alignment should help to ensure consistent implementation of the by-pass provisions throughout the Department.

Proposed § 300.190, regarding the general by-pass provision, would revise the current requirements in § 300.480. Consistent with changes in section 612(f)(1) of the Act, the proposed regulation would retain the current authority for a by-pass and would add additional authority in cases where the Secretary determines that an SEA, LEA, or other entity has substantially failed or is unwilling to provide for equitable participation. The proposed regulation generally would retain the current provision in § 300.480(b) regarding waiver of the requirements in these proposed regulations governing parentally-placed private school children with disabilities.

Proposed § 300.191, regarding services under a by-pass, generally would retain the current provisions in § 300.481, but with some exceptions. Proposed § 300.191(a)(1) would replace ''The prohibition'' with ''Any prohibition'' and would add ''and'' at the end of § 300.191(a)(1). The current provision in § 300.481(a)(3), regarding policies and procedures, would be removed consistent with other burden reduction changes in these proposed regulations. Proposed § 300.191(a) would add ''and, as appropriate, LEA or other public agency officials'' and paragraphs (b) and (c)(1) of proposed § 300.191 would add ''LEA or other public agency.'' These changes are necessary to ensure effective implementation of the by-pass provision within an affected State because, in general, a by-pass would be implemented only in a specific LEA or

other public agency within the State and not statewide. Thus, the change in proposed § 300.191(a) would ensure that the Secretary also consults with appropriate agency officials in any affected LEA or public agency within the State.

Proposed § 300.191(c)(1), regarding the calculation of the amount per child that is to be paid to providers, would revise the current provision in § 300.481(c)(1) to reflect the provision in section 612(f)(2)(A) of the Act.

Proposed §§ 300.192 and 300.193, regarding notice of intent to implement a by-pass and request to show cause, would retain the current provisions in §§ 300.482 and 300.483, but would add ''LEA or other public agency'' for consistency with statutory language.

Proposed § 300.194, regarding the show cause hearing, would retain the current provisions in § 300.484 and would add language to address statutory changes and align the proposed regulation with the by-pass regulations in 34 CFR 76.673 and 76.674 that apply to other Department programs. Proposed § 300.194(a) would add ''LEA or other public agency'' to make the provisions consistent with language in section 612(f) of the Act. Proposed § 300.194(a)(3) is a new provision that would provide an opportunity for an SEA, LEA, or other public agency and representatives of private schools to be represented by legal counsel and to submit oral or written evidence and arguments. Proposed § 300.194(d) would incorporate the by-pass provision in 34 CFR 76.763(b), and would specify that the designee conducting the hearing has no authority to require or conduct discovery. Proposed § 300.194(g) would incorporate the by-pass provision in 34 CFR 76.674(b), and would specify that within 10 days after the hearing, the designee indicates that a decision will be issued on the basis of the existing record or requests further information from one or more of the parties to the hearing.

Proposed § 300.195, regarding the show cause hearing decision, would retain the current provisions in § 300.485 and add language to address statutory changes and to align the proposed regulation with the by-pass regulations in 34 CFR 76.675. Proposed § 300.195(a)(1) would incorporate the 120-day time period for closing the record of the hearing from the by-pass provision in 34 CFR 76.675(a)(1). Proposed § 300.195(b) would replace the 15-day time period to submit comments and recommendations on the designee's decision with the 30-day time period consistent with 34 CFR 76.675(b). Proposed § 300.195(c) would replace ''SEA'' with ''all parties to the show cause hearing'' in order to make the provision consistent with language in section 612(f) of the Act.

Proposed §§ 300.196 and 300.197, regarding filing requirements and judicial review, would retain the current regulations in §§ 300.486 and 300.487, respectively.

Proposed § 300.198, regarding continuation of a by-pass, is a new provision that would incorporate the continuation of a by-pass requirement in 34 CFR 76.677 and would permit continuation of the by-pass until the Secretary determines that the SEA, LEA, or other public agency will meet the requirements for providing services to private school children.

Proposed § 300.199, regarding State administration, would incorporate the requirements in section 608 of the Act requiring that rulemaking conducted by the State conform to the purposes of Part B of the Act, that States minimize the number of rules, regulations, and policies to which LEAs and schools are subject to under the Act, and identify in writing any rule, regulation, or policy that is State-imposed and not required under the Act and its implementing regulations.

*Subpart C—LEA Eligibility*

Proposed § 300.200 would be similar to the current § 300.180 regarding the conditions of LEA eligibility, but would be revised consistent with the change in section 613(a) of the Act to require LEAs to provide assurances, rather than demonstrate, to the State that they meet the eligibility conditions. Cross-references to those eligibility conditions would be updated.

Proposed § 300.201, regarding consistency with State policies, would be essentially the same as the current § 300.220(a), with appropriate updating to reflect the structure of these proposed regulations. Current § 300.220(b) concerning policies on file with the SEA would be removed in light of the statutory change requiring only that an LEA provide assurances regarding its policies and procedures.

Proposed § 300.202 would combine the provisions addressed in current §§ 300.184(c) and 300.185, regarding excess cost requirements, and current § 300.230, regarding use of funds, with appropriate updating. Current § 300.184(a) would be removed because it is duplicative of the requirement in proposed § 300.202(a)(2) that Part B funds must be used only to pay the excess costs of special education and related services to children with disabilities. The definition of excess costs in the current § 300.184(b) would be moved to proposed § 300.16 of subpart A of these proposed regulations.

Proposed § 300.203 would incorporate current § 300.231 on LEA maintenance of effort, with appropriate updating to reflect the structure of these proposed regulations. The standard for determining whether an LEA is complying with the LEA maintenance of effort requirement would be in proposed § 300.203(b) and would be substantively the same as current § 300.231(c). The language in current § 300.231(b) would be removed, based on the statutory change requiring LEAs to provide assurances in their applications to the State, rather than information that demonstrates their compliance.

Proposed § 300.204 would replace current § 300.232, regarding the exceptions to the LEA maintenance of effort provision, with language that more closely reflects the language in section 613(a)(2)(B) of the Act and clarifies the conditions under which the LEA may reduce the level of expenditures under Part B of the Act below the level of expenditures for the preceding year. As a result, we would remove the provisions in the current § 300.232(a) that limit the circumstances under which LEAs may reduce expenditures as a result of the voluntary departure of special education personnel only to situations in which those departing personnel are replaced with qualified, lower-salaried staff. In addition, the requirements that the voluntary departures be in conformity with existing board policies, collective bargaining agreements, and applicable State statutes would be removed. These changes would reduce regulatory burden on school districts and provide increased flexibility in funding decisions. However, the basic requirement that LEAs must ensure the provision of FAPE to eligible children, regardless of the costs, would remain the same.

Proposed § 300.204(e) would add a condition based on section 611(e)(3) of the Act, regarding the assumption of costs by the high cost fund, under which an LEA may reduce its level of expenditures. Proposed § 300.204(e) is needed because LEAs should not be required to maintain a level of fiscal effort based on costs that are assumed by the SEA's high cost fund.

Section 613(a)(2)(C)(i) of the Act was substantially revised to provide an adjustment to local fiscal effort in certain years in place of a provision in the prior law that permitted LEAs to use a portion of the Federal funds they received as local funds for special education. As a result, we would remove the current § 300.233, which

was based on the prior statutory language, and replace it with proposed § 300.205, which is based on the revised statute. Proposed § 300.205 would add an exception that, if an SEA exercises its authority under § 300.230(a), LEAs in the State may not reduce local effort under § 300.205 by more than the reduction in the State funds they receive. Section 300.230 only applies if an SEA pays or reimburses all LEAs in the State 100 percent of the non-Federal share of the costs of special education and related services.

Under proposed § 300.205, in years when the LEA receives an allocation of formula funds that exceeds the amount it received in the prior year, the LEA would be permitted to reduce the level of its local maintenance of effort amount by not more than 50 percent of the increase in its section 611 allocation. The LEA would then be required to use local funds equal to the reduction to carry out activities authorized under the ESEA, as explained in proposed § 300.205(b). In subsequent years, an LEA that reduced local fiscal effort in accordance with proposed § 300.205(a) would be required to meet this lower fiscal effort amount, unless it could again reduce local fiscal effort based on proposed § 300.205. Proposed § 300.205(c) would describe circumstances under which the SEA may prohibit an LEA from reducing the level of local expenditure. Proposed § 300.205(d) would implement the provision in section 613(a)(2)(C)(iv) of the Act that provides that the amount of funds expended for early intervening services will count toward the maximum amount by which an LEA may reduce local maintenance of effort.

LEAs wanting to exercise the authority in section 613(a)(2)(C)(iv) of the Act in conjunction with the authority to use not more than 15 percent of the LEA's total grant for early intervening services under proposed § 300.226 should use caution, however, because as noted in proposed §§ 300.205(a) and (d), and 300.226(a), the operation of the local maintenance of effort reduction provision and the authority to use Part B funds for early intervening services under section 613(f)(1) of the Act and proposed § 300.226(a) would be interconnected. The decisions that an LEA makes about the amount of funds that it would use for one purpose would affect the amount that it may use for the other. The following examples illustrate how these provisions affect one another:

*Example 1:* In this example, the amount that is 15 percent of the LEA's total grant (see proposed § 300.226(a)), which is the maximum amount that the LEA may use for early intervening services (EIS), is greater than the amount that may be used for local maintenance of effort (MOE) reduction (50 percent of the increase in the LEA's grant from the prior year's grant) (see proposed § 300.205(a)).

*Prior Year's Allocation:* $900,000.
*Current Year's Allocation:* $1,000,000.
*Increase:* $100,000.
*Maximum Available for MOE Reduction:* $50,000.
*Maximum Available for EIS:* $150,000.

- If the LEA chooses to set aside $150,000 for EIS, it may not reduce its MOE (MOE maximum $50,000 less $150,000 for EIS means $0 can be used for MOE).
- If the LEA chooses to set aside $100,000 for EIS, it may not reduce its MOE (MOE maximum $50,000 less $100,000 for EIS means $0 can be used for MOE).
- If the LEA chooses to set aside $50,000 for EIS, it may not reduce its MOE (MOE maximum $50,000 less $50,000 for EIS means $0 can be used for MOE).
- If the LEA chooses to set aside $30,000 for EIS, it may reduce its MOE by $20,000 (MOE maximum $50,000 less $30,000 for EIS means $20,000 can be used for MOE).
- If the LEA chooses to set aside $0 for EIS, it may reduce its MOE by $50,000 (MOE maximum $50,000 less $0 for EIS means $50,000 can be used for MOE).

*Example 2:* In this example, the amount that is 15 percent of the LEA's total grant (see proposed § 300.226(a)), which is the maximum amount that the LEA may use for EIS, is less than the amount that may be used for MOE reduction (50 percent of the increase in the LEA's grant from the prior year's grant) (see proposed § 300.205(a)).

*Prior Year's Allocation:* $1,000,000.
*Current Year's Allocation:* $2,000,000.
*Increase:* $1,000,000.
*Maximum Available for MOE Reduction:* $500,000.
*Maximum Available for EIS:* $300,000.

- If the LEA chooses to use no funds for MOE, it may set aside $300,000 for EIS (EIS maximum $300,000 less $0 means $300,000 for EIS).
- If the LEA chooses to use $100,000 for MOE, it may set aside $200,000 for EIS (EIS maximum $300,000 less $100,000 means $200,000 for EIS).
- If the LEA chooses to use $150,000 for MOE, it may set aside $150,000 for EIS (EIS maximum $300,000 less $150,000 means $150,000 for EIS).
- If the LEA chooses to use $300,000 for MOE, it may not set aside anything for EIS (EIS maximum $300,000 less $300,000 means $0 for EIS).
- If the LEA chooses to use $500,000 for MOE, it may not set aside anything for EIS (EIS maximum $300,000 less $500,000 means $0 for EIS).

With regard to the new statutory provision on which proposed § 300.205 is based, note 122 of the Conf. Rpt. states:

> The Conferees intend for school districts to have meaningful flexibility to use local funds that are generated from their reduction in the maintenance of effort. The Conferees do not intend that school districts have to use these local funds for programs exclusively authorized under the Elementary and Secondary Education Act of 1965. The conferees recognize that most state and local education programs are consistent with the broad flexibility that is provided in section 5131 of the Elementary and Secondary Education Act of 1965.
>
> The Conferees intend that in any fiscal year in which the local educational agency or State educational agency reduces expenditures pursuant to section 613(a)(2)(C) or section 613(j), the reduced level of effort shall be considered the new base for purposes of determining the required level of fiscal effort for the succeeding year.

In order to effectuate the flexibility in the use of local funds suggested by this language, proposed § 300.205(b) would provide that the local funds equal to the reduction in local expenditures for special education and related services authorized by proposed § 300.205(a) may be used to carry out activities that could be supported with funds under the ESEA regardless of whether the LEA is actually using funds under the ESEA for those activities. An LEA can demonstrate that it meets the requirements in proposed § 300.205(b) by showing that it has expended, for elementary and secondary education, an increased amount of local funds equal to the reduction under proposed § 300.205(a) when compared to local expenditures for elementary and secondary education for the prior year.

Proposed § 300.206, regarding schoolwide programs under title I of the ESEA, would be essentially the same as the current § 300.234, with appropriate updating.

Proposed § 300.207, regarding personnel development, would reflect the new requirement under section 613(a)(3) of the Act that LEAs ensure that all needed personnel be appropriately and adequately prepared subject to the requirements that apply to SEAs regarding personnel qualifications and requirements under section 2122 of the ESEA.

Current § 300.221 on implementation of the State's comprehensive system of personnel development (CSPD) would be removed, as section 612(a) of the Act

no longer requires that a State develop and implement a CSPD.

Proposed § 300.208 on permissive uses of LEA funds would revise the current § 300.235 in the following ways: Paragraph (a)(2) from the current § 300.235 would be removed, as the authority to use Part B funds to develop and implement an integrated and coordinated services system was removed from the statute. Paragraphs (a)(2) and (3) of proposed § 300.208 would incorporate the new statutory provisions permitting LEAs to use Part B funds for early intervening services and to establish and implement cost or risk sharing arrangements for high cost special education and related services, consistent with section 613(a)(4)(A)(ii) and (iii) of the Act. Paragraph (b) of proposed § 300.208 would incorporate the new statutory authority for LEAs to use Part B funds for administrative case management services related to serving children with disabilities in section 613(a)(4)(B) of the Act. Current § 300.235(b) would be removed because that information would be conveyed by the introductory material in proposed § 300.208(a), with the cross-references updated.

Proposed § 300.209 would revise current § 300.241, concerning treatment of charter schools and their students (based on changes in section 613(a)(5) of the Act), and would also incorporate current § 300.312, regarding children with disabilities in public charter schools. Paragraph (a) of proposed § 300.209 would include current § 300.312(a), to clarify that children with disabilities who attend public charter schools retain all rights afforded under this part. Proposed § 300.209(b) would include the provisions from section 613(a)(5) of the Act to clarify (in paragraph (b)(1)(i)) that, in providing services to children with disabilities attending charter schools that are public schools of the LEA, the LEA must provide supplementary and related services on site at the charter school to the same extent as it does at its other public schools. Paragraph (b)(1)(ii) of proposed § 300.209 would specify that an LEA must provide funds under Part B of the Act to the LEA's charter schools on the same basis as it provides funds to its other schools, including proportional distribution based on the relative enrollment of children with disabilities, and that it must provide those funds at the same time as the LEA distributes funds to its other public schools.

Proposed § 300.209(b)(2) would include current § 300.312(c), to provide that if the public charter school is a school of an LEA that receives funding under § 300.705 and includes other public schools, the LEA is responsible for ensuring that the requirements of this part are met (unless State law assigns that responsibility to some other entity), and must meet the requirements of proposed paragraph (b)(1) of this section.

Proposed § 300.209(c) would add current § 300.312(b) (regarding public charter schools that are LEAs), to specify that a charter school covered by this paragraph is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity.

Proposed § 300.209(d) would include current § 300.312(d). Paragraph (d)(1) of proposed § 300.209 would provide that if a public charter school is not an LEA receiving funding under this part or a school that is part of an LEA receiving funding, the SEA is responsible for ensuring that the requirements of this part are met. Proposed § 300.209(d)(2) would clarify that a State would not be precluded from assigning that responsibility to another entity, but the SEA must maintain the ultimate responsibility for ensuring compliance with this part.

Proposed § 300.210 would incorporate the new requirement in section 613(a)(6) of the Act that not later than two years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004 (that is, not later than December 3, 2006), an LEA, when purchasing print instructional materials, must acquire those materials in the same manner as an SEA under proposed § 300.172. Proposed § 300.210(b)(1) also would make clear that an LEA would not be required to coordinate with the NIMAC, and proposed § 300.210(b)(2) would explain that if it chooses not to so coordinate, the LEA would be required to provide an assurance to the SEA that the LEA will provide instructional materials to blind and other print disabled persons in a timely manner. For the reasons explained elsewhere in this preamble under the discussion of proposed § 300.172, we would add paragraph (b)(3) to proposed § 300.210 specifying that nothing in proposed § 300.210 would relieve an LEA of its obligations to ensure that children with disabilities who need instructional materials in accessible formats receive those instructional materials in a timely manner, even if it could not obtain assistance from NIMAC in doing so.

Proposed § 300.211 on LEAs providing information to the SEA to enable the SEA to carry out its duties under Part B of the Act would be essentially the same as the current § 300.240(a), but would be appropriately updated. The current § 300.240(b) regarding assurances the LEA would have to file with the SEA would be removed as unnecessary because that condition would be covered by proposed § 300.200.

Proposed § 300.212 on public availability of LEA eligibility information would be essentially the same as current § 300.242, but with appropriate updating.

Proposed § 300.213 would reflect the new provision in section 613(a)(9) of the Act regarding LEA cooperation with the Secretary's efforts under section 1308 of the ESEA to ensure the linkage of health and educational information pertaining to migratory children among the States.

Proposed § 300.220 on an exception for prior local plans would essentially consolidate the requirements in current §§ 300.181 and 300.182. In proposed § 300.220, we use the term ''policies and procedures'' in place of the term ''application,'' which is used in section 613(b)(2) of the Act because we use the term policies and procedures in the current regulation. The statutory authority for proposed § 300.220 is not new, and was not changed from prior law.

Proposed § 300.221 on notification of the LEA or State agency if determined ineligible, proposed § 300.222 on LEA and State agency compliance determinations, proposed § 300.223 on joint establishment of eligibility, and proposed § 300.224 on the requirements for establishing joint eligibility are essentially the same as current §§ 300.181, 300.196, 300.197, 300.190 and 300.192, respectively, but with appropriate updating.

The requirements in current § 300.244 regarding permissible use of a portion of the LEA's Part B funds on coordinated services systems and current §§ 300.245 through 300.250 regarding LEA use of Part B funds in school based improvement plans would be removed, as the statutory authority for those uses has been eliminated.

Proposed § 300.226 would implement the new authority under section 613(f) of the Act, which provides that an LEA may use not more than 15 percent of the Part B funds it receives for a fiscal year, less certain reductions, if any, to develop and implement coordinated, early intervening services for children who have not been identified as eligible under the Act but who need additional academic and behavioral support to succeed in a general education environment. Paragraph (c) of proposed § 300.226 would clarify that nothing in proposed § 300.226 is construed to either limit or create a right to FAPE

under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability. We have included the language regarding evaluation of children suspected of having a disability in proposed § 300.226(c) because we believe it is critical to ensure that any child suspected of being a child with a disability is evaluated in a timely manner and without any undue or unnecessary delay. Proposed paragraph § 300.226(d) would reflect the reporting requirement in section 613(f)(4) of the Act. The term ''children'' would be used in this provision, in lieu of the statutory term ''students'' to be consistent throughout part 300. Proposed § 300.226(e) would implement the provision in section 613(f)(5) of the Act that funds to provide early intervening services may be used in conjunction with ESEA funds for early intervening services aligned with ESEA activities under certain circumstances.

Proposed § 300.227 would incorporate provisions from the regulations in current §§ 300.360 and 300.361 on direct services by the SEA when an LEA or State agency has not demonstrated its eligibility or has failed to apply for funds, is unable to establish and maintain programs of FAPE consistent with Part B of the Act, is unable or unwilling to be consolidated with one or more LEAs in order to establish and maintain programs of FAPE, or has one or more children best served by a regional or State program or service delivery system. Proposed § 300.227(a)(1) would include the phrase ''or elected not to apply for its Part B allotment'' because there could be situations in which an LEA chooses not to accept funds under Part B of the Act. Finally, proposed § 300.227 would reflect editorial changes made to eliminate repetition.

Proposed § 300.228 on State agency eligibility would be essentially the same as current § 300.194, but with the appropriate updating of cross-references.

Proposed § 300.229 regarding disciplinary information would be the same as current § 300.576.

Proposed § 300.230 would incorporate the new provision from section 613(i) of the Act on exceptions to SEA maintenance of effort requirements for a State for which the amount of the State's allocation under section 611 of the Act exceeds the amount available to the State for the preceding fiscal year and the State pays or reimburses all LEAs in the State, from State revenues, 100 percent of the non-Federal share of the costs of special education. Under these conditions, the SEA would be permitted to reduce its level of expenditures from State sources for the education of children with disabilities by not more than 50 percent of the amount of the increase in its section 611 allocation from the prior fiscal year, unless prohibited from doing so by the Secretary, as provided in proposed § 300.230(b). Paragraph (e)(2) of proposed § 300.230, which is not in section 613(i) of the Act, would specify that if an SEA used its authority to reduce its effort under proposed § 300.230, LEAs in the State would not be able to reduce local effort under proposed § 300.205 by more than the reduction in State funds that they receive. Proposed § 300.230(e)(2) is necessary to ensure that SEAs and LEAs are not independently calculating the reduction in maintenance of effort permitted when a State is providing 100 percent of the non-Federal share of the costs of special education and related services.

*Subpart D—Evaluations, Eligibility Determinations, IEPs, and Educational Placements*

The provisions in subpart D of these proposed regulations would reflect the requirements of section 614 of the Act. As a result, the provisions on parental consent and evaluations and reevaluations contained in subpart E of current regulations would be moved to subpart D of these proposed regulations. Also, the provisions on IEPs contained in subpart C of the current regulations would be renumbered, and in some cases, have been moved to subpart D of these proposed regulations.

**Parental Consent**

Proposed § 300.300 regarding parental consent for initial evaluations, reevaluations, and the initial provision of services would replace § 300.505 of the current regulations and would incorporate new requirements regarding parental consent contained in section 614(a)(1)(D) of the Act. Some of the provisions contained in proposed § 300.300 would be similar to those contained in § 300.505 of the current regulations, but with some differences.

Proposed § 300.300(a)(1)(i) would incorporate section 614(a)(1)(D)(i)(I) of the Act, and would provide that with the exception of children who are wards of the State, the public agency proposing to conduct the evaluation must obtain informed parental consent before conducting an initial evaluation of a child to determine if the child qualifies as a child with a disability under the Act.

Proposed § 300.300(a)(1)(ii) would retain the provision in § 300.505(a)(2) of the current regulations that consent for the initial evaluation may not be construed as consent for the initial provision of special education and related services. The proposed regulations would use the term ''initial provision'' rather than the statutory term ''receipt'' of special education and related services. This would make clear that consent does not need to be sought every time a particular service is provided to the child. The proposed regulation would continue to refer to consent for the initial provision of services, in lieu of using the statutory language, which refers to ''consent for placement for receipt of special education and related services.'' This would be consistent with the revised language in section 614(a)(1)(D)(i)(I) of the Act and the Department's position that placement refers to the provision of special education services rather than as a specific place, such as a specific classroom or specific school.

Proposed § 300.300(a)(2)(i), which would incorporate the new requirement in section 614(a)(1)(D)(iii) of the Act regarding informed parental consent prior to the initial evaluation for wards of the State, would set out the general rule that the public agency must make reasonable efforts to obtain informed consent from the parent for an initial evaluation if the child is a ward of the State and is not residing with the parent. Proposed § 300.300(a)(2)(ii) would incorporate the language in section 614(a)(1)(D)(iii)(II) of the Act, which identifies the exceptions to this general rule. These include when the public agency cannot find the parent, despite reasonable efforts to do so, when parental rights have been terminated under State law, or when parental rights have been subrogated by a judge in accordance with State law, and consent has been given by an individual appointed by the judge to represent the child. With regard to this last exception, note 146(b) of the Conf. Rpt. explains Congressional intent that ''* * * in the case of children who are wards of the State, consent may be provided by individuals legally responsible for the child's welfare or appointed by the judge to protect the rights of the child.'' This should ensure that consent for a child who is a ward of the State is obtained from an appropriate individual who has the legal authority to provide consent.

Proposed paragraph (a)(3) of § 300.300 would replace § 300.505(b) of the current regulations and would reflect language in section 614(a)(1)(D)(ii) of the Act regarding absence of consent. As was true under § 300.505(b) of the current regulations, the proposed

regulations would provide that if a parent does not provide consent or if the parent fails to respond to a request for consent, the public agency may pursue the initial evaluation of a child by using the procedural safeguards in subpart E of these proposed regulations, including applicable mediation and due process procedures, except to the extent inconsistent with State law. However, consistent with the Department's position that public agencies should use their consent override procedures only in rare circumstances, proposed § 300.300(a)(3) would clarify that a public agency is not required to pursue an initial evaluation of a child suspected of having a disability if the parent does not provide consent for the initial evaluation. States and LEAs do not violate their obligation to locate, identify, and evaluate children suspected of being children with disabilities under the Act if they decline to pursue an evaluation to which a parent has failed to consent.

In addition, paragraph (a)(3) of this section would permit consent override only for children who are enrolled in public school or seeking to be enrolled in public school. For children who are home schooled or placed in a private school by the parents at their own expense, consent override is not authorized. The district can always use the override procedures to evaluate the child at some future time should the parents choose to return their child to public school.

Of course, public agencies do have an obligation to actively seek parental consent to evaluate private school (including home school, if considered a private school under State law) children who are suspected of being children with disabilities under the Act. However, if the parents of a private school child withhold consent for an initial evaluation, the public agency would have no authority to conduct an evaluation under proposed § 300.131 and no obligation to consider that child as eligible for services under proposed §§ 300.132 through 300.144.

Proposed § 300.300(b)(1), which is essentially the same as, and would replace, § 300.505(a)(1)(ii) of the current regulations, would incorporate the provision in section 614(a)(1)(D)(i)(II) of the Act specifying that the public agency responsible for making FAPE available to the child must seek to obtain informed parental consent before the initial provision of special education and related services.

Proposed § 300.300(b)(2) would incorporate the new requirement added by section 614(a)(1)(D)(ii)(II) of the Act that prohibits a public agency from providing special education and related services by using the procedural safeguards in subpart E of these proposed regulations if the parents fail to respond or do not provide consent to services. We believe that the Act gives parents the ultimate choice as to whether their child should receive special education and related services, and this proposed regulation would reflect this statutory interpretation.

Proposed § 300.300(b)(3) would incorporate the new provision in section 614(a)(1)(D)(ii)(III) of the Act, that relieves public agencies of any potential liability for failure to convene an IEP meeting or for failure to provide the special education and related services for which consent was requested but withheld.

Proposed § 300.300(c)(1) would reflect the requirement in current § 300.505(b)(1)(i) that parental consent be obtained before a reevaluation.

Proposed § 300.300(c)(2) would incorporate the provision in § 300.505(c)(1) of the current regulations that informed parental consent need not be obtained for a reevaluation if the public agency can demonstrate that it has taken reasonable measures to obtain that consent and the parent failed to respond.

However, in lieu of prescribing ''reasonable measures,'' and to reduce regulatory burden, § 300.505(c)(2) of the current regulations, which refers to the reasonable measures that public agencies must use in this situation, would be removed. As a practical matter, because public agencies take seriously their obligation to obtain parental consent for a reevaluation because of their ongoing obligation to ensure the provision of FAPE to eligible students with disabilities, they typically would use a number of informal measures to obtain such consent. Eliminating the provision currently in § 300.505(c)(2) from these proposed regulations should give public agencies increased flexibility to use the measures they deem reasonable and appropriate.

Proposed paragraph (d)(1) of § 300.300 is the same as § 300.505(a)(3) of the current regulations and would provide that public agencies are not required to obtain parental consent before reviewing the existing data as part of an evaluation or reevaluation, or before administering a test or evaluation that is administered to all children, unless consent is required of parents of all children. Proposed paragraph § 300.300(d)(2) is the same as § 300.505(d) of the current regulations, regarding additional State consent requirements, and would continue to permit a State to maintain such requirements, provided its public agencies establish and implement effective procedures to ensure that the failure to provide consent does not result in the failure to provide FAPE to a child with a disability. Proposed § 300.300(d)(3) would incorporate the provision, in § 300.505(e) of the current regulations, consistent with the Department's longstanding policy that a public agency may not use a parent's refusal to consent to one service or activity as a basis for denying the child any other service, benefit, or activity of the public agency, except as required by Part B of the Act.

*Evaluations and Reevaluations*

Most of the provisions contained in subpart E of the current regulations governing procedures for evaluation and determination of eligibility would be moved to subpart D of the proposed regulations. Section 300.530 of the current regulations governing the SEA's obligation to ensure that LEAs establish and implement conforming evaluation procedures would be removed as unnecessary. It is covered elsewhere by proposed § 300.122 governing the SEA's responsibilities regarding evaluations.

Proposed § 300.301(a) would incorporate the requirements in § 300.531 of the current regulations that a public agency conduct a full and individual initial evaluation before the initial provision of special education and related services to a child with a disability. The cross-references to the regulations governing the initial evaluation would be updated. Proposed paragraph (b) of this section would incorporate section 614(a)(1)(B) of the Act and would provide that, consistent with the parental consent requirements in proposed § 300.300, either a parent or a public agency may initiate a request for an initial evaluation to determine if a child is a child with a disability. This clarification underscores that a public agency may only conduct an evaluation of a child subject to the informed consent requirements discussed previously.

Proposed § 300.301(c)(1) would incorporate the new provision in section 614(a)(1)(C)(i)(I) of the Act regarding conducting the initial evaluation within 60 days of receiving parental consent for the evaluation, or within another timeframe if the State establishes a timeframe for conducting the initial evaluation. Section 300.343(b) of the current regulations requires that the public agency ensure, within a reasonable period of time following receipt of parental consent, that the child is evaluated, and if found eligible, that special education and related

services are made available to the child. The current regulation does not specify a timeframe for conducting the initial evaluation following receipt of parental consent.

Proposed § 300.301(c)(2), regarding procedures for the initial evaluation, would incorporate the provision in section 614(a)(1)(C)(i)(I) of the Act as well as portions of § 300.320(a)(1) and (2) of the current regulations, and would clarify that the initial evaluation must consist of procedures to determine whether the child is a child with a disability under § 300.8 and to determine the child's educational needs. The remainder of § 300.320 of the current regulations would be removed as these requirements are addressed in proposed §§ 300.304 through 300.306.

Proposed § 300.301(d) would incorporate the new provision in section 614(a)(1)(C)(ii) of the Act, which provides an exception to the timeframe requirement for conducting the initial evaluation following receipt of parental consent and specifies when this exception would apply. However, for greater clarity, the proposed regulations would reorder the statutory language to make clear that the 60-day timeframe or a timeframe established by State law is inapplicable to a public agency if the child's parent repeatedly refuses to produce the child for an evaluation or the child enrolls in a school after the timeframe has commenced for the child's previous public agency to have completed an evaluation of the child, and the parent and subsequent public agency agree to a specific timeframe by which the evaluation must be completed. Proposed § 300.301(d)(2)(ii) would clarify, in accordance with section 614(a)(1)(C)(ii) of the Act, that this exception would apply only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation and the parent and the public agency agree to a specific timeframe when the evaluation will be completed.

Proposed § 300.302 would incorporate the new requirement in section 614(a)(1)(E) of the Act to clarify that screening for instructional purposes by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not considered an evaluation for eligibility for special education and related services, and therefore could occur without obtaining informed parental consent for the screening.

Proposed § 300.303, regarding reevaluations, would incorporate section 614(a)(2)(A) of the Act, and would supersede § 300.536 of the current regulations, which does not reflect the new requirements governing the timing and conduct of reevaluations. Proposed § 300.303(a) would require a public agency to ensure that a reevaluation is conducted in accordance with proposed §§ 300.304 through 300.311 if it determines that the educational or related services needs, including the need for improved academic achievement and functional performance of the child, would warrant a reevaluation, or if the child's parent or teacher requests a reevaluation.

Under the circumstances set forth in the Act and proposed § 300.303(a), proposed paragraph (b)(1) of this section would provide that the reevaluation occur not more than once a year unless the parent and the public agency agree otherwise. Proposed § 300.303(b)(2) would continue the general requirement for three-year reevaluations from current § 300.536(b), except that in accordance with section 614(a)(2)(B) of the Act, a parent and a public agency could agree that a three-year reevaluation is unnecessary.

Proposed §§ 300.304 and 300.305 would incorporate some of the evaluation procedures contained in §§ 300.532 and 300.533 of the current regulations, with appropriate updates to reflect statutory changes in section 614(b) of the Act. Proposed § 300.304(a) would incorporate the new requirement in section 614(b)(1) of the Act that the public agency provide notice to the parents of a child with a disability, in accordance with § 300.503 of these proposed regulations, of any evaluation procedures that the agency proposes to conduct. (Under proposed § 300.503(b)(3), public agencies are required to include in the prior written notice to parents a description of each evaluation procedure, test, record, or report the agency used as the basis for the proposal or refusal, not the tests the agency would be proposing to conduct.)

**Evaluation Procedures**

Proposed § 300.304(b)(1) would incorporate the procedures governing conduct of evaluations in section 614(b)(2) of the Act. This proposed regulation would replace § 300.532(b)(1) and (2) of the current regulations and would require that the public agency use a variety of assessment tools and strategies, including information provided by the parent, to gather relevant functional, developmental, and academic information about the child.

Proposed § 300.304(b)(2) would incorporate the language from § 300.532(f) of the current regulations, based on section 612(a)(6)(B) of the Act, prohibiting the use of a single measure or assessment as the sole criterion for determining whether a child is a child with a disability or for determining an appropriate educational program for the child.

Proposed § 300.304(b)(3) would replace § 300.532(i) of the current regulations and would require, in accordance with section 614(b)(2)(c) of the Act, that the public agency, in conducting the evaluation, use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to developmental factors.

Proposed § 300.304(c) would address other evaluation procedures and would incorporate the requirements of sections 612(a)(6)(B) and 614(b)(3) of the Act regarding the use of assessments and other evaluation materials. Unlike the current regulations, which refer to standardized tests, the proposed regulations would refer to assessments and other evaluation materials, which is the terminology used in section 614(b)(3) of the Act.

Proposed § 300.304(c)(1)(i) would incorporate the provision in section 612(a)(6)(B) of the Act and continue the longstanding requirement that procedures used for evaluation and placement of children with disabilities not be discriminatory on a racial or cultural basis. This proposed regulation would replace § 300.532(a)(1)(i) of the current regulations, which contains a similar requirement.

In order to provide information and guidance regarding evaluation and assessment in one place, proposed § 300.304(c)(1)(ii) would incorporate section 614(b)(3)(A)(ii) of the Act, and also would include language from the requirement in section 612(a)(6)(B) of the Act regarding the form of assessments and other evaluation materials used to assess limited English proficient children under the Act. Based on additional clarity provided in the statute, the proposed regulation would require public agencies to provide and administer assessments in the child's native language, including ensuring that the form in which the test is provided or administered is most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to provide or administer the assessment in this manner. This proposed regulation would replace § 300.532(a)(1)(ii) of the current regulations, which contains the general standard for assessing limited English proficient children, and provides, in accordance with section 612(a)(6)(B) of the Act, that the child be assessed in his or her native language or

other mode of communication, unless clearly not feasible to do so.

Proposed § 300.304(c)(1)(iii) through (v) would incorporate the requirements of section 614(b)(3)(A)(iii) through (v) of the Act. This proposed regulation would replace similar requirements contained in 300.532(a)(2)(i) and (ii) of the current regulations. Proposed paragraph (c)(1)(iii) would reflect new language in section 614(b)(3)(A)(iii) of the Act, which requires assessments or measures to be used for purposes that are valid and reliable. Current § 300.532(c)(2), which requires that the evaluation report include a description of the extent to which the evaluation varied from standard conditions, has been removed from these proposed regulations. This is standard test administration practice and need not be repeated in the regulations.

Proposed § 300.304(c)(2) would be substantially the same as § 300.532(d) of the current regulations and would reflect the longstanding regulatory requirement that assessments and other evaluation materials be tailored to address individual educational needs, rather than merely designed to provide a single general intelligence quotient. Proposed § 300.304(c)(3)(v)(C) would replace § 300.532(e) of the current regulations and would reflect the longstanding regulatory requirement that assessment selection or administration ensures that the assessment results accurately reflect the child's aptitude or achievement levels, or whatever other factors the assessment purports to measure, not the child's impaired sensory, manual, or speaking skills, unless the assessment purports to measure those skills.

Proposed § 300.304(c)(4), which would incorporate section 614(b)(3)(B) of the Act, would require that the child be assessed in all areas related to the suspected disability, and would replace § 300.532(g) of the current regulations. This proposed section would incorporate the longstanding requirement that the child be assessed in all areas related to the suspected disability including, if appropriate: health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

Proposed § 300.304(c)(5) would incorporate the new requirement from section 614(b)(3)(D) of the Act that provides for expeditious coordination among school districts to better ensure prompt completion of full evaluations for children with disabilities who transfer from one public agency to another public agency in the same academic year. Section 300.532(h) of the current regulations would be reflected in proposed § 300.304(c)(6), and would continue to require that the evaluation be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child is classified. With regard to this requirement, note 152 of the Conf. Rpt. states:

> Conferees intend the evaluation process for determining eligibility of a child under this Act to be a comprehensive process that determines whether the child has a disability, and as a result of that disability, whether the child has a need for special education and related services. As part of the evaluation process, conferees expect the multi-disciplinary evaluation team to address the educational needs of the child in order to fully inform the decisions made by the IEP Team when developing the educational components of the child's IEP. Conferees expect the IEP Team to independently review any determinations made by the evaluation team, and that the IEP Team will utilize the information gathered during the evaluation to appropriately inform the development of the IEP for the child.

Thus, proposed § 300.304(c)(6) would emphasize the direct link between the evaluation and the IEP processes and should ensure that the evaluation is sufficiently comprehensive to inform the development of the child's IEP.

Proposed § 300.304(c)(7), in accordance with section 614(c) of the Act, would replace §§ 300.532(j) of the current regulations and would continue to require that the public agency use assessment tools and strategies providing relevant information that directly assists persons in determining the educational needs of the child.

Proposed § 300.305, which addresses additional requirements for evaluations and reevaluations, would combine §§ 300.533 and 300.534(c) of the current regulations. Proposed § 300.305(a)(2) would include the language in section 614(c)(1)(B)(i) through (iv) of the Act regarding determinations about the child's eligibility under this part. Proposed paragraphs (b) through (d) of § 300.305 would reflect § 300.533 of the current regulations regarding procedures for determining whether additional data are needed as part of the initial evaluation or the reevaluation, but with minor modifications to incorporate section 614(c)(2) of the Act. For example, in accordance with section 614(c)(2) of the Act, proposed paragraph (c) of § 300.305, regarding source of data, would replace § 300.533(c) of the current regulations, regarding need for additional data.

Proposed § 300.305(e), regarding evaluations before change in placement, would replace § 300.534(c) of the current regulations, regarding the requirement to conduct an evaluation before determining that the child is no longer a child with a disability, as well as the exception to that requirement for students who graduate from secondary school with a regular high school diploma or who exceed age eligibility for FAPE under State law. However, proposed paragraph (e)(3) would incorporate the new requirement in section 614(c)(5)(B)(ii) of the Act that the public agency provide a summary of academic and functional performance, including recommendations to assist the student in meeting postsecondary goals, for students whose eligibility terminates because of graduation with a regular high school diploma or because of exceeding the age eligibility for FAPE under State law.

Proposed § 300.306, regarding determination of eligibility, would replace paragraphs (a) and (b) of §§ 300.534 and 300.535 of the current regulations and would incorporate the language in section 614(b)(4) and (5) of the Act, which is substantially the same as the language in the current regulations. This proposed regulation would provide that, upon completion of the administration of assessments and other evaluation measures, a group of qualified professionals, including the child's parent, determine whether the child is a child with a disability and the educational needs of the child. As is true under the current regulation, the public agency would be required to provide a copy of the evaluation report to the parent, including the documentation of determination of eligibility.

Proposed section § 300.306(b) would include the provision in current § 300.534(b)(2) that makes clear that a child must not be determined to be a child with a disability under this part if the determinant factor is lack of instruction in reading, lack of instruction in math, or limited English proficiency, and the child does not otherwise meet the eligibility criteria under 300.8(a).

Proposed paragraph (c) of § 300.306 would replace § 300.535 of the current regulations and would incorporate the longstanding regulatory requirements that public agencies use a multifactored approach in determining eligibility and placement and develop an IEP for a child found eligible for services under the Act.

**Additional Procedures for Evaluating Children With Specific Learning Disabilities**

Proposed §§ 300.307 through 300.311 would revise §§ 300.540 through 300.543 of the current regulations regarding additional procedures for evaluating children suspected of having specific learning disabilities and would implement the new requirements of section 614(b)(6) of the Act. Proposed § 300.307(a) would generally require a State to adopt criteria for determining whether a child has a specific learning disability (SLD) as defined in proposed § 300.8. Specifically, proposed § 300.307(a)(1) would allow States to prohibit the use of a severe discrepancy between achievement and intellectual ability criterion for determining whether a child has an SLD. Proposed § 300.307(a)(2) would make it clear that the State may not require LEAs to use a discrepancy model for determining whether a child has an SLD. In addition, proposed § 300.307(a)(3) would require States to permit a process that examines whether the child responds to scientific, research-based intervention as part of the evaluation procedures. Proposed § 300.307(a)(4) would allow States to permit the use of other alternative procedures for determining whether a child has an SLD as defined in § 300.8. Proposed § 300.307(b) would clarify that a public agency must use State criteria in determining whether a child has an SLD.

Recent consensus reports and empirical syntheses concur in suggesting major changes in the approach to the identification of an SLD. These reports recommend abandoning the IQ-discrepancy model and recommend the use of response to intervention (RTI) models (Donovan & Cross, 2002; Lyon *et al.*, 2001; President's Commission on Excellence in Special Education, 2002; Stuebing *et al.*, 2002). These reports find that SLD is a group of heterogeneous disorders, but recommend changes in the seven domains identified in current § 300.541(a)(2) because of areas of difficulty for students with SLD that have not been identified under current regulations (*e.g.*, reading fluency).

There are many reasons why use of the IQ-discrepancy criterion should be abandoned. The IQ-discrepancy criterion is potentially harmful to students as it results in delaying intervention until the student's achievement is sufficiently low so that the discrepancy is achieved. For most students, identification as having an SLD occurs at an age when the academic problems are difficult to remediate with the most intense remedial efforts (Torgesen *et al.*, 2001). Not surprisingly, the ''wait to fail'' model that exemplifies most current identification practices for students with SLD does not result in significant closing of the achievement gap for most students placed in special education. Many students placed in special education as SLD show minimal gains in achievement and few actually leave special education (Donovon & Cross, 2002).

The use of the IQ-discrepancy drives assessment practices for most special education services (President's Commission on Excellence in Special Education, 2002). Nationwide, virtually every student considered for special education eligibility receives IQ tests. This practice consumes significant resources, with the average cost of an eligibility evaluation running several thousand dollars (MacMillan & Siperstein, 2002; President's Commission on Excellence in Special Education, 2002). Yet these assessments have little instructional relevance and often result in long delays in determining eligibility and therefore services.

Alternative models are possible. The type of model most consistently recommended uses a process based on systematic assessment of the student's response to high quality, research-based general education instruction. The Department strongly recommends that States consider including this model in its criteria. Other models focus on the assessment of achievement skills identifying SLD by examining the strengths and weaknesses in achievement, or simply rely on an absolute level of low achievement. These models are directly linked to instruction. (Fletcher, *et al.*, 2003). Other models use alternative approaches to determining aptitude-achievement discrepancies that do not involve IQ, including multiple assessments of cognitive skills. However, these models do not identify a unique group of low achievers and maintain a focus on assessment as opposed to intervention. In considering alternative models for identification, we believe that the focus should be on assessments that are related to instruction, and that identification should promote intervention. For these reasons, models that incorporate response to a research-based intervention should be given priority in any effort to identify students with SLD. Identification models that incorporate response to intervention represent a shift in special education toward the goals of better achievement and behavioral outcomes for students identified with SLD because the students who are identified under such models are most likely to require special education and related services.

Proposed § 300.308, regarding eligibility group members, would revise § 300.540 of the current regulations. Under this proposed regulation, the group making the determination of whether a child has an SLD would include a special education teacher. Further, this proposed regulation would require that the group be collectively qualified to conduct individual diagnostic assessments relevant to SLD, interpret and apply critical analysis to assessment data, develop appropriate educational and transitional recommendations, and deliver specifically designed instruction and services to meet the needs of students with SLD. It is intended that the group described in proposed § 300.308 would serve as the required group under proposed § 300.306(a)(1).

The current requirements in § 300.541 permit the group to determine that an SLD is present if the child does not achieve commensurate with his or her age and ability levels and if the group finds a severe discrepancy between achievement and intellectual ability. Proposed § 300.309 would address the elements required for determining the existence of an SLD and would revise § 300.541 of the current regulations in light of the statutory provision in section 614(b)(6)(A) of the Act, which protects LEAs from being required to use a severe discrepancy between intellectual ability and academic achievement. Under the proposed regulations, the first element of a determination that a child has an SLD is a finding that the child does not achieve commensurate with the child's age in one or more of the eight specified areas when provided with learning experiences appropriate to the child's age.

The second element for a determination that a child has an SLD is a finding that the child failed to make sufficient progress in meeting State-approved results when using a response to scientific, research-based intervention process, or the child exhibits a pattern of strengths and weaknesses that the team determines is relevant to the identification of an SLD. The pattern of strengths and weaknesses may be in performance, achievement, or both or may be in performance, achievement, or both relative to intellectual development. Proposed § 300.309(a)(3) would incorporate the exclusions from section 602(30)(C) of the Act and would prohibit the eligibility group from finding an SLD if the SLD is primarily

the result of other visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage. These exclusions are in addition to the special rule for eligibility determination in section 614(b)(5) of the Act and proposed § 300.306(b).

Proposed § 300.309(b) would require the group to consider evidence that the child was provided appropriate instruction prior to, or as a part of, the referral process. These requirements would emphasize the importance of using high-quality, research-based instruction in regular education settings consistent with relevant sections of the ESEA, including that the instruction was delivered by qualified personnel. Also important is evidence that data-based documentation reflecting formal assessment of progress during instruction through repeated assessments of achievement at reasonable intervals is provided to the parents and documentation that the timelines described in proposed §§ 300.301 and 300.303 are adhered to, unless extended by mutual written agreement of the child's parents and a group of qualified professionals as described in § 300.308. These requirements would be included in § 300.309(c) and (d), respectively, of the proposed regulations.

Proposed § 300.310 would revise § 300.542 of the current regulations regarding observation. Proposed § 300.310(a) would require that at least one member of the group described in proposed § 300.308, other than the child's teacher, who observes the child be trained in observation. This should ensure that the group member or members conducting the observation know what to look for when they observe the child. Proposed § 300.310(a) also would provide additional parameters for conducting the observation, and would specify that the observation document academic performance and behavior in the areas of difficulty. Proposed § 300.310(b) would be substantively unchanged from § 300.542(b) of the current regulations.

Proposed § 300.311, regarding a written report, would revise § 300.543 of the current regulations and incorporate much of the content of that section. The proposed regulation would remove the reference in § 300.543(a)(6) of the current regulation as to whether a child has a severe discrepancy between achievement and ability that is not correctable without special education and related services and the reference in current § 300.543(a)(7) regarding the effects of environmental, cultural, and economic disadvantage. This language is included in proposed § 300.306. Proposed § 300.311(a)(5) would require that the report address only whether the child does not achieve commensurate with the child's age rather than the discrepancy model referred to in current § 300.531(a)(2). The proposed regulation also would require that the written report address two additional factors: whether there are strengths and weaknesses in performance or achievement, or both, or relative to intellectual development that require special education and related services; and the instructional strategies used and the response to student data collected if the response to the scientific, research-based process was implemented. These additional provisions should ensure that the report is a more useful document for educators in determining the existence of an SLD. It is intended that the written report in this section would serve as the required evaluation report and documentation of the determination of eligibility as required by proposed § 300.306(a)(2).

**Individualized Education Programs**

Proposed §§ 300.320 through 300.328 would replace some of the provisions in §§ 300.340 through 300.350 of the current regulations regarding IEPs. Proposed § 300.320 would contain a definition of individualized education program or IEP that would incorporate the definition in section 614(d)(1)(A)(i) of the Act as well as provisions contained in section 614(d)(6) of the Act. This definition would replace and expand § 300.340(a) of the current regulations, which contains only a brief definition of the term IEP. The definition of ''participating agency'' contained in § 300.340(b) of the current regulations would be removed from these proposed regulations as unnecessary. Many of the provisions in the new definition of IEP are taken from provisions in §§ 300.346 through 300.347 of the current regulations, but appropriate modifications also would be included in this definition to reflect new provisions of the Act.

The first sentence of the definition in § 300.320 would refer to the IEP as a written statement for a child with a disability that is developed, reviewed, and revised at a meeting in accordance with §§ 300.320 through 300.324. Proposed paragraph (a)(1) would require, in accordance with section 614(d)(1)(A)(i)(I) of the Act, that the IEP include a statement of the child's present levels of academic achievement and functional performance. This proposed regulation would supersede § 300.347(a)(1) of the current regulations, which requires that the IEP include a statement of the child's present levels of educational performance. Proposed § 300.320(a)(1)(i) would be the same as § 300.347(a)(1)(i) of the current regulations, except that the phrase used in the Act, ''general education curriculum,'' would be substituted for ''general curriculum,'' and the proposed regulation would continue to explain, as do the current regulations, that the general education curriculum is the same curriculum as for nondisabled children. Proposed § 300.320(a)(1)(ii), regarding the participation of preschool children in appropriate activities, is the same as § 300.347(a)(1)(ii) of the current regulations.

Proposed § 300.320(a)(2) is similar to § 300.347(a)(2) of the current regulations, except for minor language changes from section 614(d)(1)(A)(i)(II) of the Act. Proposed § 300.320(a)(2)(i)(A) and (B) would be the same as § 300.347(a)(2)(i) and (ii) of the current regulations.

Proposed § 300.320(a)(2)(ii) would add a new provision consistent with section 614(d)(1)(A)(i)(I)(cc) of the Act that would require the IEP to contain a statement of benchmarks or short-term objectives for children with disabilities who take alternate assessments aligned to alternate achievement standards. In accordance with changes made in section 614(d)(1)(A)(i)(III) of the Act, proposed § 300.320(a)(3) would replace § 300.347(a)(7) of the current regulations, and would require that the IEP include a statement of how the child's progress on the annual goals is being measured. In accordance with section 614(d)(1)(A)(i)(III) of the Act, proposed § 300.320(a)(3)(ii) would clarify that periodic progress reports could be issued concurrently with quarterly report cards.

Proposed § 300.320(a)(4) would replace § 300.347(a)(3) of the current regulations, and would incorporate the language in section 614(d)(1)(A)(IV) of the Act regarding a statement of special education and related services and supplementary aids and services, based on peer-reviewed research, to the extent practicable. Proposed § 300.320(a)(5), which would require an explanation of the extent, if any, to which a child will not participate with nondisabled children in the regular class and in other activities, would incorporate current § 300.347(a)(4), which is the same as section 614(d)(1)(A)(i)(V) of the Act. Proposed § 300.320(a)(6) would replace § 300.347(a)(5), regarding participation of children with disabilities in State and districtwide assessments of student achievement, and would incorporate section

614(d)(1)(A)(VI) of the Act. This section would require that the IEP include a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments, consistent with proposed § 300.160. If the IEP Team determines that the child should take a particular alternate assessment on a particular State or districtwide assessment of student achievement, the IEP must include a statement of why the child cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the child. Proposed § 300.320(a)(7), regarding the projected date for the beginning of services and modifications and the anticipated frequency, location, and duration of those services and modifications, is the same as § 300.347(a)(6) of the current regulations.

Proposed § 300.320(b) would replace current § 300.347(b), regarding transition services, and would incorporate some of the new statutory requirements regarding postsecondary goals in section 614(d)(1)(A)(VIII) of the Act. Beginning with the first IEP in effect after the child turns age 16 or younger if determined appropriate, and updated annually thereafter, this proposed paragraph would require that the IEP include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills, and the transition services, including courses of study needed to assist the child in reaching those goals. As under the current regulations, proposed § 300.320(b) would continue to apply the requirements regarding transition services for students younger than age 16, if determined appropriate by the IEP Team. However, § 300.347(b)(1) of the current regulations, regarding including a statement of transition services needs under the applicable components of the student's IEP in the IEPs of students beginning at age 14 or younger, would be removed from these proposed regulations because it is no longer required under the Act. Proposed § 300.320(c) would replace § 300.347(c) of the current regulations, regarding transfer of rights, and would incorporate section 614(d)(1)(A)(i)(VIII)(cc) of the Act to require that beginning not later than one year before the rights transfer, the child is informed that his or her rights under Part B will transfer to the child upon reaching the age of majority under State law.

Proposed § 300.320(d) would be based on section 614(d)(1)(A)(ii) of the Act and § 300.346(e) of the current regulations. The first clause would provide that the IEP is not required to include additional information beyond what is explicitly required under section 614(d) of the Act. The second clause, which is the same as § 300.346(e) of the current regulations, would provide that this section would not require the IEP to include information under one component of the child's IEP that is already contained under another component of the IEP.

Section 300.341 of the current regulations, regarding responsibility of the SEA and other public agencies for IEPs, would not be retained in these proposed regulations. The statutory authority for that section is not based on the IEP provisions in section 614(d) of the Act, and the substance of the provision is essentially covered by proposed § 300.149, which would address the SEA responsibility for general supervision, including responsibility to ensure development and implementation of IEPs.

Proposed § 300.321 would include a requirement regarding the composition of the IEP Team, and is substantially the same as § 300.344 of the current regulations addressing a public agency's responsibility to ensure that the IEP Team includes the required participants. Proposed § 300.321(a) would replace § 300.344(a) of the current regulations. As with the current regulation, proposed paragraph (a)(7) would provide that, in accordance with the Act, whenever appropriate, the child be a member of the IEP Team.

Proposed § 300.321(b) would address transition services participants and would replace and modify § 300.344(b) of the current regulations to reflect changes to the Act's requirements on transition services. Proposed § 300.321(b)(1) would provide that the child be invited to the IEP meeting if a purpose of the meeting is consideration of the child's postsecondary goals and the transition services needed to achieve those goals. Proposed § 300.321(b)(2) is substantially the same as § 300.344(b)(2) of the current regulations, regarding the public agency's obligation to take other steps to ensure that the student's preferences and interests are considered if the child is unable to attend the meeting. Proposed § 300.321(b)(3) would replace and modify § 300.344(b)(3)(i) of the current regulations and would require, to the extent appropriate, and with the consent of the parent or a child who has reached the age of majority, that a representative of a participating agency that is likely to be responsible for providing or paying for transition services be invited to the meeting. Current § 300.344(b)(3)(ii), addressing the public agency's obligations to take steps to obtain the participation of the other agency in the planning for transition services if the other agency does not send a representative, would be removed as it is an unnecessary burden. Proposed § 300.321(c), regarding determination of knowledge and special expertise of other individuals invited by the parent or public agency to be members of the IEP Team, is essentially the same as, and would replace, § 300.344(c) of the current regulations. Proposed § 300.321(d), regarding designating a public agency representative, is essentially the same as, and would replace, § 300.344(d) of the current regulations.

Proposed § 300.321(e) would add a new provision regarding IEP meeting attendance and would incorporate section 614(d)(2)(C) of the Act. Proposed § 300.321(e)(1) would specify when a member of the IEP Team would not be required to attend the IEP meeting in whole or in part. Proposed § 300.321(e)(2) would specify when a member of the IEP Team may be excused from attending the IEP meeting in whole or in part, subject to the parent's and public agency's written consent to the member's excusal, and subject to the member's written submission to the parent and public agency of input into the development of the IEP prior to the meeting.

Proposed § 300.321(f) would incorporate a new requirement in section 614(d)(2)(D) of the Act for the initial IEP meeting for a child who was previously served under Part C of the Act, and would require, to ensure the child's smooth transition, that an invitation to that meeting, at the request of the parent, be sent to the Part C services coordinator or a representative of the Part C system.

Consistent with the statutory requirement that a parent, as a member of the IEP Team, provide significant input into the child's IEP, proposed § 300.322 would address parent participation and would replace § 300.345 of the current regulations. Proposed § 300.322(a), regarding notifying the parents of the meeting early enough to ensure they will have an opportunity to attend and scheduling the meeting at a mutually convenient time and place, would be the same as § 300.345(a) of the current regulations. Proposed § 300.322(b), regarding information in the notice, would be the

same as § 300.345(b) of the current regulations, except that paragraph (b)(2), regarding notifying a student age 14 or younger about an IEP meeting to develop a statement of needed transition services would be removed because the participation of a child age 14 or younger in the transition services planning process is not required under the Act. Proposed § 300.322(b)(1), which would be the same as § 300.345(b)(1) of the current regulations, would continue to require the public agency to notify the parents of the purpose, time, and location of the meeting and who will be in attendance, including informing parents of the provisions in § 300.322 regarding the participation of other individuals with knowledge or special expertise about the child. Paragraph (b)(3) of current § 300.345 would be modified, would become proposed § 300.322(b)(2) and would require that the parent be notified, not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, if a purpose of the meeting will be the consideration of postsecondary goals and transition services for the child. The notice would indicate that the agency will invite the child to the meeting and also would identify any other agency that will be sending a representative to the meeting. Proposed § 300.322(c), regarding other methods to ensure parent participation if neither parent can attend, would replace § 300.345(c) of the current regulations, and would be modified to address the use of other methods, including individual or conference telephone calls, subject to § 300.328 of the proposed regulations relating to alternative means of meeting participation. Proposed § 300.322(d), regarding conducting a meeting without a parent in attendance, would replace § 300.345(d) of the current regulations, except that the proposed regulation would not specify the methods that the public agency must use to keep a record of its attempts to convince the parent that he or she should attend the meeting. Current section 300.345(e), regarding the use of interpreters or other action, as appropriate, would be removed from these proposed regulations because public agencies are required by other Federal statutes to take appropriate actions to ensure that parents who themselves have disabilities and limited English proficient parents understand proceedings at the IEP meeting. The other Federal statutory provisions that apply in this regard are Section 504 of the Rehabilitation Act of 1973 and its implementing regulations in 34 CFR Part 104 (prohibiting discrimination on the basis of disability by recipients of Federal financial assistance) and title II of the Americans With Disabilities Act and its implementing regulations in 28 CFR Part 35 (prohibiting discrimination on the basis of disability by public entities, regardless of receipt of Federal funds), and title VI of the Civil Rights Act of 1964 and its implementing regulations in 34 CFR Part 100 (prohibiting discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance).

Proposed § 300.322(f) would replace § 300.345(f) of the current regulations and would continue to require that public agencies give a parent a copy of their child's IEP at no cost to the parent.

Proposed § 300.323 would address when IEPs must be in effect and would replace some of the provisions of § 300.342 of the current regulations. Proposed § 300.323(a), which is essentially the same as § 300.342(a) of the current regulations, would require a public agency to ensure that an IEP is in effect for each child with a disability at the beginning of each school year. Proposed § 300.323(b), regarding an IEP or IFSP for children aged three through five, would replace and modify § 300.342(c) of the current regulations. The proposed regulation would incorporate language in section 614(d)(2)(B) of the Act as well as language in section 636 of the Act to require the IEP Team to consider an IFSP that contains the IFSP content described in section 636 of the Act, and that is developed in accordance with § 300.324 of these proposed regulations. Under both the Act and the proposed regulations, the IFSP could serve as the IEP if consistent with State policy and agreed to by the parent and the agency. Proposed § 300.323(b)(1) would specify further that, in order for the IFSP to be considered as the IEP, the IFSP must contain the IFSP content, including the natural environments statement and an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs who are at least three years of age. Proposed § 300.323(b)(2) would be consistent with the current regulation in § 300.342(c)(2)(i) and (ii) that requires that the child's parents be provided a detailed explanation of the differences between an IFSP and an IEP, and written informed consent from the parent if the parent chooses an IFSP. Proposed § 300.323(c), regarding initial IEPs and provision of services, would combine §§ 300.342(b)(2)(ii) and 300.343(b)(2) of the current regulations and would continue the longstanding requirement in § 300.343(b)(2) that an initial IEP be developed within 30 days of a determination that the child needs special education and related services. However, § 300.342(b)(1)(i) of the current regulations, requiring that an IEP be in effect before special education and related services are provided to a child, would be removed from these proposed regulations. This requirement is covered by proposed § 300.323(a), which would require that each public agency have an IEP in effect for each child with a disability in the public agency's jurisdiction at the beginning of each school year, and by section 614(d)(2)(A) of the Act.

Proposed § 300.323(c)(2) would combine current § 300.343(b)(2), which requires that a meeting to develop an IEP ''be conducted within 30 days of a determination that the child needs special education and related services'' with current § 300.342(b)(1)(ii), which requires an IEP to be ''implemented as soon as possible following the meetings described in § 300.343.'' This combined language would provide a clearer, more direct, and more specific requirement than what is contained in current §§ 300.342((b)(1)(ii) and 300.343(b)(2).

Proposed § 300.323(d), regarding accessibility of the child's IEP to the regular education teacher and others responsible for its implementation, would replace § 300.342(b)(2) of the current regulations. However § 300.342(b)(3) of the current regulations, which requires that each person responsible for implementing the IEP be informed of his or her specific responsibilities related to implementing the child's IEP, and the specific accommodations, modifications and supports that must be provided for the child in accordance with the IEP, would be removed from the proposed regulations as unnecessary. Public agencies are required to share this information with responsible individuals in order to meet their obligations under the Act.

Proposed § 300.323(e) would implement the new requirement in section 614(d)(2)(C) of the Act regarding programs for children who transfer public agencies within the same academic year. Proposed § 300.323(e)(1)(i) would implement the Act and the Department's longstanding policy regarding students who transfer public agencies within the same State. The proposed regulation would require that the new school district provide the child with FAPE, including services comparable to those described in a previously held IEP until the public agency adopts the previously held IEP

or develops, adopts, and implements a new IEP that is consistent with Federal and State law. Proposed § 300.323(e)(1)(ii) would incorporate a statutory change that requires, in the case of a child who had an IEP in effect and who transfers from a public agency outside the State in the same academic year, that the public agency provide the child with FAPE, including services comparable to those described in the previously held IEP, until the public agency conducts an evaluation of the child, if determined necessary by the public agency, and develops a new IEP for the child, if appropriate, that is consistent with Federal and State law.

Proposed § 300.323(e)(2) would incorporate the new requirement in section 614(d)(2)(C)(ii) of the Act regarding transmittal of education records to facilitate the transition of a child who transfers public agencies within the same State. It also would address the responsibility of the new public agency and previous public agency to take reasonable steps regarding making prompt requests for, and transmission of, education records consistent with 34 CFR 99.31(a)(2), implementing FERPA.

Paragraph (d) of § 300.342 of the current regulations, regarding effective dates for new IEP requirements, is unnecessary and would be removed from the proposed regulations. All the IEP requirements of Part B of the Act will take effect on July 1, 2005. Further, it is not anticipated that public agencies will need additional time to implement these new requirements, some of which provide additional flexibility to public agencies and parents and reduce regulatory burden.

**Development of IEP**

Proposed § 300.324 would address the development, review, and revision of IEPs. This section would incorporate some requirements regarding IEP development, review, and revision, which are currently addressed in §§ 300.343 and 300.346 of the regulations.

Proposed § 300.324(a) would incorporate section 614(d)(3)(A) of the Act regarding considerations in IEP development. Although most of the language from § 300.346(a) of the current regulations would be retained, the requirement in § 300.346(a)(1)(iii), regarding consideration in IEP development of the child's performance on State or districtwide assessments, as appropriate, would be removed. Instead, the proposed regulation would include language from section 614(d)(3)(A)(iv) of the Act regarding consideration of the academic, developmental, and functional needs of the child in IEP development. In accordance with section 614(d)(3)(B) of the Act, proposed § 300.324(a)(2), regarding consideration of special factors in IEP development, would be substantially the same as, and would replace, § 300.346(a)(2) of the current regulations. Proposed § 300.324(a)(3) would continue to require, in accordance with section 614(d)(3)(C) of the Act, that the regular education teacher, as a member of the IEP Team, to the extent appropriate, participate in IEP development in the areas specified in the Act. This proposed regulation would replace § 300.346(d) of the current regulations, which contains a similar provision regarding the role of the regular education teacher in the development, review, and revision of the IEP. Because the Act no longer requires the consideration of special factors in IEP review and revision, § 300.346(b) of the current regulations would be removed. Section 300.346(c) of the current regulations, regarding the requirement to include a statement in the child's IEP about a child's need for a particular device or service in order to receive FAPE, would be removed because it is covered in proposed § 300.320(a)(4).

Proposed § 300.324(a)(4) would incorporate section 614(d)(3)(D) of the Act and would permit the parent and the public agency to agree not to convene an IEP meeting to make changes to the child's IEP after the annual IEP meeting for the school year has taken place. Instead, in accordance with this new statutory provision, this proposed regulation would permit the parent and the public agency to develop a written document to amend or modify the child's current IEP without convening an IEP meeting.

To incorporate section 614(d)(3)(E) of the Act, proposed § 300.324(a)(5) would address consolidation of IEP meetings and would require the public agency, to the extent possible, to encourage the consolidation of reevaluation meetings and other IEP meetings for the child.

To incorporate section 614(d)(3)(F) of the Act, proposed § 300.324(a)(6) would permit changes to the IEP to be made either by the entire IEP Team, or in accordance with proposed § 300.324(a)(4), by amending the IEP, rather than redrafting the entire IEP. This proposed paragraph would also provide that a parent who requests a copy of the revised IEP with the amendments incorporated must be provided with it.

Section 300.343(a) of the current regulations, regarding the public agency's responsibility to initiate and conduct meetings to develop, review, and revise a child's IEP, would be removed because it is covered in § 300.320(a) of the proposed regulations. Proposed § 300.324(b)(1) would address review and revision of IEPs and is essentially the same as § 300.343(c) of the current regulations. Proposed § 300.324(b)(2) would require the participation of the regular education teacher in the review and revision of the child's IEP, consistent with proposed § 300.324(a)(3).

Proposed § 300.324(c), regarding failure to meet transition objectives, is essentially the same as, and would replace § 300.348 of the current regulations. Proposed § 300.324(c)(1) would implement section 614(d)(6) of the Act, which requires the public agency to reconvene the IEP Team to develop alternative strategies if the agency responsible for providing transition services fails to provide those services. Proposed § 300.324(c)(2) would continue the longstanding regulatory requirement in current § 300.348(b) that a participating agency, including a State vocational rehabilitation agency, is not relieved of its responsibility to provide or pay for transition services that the agency would otherwise provide if the student meets the eligibility requirements for those services.

Proposed § 300.324(d)(1), regarding children with disabilities in adult prisons, would conform to section 614(d)(7) of the Act. Unlike § 300.347(d) of the current regulations, which merely cross-references other applicable regulatory requirements, proposed § 300.324(d)(1) would specify the requirements from which public agencies would be exempt with respect to these children. Specifically, public agencies would be exempt from the requirements in § 300.160 and § 300.320(a)(6), regarding participation in State and districtwide assessments, and the requirements in § 300.320(b), regarding transition services, which do not apply to children who exceed age eligibility under Part B of the Act prior to their release from prison, based on their sentence and eligibility for early release.

Proposed § 300.324(d)(2)(i) would, consistent with section 614(a)(7) of the Act, continue to permit the IEP Team of a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison to modify the child's IEP or placement if the State has demonstrated a bona fide security or penological interest that cannot otherwise be accommodated. Proposed § 300.324(d)(2)(ii) would continue to provide that the requirements in current §§ 300.347(d)

and 300.313, regarding LRE, would not apply to these IEP and placement modifications.

Proposed § 300.325, regarding private school placements by public agencies, would be essentially the same as § 300.349 of the current regulations, and would implement section 612(a)(10)(B) of the Act. The proposed regulation would require that children placed in private schools by public agencies receive required special education and related services at no cost to the parents in accordance with an IEP developed under Part B of the Act. Further, even if the private school implements the child's IEP, responsibility for ensuring compliance with the Act rests with the SEA and the public agency.

Section 300.350 of the current regulations, regarding IEP accountability, would be removed from the proposed regulations as unnecessary. The requirement in § 300.350(a) that each child eligible for services under Part B of the Act be provided services in accordance with an IEP is unnecessary because entitlement to FAPE under the Act includes the provision of special education and related services in accordance with an IEP. Paragraph (a)(2) and (b) of § 300.350 is unnecessary as we believe that other federal laws, such as title I of the ESEA, already provide sufficient motivation for agency effort to assist children with disabilities in making academic progress. Section 300.350(c), regarding accountability, would be removed as it merely provides explanatory information.

Proposed § 300.327, regarding educational placements, would replace § 300.501(c)(1) of the current regulations, and would continue to require, in accordance with section 614(e) of the Act, that each public agency ensure that parents are members of any group that makes decisions on the educational placement of their child. Current § 300.501(c)(2), regarding other methods to ensure parent participation, would be removed from these proposed regulations because it is covered by proposed § 300.328.

Proposed § 300.328 would incorporate section 614(f) of the Act and would give a parent and a public agency the option of agreeing to use alternative means, such as video conferences and conference calls, to meet their obligations for participation in IEP and placement meetings and in carrying out administrative matters, such as scheduling, exchange of witness lists, and conference calls.

*Subpart E—Procedural Safeguards*

Due Process Procedures for Parents and Children

Proposed § 300.500 on the responsibility of SEAs and other public agencies would include the current regulatory language in § 300.500(a), appropriately updated. The definitions of the terms ''consent,'' ''evaluation,'' and ''personally identifiable'' in current § 300.500(b) would be moved to subpart A of 34 CFR part 300.

Proposed § 300.501 concerning the opportunity to examine records and parent participation in meetings generally would reflect the language in current § 300.501 with appropriate updating of cross-references and two substantive changes. First, proposed § 300.501(c)(4) would not include the current concluding phrase requiring that public agencies keep a record of attempts to involve parents in placement decisions, including information consistent with the records that must be maintained if an IEP meeting is to be held without a parent in attendance. The phrase would be removed to provide school personnel greater flexibility in how they document attempts to involve parents. However, public agencies still must maintain documentation of their efforts in this regard. Second, the regulatory requirement in current § 300.501(c)(5) would be removed as unnecessarily duplicative. The requirement that agencies make reasonable efforts to enable parents to understand and participate in discussions about placement of their child is inherent in the obligation in proposed § 300.501(b)(1) that parents be afforded an opportunity to participate in meetings about the identification, evaluation, educational placement and provision of FAPE to their child.

Proposed §300.502 would incorporate the provisions of the current § 300.502, regarding independent educational evaluations, with some minor changes. References to hearings throughout would be modified to indicate that the hearing involved is a due process hearing, or a hearing on a due process complaint. Proposed § 300.502(c)(2) also would be revised to clarify that the results of a parent-initiated independent educational evaluation at public expense may be introduced by any party as evidence at a hearing on a due process complaint.

Proposed § 300.503, on prior written notice, would incorporate two substantive changes from current § 300.503. First, current § 300.503(a)(2) would be removed. It is not necessary to explain in the regulation that prior written notice can be provided at the same time as parental consent is requested because parental consent cannot be obtained without this notice. Second, the elements of the contents of the notice would be revised in § 300.503(b) to reflect new statutory language in section 615(c)(1) of the Act.

Proposed § 300.504(a) would be revised consistent with new statutory language in section 615(d)(1) of the Act regarding the timing of procedural safeguards notices. In addition, proposed § 300.504(a)(2) would clarify that a procedural safeguards notice must be provided upon receipt of the first filing of a State complaint or request for a due process hearing in a school year, as opposed to the first request at any point in a child's school career. This should aid implementation at the school district level without unduly burdening school districts, and ensure that parents have information about the due process procedures when they are most likely to need it.

Throughout these proposed regulations we use the term ''due process complaint,'' instead of the statutory term ''complaint'' in order to provide clarity and reduce confusion between a due process complaint and a complaint under the State complaint procedures in §§ 300.660 through 300.662 of the current regulations and provided for in these proposed regulations in §§ 300.151 through 300.153.

A new § 300.504(b) would be added concerning Internet posting of the procedural safeguards notice, consistent with section 615(d)(1)(B) of the Act.

The contents of the procedural safeguards notice would be updated in proposed § 300.504(c), reflecting revised statutory language in section 615(d)(2) of the Act. The notice also would have to explain the differences between the due process complaint and the State complaint procedures as provided for in proposed § 300.504(c)(5)(iii). This change also should assist in reducing confusion about these alternatives. Cross-references would be updated, as appropriate.

Proposed § 300.505 would incorporate language from section 615(n) of the Act providing that a parent may elect to receive required notices by electronic mail, if the public agency makes that option available. Provisions in current § 300.505 concerning parental consent would be moved to subpart D of the proposed regulations that addresses parental consent in the context of evaluations, reevaluations and the initial provision of services to children with disabilities.

Proposed § 300.506 would revise the current regulatory language on mediation to reflect changes in section 615(e) of the Act. In proposed § 300.506(a), new language would be added providing that mediation be made available to resolve any dispute, including matters that arise before a party has requested a due process hearing. In proposed § 300.506(b), language would be added to reflect section 615(e)(2)(B) of the Act and would provide that public agencies may establish procedures to offer parents and schools that choose not to use mediation the opportunity to learn about the benefits and use of mediation. In addition, proposed § 300.506(b)(3)(ii) would replace the current language in § 300.506(b)(2)(ii), regarding party involvement in the selection of mediators, with more general language providing that the SEA select mediators on a random, rotational, or some other impartial basis. Proposed § 300.506(b)(2)(ii) should provide SEAs additional flexibility in selecting mediators, while ensuring that mediators are impartial. Proposed § 300.506(b)(6), (b)(7), and (b)(8) would include new provisions from section 615(e)(2)(F) and (G) of the Act concerning written agreements when mediation results in an agreement to resolve the dispute, and confidentiality of mediation agreements. However, each of these provisions would clarify that the limitation placed on the use of information discussed during mediation as evidence would apply only to actions arising out of the same dispute. Without this clarifying language, there could be a misperception that the Department would be attempting to restrict the powers of State courts. Proposed § 300.506(b)(9) would be added in light of note 208 of Conf. Rpt. indicating the Conference Committee's intention that parties could be required to sign confidentiality pledges prior to the commencement of mediation, without regard to whether the mediation ultimately resolves the dispute.

Proposed § 300.506(c) would be similar to current § 300.506(c) concerning requirements for the impartiality of the mediator. However, consistent with the language in section 615(f)(3)(A)(i)(II) regarding due process hearing officers, and the Senate Report No. 108–185, p. 37, proposed § 300.506(c)(1) would permit employees of LEAs that are not involved in the education or care of the child involved in the dispute being mediated to serve as mediators. In addition, the cross-references would be updated. Current § 300.506(d), regarding a meeting to encourage mediation, would be removed, reflecting the change in section 615(e)(2)(B) of the Act.

Proposed § 300.507(a)(1) would revise the current regulatory language regarding initiating a due process hearing on matters relating to the identification, evaluation, or educational placement of a child, or the provision of FAPE to the child to specify that a party could ''file a due process complaint,'' as opposed to ''initiate,'' a hearing on these matters. This change would be made in light of new language concerning the resolution process, particularly in section 615(b)(7)(B) of the Act, requiring that a sufficient due process hearing notice be provided, and section 615(f)(1)(B) of the Act, requiring that a resolution process occur (unless waived by joint agreement of the parties) before a hearing will be available. Current § 300.507(c)(4), regarding a parent's right to a due process hearing for failure to provide the requisite notice, would be removed as it is inconsistent with the new statutory language requiring that a resolution session occur, unless waived by joint agreement of the parties. Current § 300.507(a)(2), providing that parents be advised of the availability of mediation whenever a hearing is initiated, would be removed. Under the proposed regulations, mediation must be available to resolve any dispute, not just when a hearing has been requested, as was the case under the prior law. In addition, under the new statute, additional opportunities will exist to resolve disputes when a hearing has been requested, such as through the resolution process. Proposed § 300.507(a)(2) would reflect the new requirement in section 615(b)(6)(B) of the Act concerning the time period for filing a request for a due process hearing after the alleged violation has occurred. Proposed § 300.507(b) would contain the information currently in the regulations in § 300.507(a)(3) on available free or low-cost legal or other relevant services, but would be revised to refer to ''requests a hearing'' as opposed to ''initiates a hearing'' for the reasons discussed previously.

Proposed § 300.508(a), (b), and (c) would incorporate new language from section 615(b)(7) of the Act concerning the obligation to provide a due process complaint to the other party, the required content of the complaint notice, and the requirement that a due process hearing may not be held until the party, or the attorney representing the party, files the due process complaint. These changes should also help clarify that the complaint and complaint notice would be the same document, which should aid in smooth implementation of these new provisions. Proposed § 300.508(a) and (b) are similar to current § 300.507(c)(1) and (2), but would be revised as required by the Act. Proposed § 300.508(a)(2) would require that the party requesting the hearing forward a copy of the due process complaint to the SEA. Proposed § 300.508(c) would address the contents of this due process complaint. Proposed § 300.508(d) and (e) would incorporate the new language from section 615(c)(2) of the Act concerning due process complaint sufficiency and response to a due process complaint. Proposed § 300.508(e) would address the public agency's responsibility to send a parent a response to the due process complaint if the public agency had not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint. The proposed regulation would outline what information must be contained in the response. Proposed § 300.508 would incorporate but reorder the statutory provisions slightly to clarify and provide an organized discussion of each topic.

Proposed § 300.509 would incorporate the new requirement from section 615(b)(8) of the Act that SEAs develop a model form to assist parents in filing a due process complaint, including the content of the complaint. Proposed § 300.509 also would require States to develop model forms for filing State complaints, consistent with the changes regarding proposed §§ 300.151 through 300.153 discussed elsewhere in this preamble. The proposed language would replace the current regulatory requirement in § 300.507(c)(3).

Proposed § 300.510 would incorporate the new requirements concerning resolution process from section 615(f)(1)(B) of the Act. Proposed § 300.510(a)(1) would clarify that the resolution meeting must be held within 15 days of receipt of notice of the due process complaint, and prior to the initiation of a due process hearing. Proposed § 300.510(a)(4) would be added in light of note 212 of the Conf. Rpt. providing that parents and the LEA must determine the relevant members of the IEP Team to attend the resolution meeting. Proposed § 300.510(b)(2) would clarify that the regulatory timeline for issuing a final due process hearing decision begins at the end of the new 30-day resolution period that starts when the due process complaint is received. This provision is based on the language in section 615(f)(1)(B)(ii) of the Act stating that the applicable due process timelines commence at the end

of this 30-day period. Proposed § 300.510(b)(3) would provide, however, that the resolution session and due process hearing would be delayed until the meeting is held if a parent filing a due process complaint fails to participate in the resolution meeting. Proposed § 300.510(b)(3) is based on H. Rep. No. 108–77, page 114 that provides:

> [If] the parent and the LEA mutually agree that the meeting does not need to occur, the resolution session meeting does not need to take place. However, unless such an agreement is reached, the failure of the party bringing the complaint to participate in the meeting will delay the timeline for convening a due process hearing until the meeting is held.

Proposed § 300.510 would incorporate the requirement from section 615(f)(1)(B) of the Act regarding the conducting of resolution sessions, unless waived by joint agreement of the parties prior to the opportunity for an impartial due process hearing.

Proposed § 300.511(a) and (b) would incorporate the language from section 615(f)(1)(A) of the Act regarding impartial due process hearings. Proposed § 300.511(b) is the same as the current § 300.507(b). Proposed § 300.511(c)(1) would incorporate the language regarding qualifications of hearing officers from section 615(f)(3)(A) of the Act, and would replace current language in § 300.508(a) and (b) of the current regulations. Proposed § 300.511(c)(2) and (3) would incorporate the regulatory language currently in § 300.508(b) and (c) regarding the non-employee status of the hearing officer and the requirement for the public agency to keep a list of hearing officers and their qualifications. Proposed § 300.511(d), (e) and (f) would include the new requirements in section 615(f)(3)(B), (C), and (D) of the Act concerning the subject matter of the due process hearings, timelines for requesting hearings and exceptions to the timelines.

Proposed § 300.512(a), (b), and (c) would incorporate the due process hearing rights addressed in section 615(f)(2) and (h) of the Act, and the current regulatory language in § 300.509(a), (b) and (c)(1). The language in current § 300.509(c)(2) concerning providing the record of the hearing and decision at no cost to the parents would be moved to proposed § 300.512(c)(3). Under proposed § 300.512(a)(4), parents would have a right to obtain copies of a written, or, at the option of the parents, electronic, verbatim record of the hearing and copies of findings of fact and decisions, and public agencies would remain responsible for ensuring that these rights are effectively implemented.

Proposed § 300.513(a) would reflect the new language in section 615(f)(3)(E) of the Act concerning the nature of hearing officer decisions, including the requirement that decisions be made on substantive grounds, standards for when procedural violations can be found to deny FAPE, and clarifying that a hearing officer can order an LEA to comply with procedural requirements. Proposed § 300.513(b) would incorporate the construction clause from section 615(f)(3)(F) of the Act, but would clarify that language based on note 225 of the Conf. Rpt., which indicates that the statutory reference to a complaint was intended to address a State-level administrative appeal process, if available in that State. Proposed § 300.513(c) would incorporate the requirement from section 615(o) of the Act that nothing prevents a parent from filing a separate due process complaint on an issue separate from the due process complaint that has already been filed. However, note 220 of the Conf. Rpt. states that ''the Conferees intend to encourage the consolidation of multiple issues into a single complaint where such issues are known at the time of the filing of the initial complaint.''

Proposed § 300.513(d) would incorporate the current regulatory language from § 300.509(d) concerning the availability of hearing decisions to the public and the State advisory panel, based on section 615(h)(4) of the Act.

Proposed § 300.514, on finality of decisions, appeals, and impartial reviews, and § 300.515, regarding timelines and convenience of hearings, would be the same as current §§ 300.510 and 300.511 respectively, with cross-references updated. Proposed § 300.515(a) also would be revised to start the 45-day timeline from the expiration of the 30-day period for resolution under proposed § 300.510, rather than from the date when the agency receives a request for a due process hearing. This change is based on new language in section 615(f)(1)(B)(ii) of the Act providing that the timelines for due process commence at the expiration of the resolution period.

Proposed § 300.516, on civil actions, would be essentially the same as the current § 300.512 with updated references, and one substantive change. Specifically, proposed § 300.516(b) would be added to reflect the new requirement in section 615(i)(2)(B) of the Act that provides for a time limit of 90 days from the date of the final State administrative decision to file a civil action, or if the State has an explicit time limitation for bringing a civil action under Part B of the Act, in the time allowed by that State law.

Proposed § 300.517, concerning attorneys' fees, would revise current § 300.513 to reflect new language in section 615(i)(3)(B) through (G) of the Act. Proposed § 300.517(a)(1) would reflect changes in section 615(i)(3)(B) of the Act providing that either the parents or an SEA or LEA could receive reasonable attorneys' fees in appropriate circumstances. Proposed § 300.517(a)(2) would be added to reflect the language in section 615(i)(3)(B)(ii) of the Act clarifying that the attorneys' fees limitation in the District of Columbia Appropriations Act, 2005, P.L. 108–335, would not be affected by this regulation. Proposed § 300.517(c)(2)(iii) would be added to incorporate language from section 615(i)(3)(D)(iii) of the Act providing that attorneys' fees are not available for preliminary meetings that are a part of the new resolution proceedings.

Finally, proposed § 300.517(c)(4)(i) would provide that action by either the parent, or the parent's attorney, to unreasonably protract the final resolution of the controversy would be a basis to reduce the amount of attorneys' fees, consistent with a corresponding change in section 615(i)(3)(F)(i) of the Act.

Proposed § 300.518, concerning the child's status during proceedings, would be substantially the same as the current regulation in § 300.514, with appropriate updating of cross-references.

Proposed § 300.519 would revise the current regulation in § 300.515 concerning surrogate parents in the following ways: In proposed § 300.519(a)(2), we would use the statutory word ''locate'' rather than the current ''discover the whereabouts'' of the parent. Proposed § 300.519(a)(4) would be added to reflect the new language in section 615(b)(2)(A)(ii) of the Act requiring that a child's rights be protected if the child is an unaccompanied homeless youth as defined under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431 *et seq*. Proposed § 300.519(c) would be added to provide that a judge overseeing a child's case could appoint a surrogate if the child were a ward of the State, consistent with section 615(b)(2)(A)(i) of the Act. Proposed § 300.519 would remove current § 300.515(c)(3) regarding the option for a public agency to select as a surrogate an employee of a nonpublic agency that only provides noneducational care for the child, to ensure that surrogates do not have interests that conflict with the interest of the child. Proposed

§ 300.519(f) would be added concerning the potential appointment of temporary surrogates for unaccompanied homeless youth based on language in note 189 of the Conf. Rpt. providing that:

> The Conferees recognize that, because the parents of homeless unaccompanied youth may be unavailable or unwilling to participate in the youth's education, homeless unaccompanied youth face unique problems in obtaining a free appropriate public education.
>
> Accordingly, the Conferees intend that the surrogate parent process be available for such youth * * * the Conferees intend that appropriate staff members of emergency shelters, transitional shelters, independent living programs, and street outreach programs not be considered to be employees of agencies involved in the education or care of youth, for purposes of the prohibition of certain agency employees from acting as surrogates for parents * * *, provided that such role is temporary until a surrogate can be appointed that meets the requirements and such role in no way conflicts with, or is in derogation of, the provision of a free appropriate public education to these youth.

Finally, in light of the new requirement in section 615(b)(2)(B) of the Act, proposed § 300.519(h) would require that the SEA make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that a surrogate is needed. It is anticipated that only rare situations would cause the appointment of a surrogate to take 30 days.

Proposed § 300.520, concerning the transfer of parental rights at the age of majority, would be unchanged from the current regulatory language in § 300.517. With regard to the permissive transfer of rights to individuals who are in correctional institutions, we would not include the reference, from the statute, to Federal correctional institutions, as States do not have an obligation to provide special education and related services under the Act to individuals in Federal facilities.

**Discipline Procedures**

The discipline provisions of the regulations would be substantially revised or removed, in light of significant changes to section 615(k) of the Act. In light of these statutory changes, the current regulations in §§ 300.520 through 300.528 would be removed. Proposed § 300.530(a) would provide that school personnel may consider unique circumstances, on a case-by-case basis when deciding whether a change in placement, consistent with the requirements of proposed § 300.530, would be appropriate for a particular child for a violation of a school code of student conduct. This provision would be based on statutory language in section 615(k)(1)(A) of the Act, and the Conf. Rpt. in notes 237–245, which provides that ''[It] is the intent of the Conferees that when a student has violated a code of conduct school personnel may consider any unique circumstances on a case-by-case basis to determine whether a change of placement for discipline purposes is appropriate.'' Proposed § 300.530(b) would reflect the language in section 615(k)(1)(B)(1) of the Act, permitting school personnel to remove a child with a disability who violates a school code of conduct for not more than 10 school days, except that the regulatory language would clarify that these removals could be for not more than 10 consecutive school days, and that additional removals in the same school year would be possible, as long as those removals do not amount to a change of placement for the child. It is important for purposes of school safety and order to preserve the authority that school personnel have under the regulations to be able to remove a child for a discipline infraction for a short period of time, even though the child may have been removed for more than 10 days in that school year, as long as the pattern of removals does not itself constitute a change in placement of the child.

However, because it is also important to preserve the concept from the current regulations that discipline not be used as a means of disconnecting a child with a disability from education, the requirement in proposed § 300.530(b)(2) would provide that a child receive educational services consistent with paragraph (d) of § 300.530 after the first 10 days of removal in a school year.

Paragraphs (c) and (d)(1) and (2) of proposed § 300.530 would incorporate the statutory provisions from section 615(k)(1)(C) and (D) of the Act concerning removals for more than 10 school days and the provision of services during periods of removal. Proposed § 300.530(d)(3) would clarify that public agencies need not provide services to a child removed for 10 school days or less in a school year, as long as the public agency does not provide educational services to nondisabled children removed for the same amount of time. This is the same policy as in the current regulations in § 300.121(d)(1).

Paragraph (d)(4) of proposed § 300.530 would provide that where a child has been removed for more than 10 school days in the same school year, but not for more than 10 consecutive school days and not a change of placement, school personnel, in consultation with at least one of the child's teachers, would determine the extent to which services are needed, if any, and the location where needed services would be provided. We believe that this requirement is important to ensure that children with disabilities in this situation receive appropriate services, while preserving the flexibility of school personnel to move quickly to remove a child when needed and determine how best to address the child's needs during these relatively brief periods of removal. The consultation by school personnel with at least one of the child's teachers does not require that a meeting be held.

Proposed § 300.530(d)(5) would provide that the child's IEP Team determines appropriate services, including the location of services when a child is removed for more than 10 consecutive school days, or the removal otherwise is a change of placement. We believe that in instances of these longer-term removals, the child's IEP Team should make the determination of what services are appropriate for the child.

Proposed § 300.530(e) and (f) would incorporate the new requirements concerning manifestation determinations from section 615(k)(1)(E) and (F) of the Act, with one addition. An introductory phrase would be included in proposed § 300.530(e)(1) to clarify that a manifestation determination would not need to be conducted for removals for not more than 10 consecutive school days or that do not otherwise constitute a change of placement. This added language is consistent with the regulatory policy in current § 300.523(a).

Proposed § 300.530(g) and (h) would incorporate the requirements from section 615(k)(1)(G) and (H) of the Act, which address the circumstances under which school personnel can remove a child for not more than 45 school days, including the new authority to remove a child who has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or LEA. In addition, proposed § 300.530(h) would contain parental notification requirements. Proposed § 300.530(i) would contain definitions drawn from section 615(k)(7) of the Act. The Act uses the definition of ''serious bodily injury'' from section 1365 of title 18, United States Code (*i.e.*, ''bodily injury which involves—(A) a substantial risk of death; (B) extreme physical pain; (C) protracted or obvious disfigurement; or (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty'').

Proposed §§ 300.531 and 300.532(a) and (b) reflect the new language in section 615(k)(2) and (3) of the Act concerning the determination of the interim alternative educational setting by the IEP Team, the right to request a hearing to appeal placement and manifestation decisions, and the authority of the hearing officer in appeals under the discipline procedures. We add proposed § 300.532(b)(3) to the regulations to clarify that in appropriate circumstances, a school district could seek a subsequent hearing to continue a child in an interim alternative educational placement if the school district believes that the child would be dangerous if returned to his or her original placement at the end of a removal that was based on a determination that maintaining the child's regular placement was substantially likely to result in injury to the child or others. Proposed § 300.532(c)(1) would incorporate the statutory right to a hearing from section 615(f)(1)(A) of the Act.

Proposed § 300.532(c)(2) would reflect the language in section 615(k)(4)(B) of the Act regarding expedited timelines in cases of hearings under the discipline procedures. In proposed § 300.532(c)(3) and (4), we propose shortened timelines for the resolution session process in expedited hearings in light of the shortened timelines for these expedited hearings under the statute. Proposed § 300.532(c)(5) and (6) would repeat language from current § 300.528(c) and (d) that provides useful flexibility for States in designing their expedited hearing procedures.

Proposed § 300.533 would address the issue of the child's placement during appeals. This section would reflect the language in section 615(k)(4)(A) of the Act providing that the child remain in the interim alternative educational setting pending the decision of the hearing officer or the expiration of the time period provided for removals based on a determination that the behavior is not a manifestation of the child's disability. We would add, however, in proposed § 300.530(g), that this provision also would apply to removals of up to 45 school days.

Proposed § 300.534 concerning, in the context of discipline, the protections for children not yet determined eligible for special education and related services would replace the current § 300.527, and would reflect the new language in section 615(k)(5) of the Act. Proposed § 300.535 would be essentially the same as current § 300.529, and is based on section 615(k)(6) of the Act. Proposed § 300.536 would include a description of when a change in placement occurs because of a disciplinary removal. The concept of change of placement under discipline is raised in section 615(k)(1)(A) and (k)(3)(B) of the Act, and it is important to have a clear understanding of when a change in placement occurs so as to ensure that discipline does not effectively result in the cessation of services to a child with a disability, in violation of the FAPE requirements in section 612(a)(1)(A) of the Act. Proposed § 300.536 is similar to current § 300.519 but would include the additional provision that the child's behavior, if substantially similar to the child's behavior in the incidents that resulted in a series of removals, taken cumulatively, is a manifestation of the child's disability. This addition should assist in the appropriate application of the change in placement provisions.

**Current Sections Incorporated Elsewhere in This Part**

Current §§ 300.530 through 300.543 are incorporated into subpart D of these proposed regulations, as appropriate. Current §§ 300.550 through 300.556 are incorporated into subpart B of these proposed regulations, as appropriate. Current §§ 300.560 through 300.577 are incorporated into subpart F of these proposed regulations. Current §§ 300.580 through 300.586 and § 300.589 are incorporated in subpart B of these proposed regulations. Current § 300.587 is incorporated into subpart F of these proposed regulations, as appropriate.

*Subpart F—Monitoring, Enforcement, Confidentiality, and Program Information*

**Monitoring, Technical Assistance and Enforcement**

Subpart F reflects certain portions of section 616 of the Act that address State activities and those activities where the Department must establish and enforce particular procedures for withholding actions. Proposed § 300.600 would reflect the new provisions of section 616(a) and (b)(2)(c)(ii) of the Act concerning monitoring and enforcement, which sets forth the responsibility of States to monitor the implementation of, enforce, and annually report on performance under part 300. Proposed § 300.600 would further reflect the new statutory requirement that the primary focus of monitoring is on improving educational results and functional outcomes for children with disabilities. The provisions of current § 300.600 have been moved to proposed § 300.149 to follow the order of the Act. Proposed § 300.600(c) would reflect new requirements in section 616(a)(3) of the Act that States measure performance in monitoring priority areas using quantifiable indicators and such qualitative indicators as are needed to adequately measure performance. Proposed § 300.600(c) clarifies that these indicators are established by the Secretary in the context of informing States of what they need to do under the State's performance plan.

Proposed § 300.601 would reflect new statutory language requiring States to have a performance plan that evaluates their efforts to implement the requirements and purposes of part 300 and describes how the State will improve implementation within one year of enactment of the Act. Under proposed § 300.601 the plan must establish measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in section 613(a)(3) of the Act and must be submitted to the Secretary for approval. Consistent with the new statutory language, proposed § 300.601 would require States to review their performance plans at least once every six years and submit any amendments to the Secretary. The proposed regulation also incorporates the statutory requirements from section 616(b)(2)(B)(ii) regarding data collection and specifies that nothing in these regulations authorizes the development of a nationwide database of personally identifiable information on individuals involved in studies or other data collections. These provisions are based on section 616(b)(1), (2)(A) and (2)(B) of the Act.

Proposed § 300.601(b)(1) contains language requiring that each State must collect valid and reliable information on all the indicators in the performance plan concerning the priority areas in section 616(a)(3) of the Act.

Proposed § 300.602 would reflect new statutory language from section 616(b)(2)(C) of the Act requiring States to use the targets established in their performance plans to analyze the performance of each LEA. These targets will include the priority areas in section 616(a)(3) of the Act. Under proposed § 300.602, which largely tracks the language in section 616(b)(2)(C) of the Act, States would be required to report annually to the public on the performance of each LEA in the State on the targets in the performance plan and make the performance plan available to the public. Notes 253 through 258 of the Conf. Rpt. explain that the expectation is that the State performance plans, indicators and targets are to be developed with broad stakeholder input

and public dissemination. Proposed § 300.602(b)(1)(i) would include the statutory requirements from section 616(b)(2)(C) of the Act that States report annually to the public on the performance of each LEA in the State on the targets in the State's performance plan, and make the State's performance plan publicly available. Proposed § 300.602(b)(1)(ii) would add that if the State, in meeting the requirements of § 300.602(b)(1)(i), collects performance data through State monitoring or sampling, the State must include in its report the most recently available performance data on each LEA and the date the data were obtained. When appropriate, monitoring or sampling can be an effective means of data collection, reduce burden on States, and provide meaningful information on LEAs' performance.

Reflecting new language in section 616(b)(2)(C) of the Act, proposed § 300.602(b)(2) also would require each State to report annually to the Secretary on the performance of the State under its performance plan, but the State would not be required to report to the public or the Secretary any information on performance that would disclose personally identifiable information about individual children. Furthermore, under proposed § 300.602(b)(3), States would not be required to report their student data if the available data are insufficient to yield statistically reliable information.

Proposed § 300.603 would reflect new language in section 616(d) of the Act requiring the Secretary to review the State's annual performance report and based on information in the annual performance report, or information obtained through monitoring visits or other public information, determine if the State (1) meets the requirements and purposes of Part B of the Act, (2) needs assistance in implementing the requirements of Part B of the Act, (3) needs intervention in implementing the requirements of Part B of the Act, or (4) needs substantial intervention in implementing the requirements of Part B of the Act. Proposed § 300.603(b)(2) would reflect the language from section 616(d)(2)(B) of the Act that would provide States with notice and an opportunity for a hearing for determinations under proposed § 300.603(b)(1)(iii) and (b)(1)(iv). Proposed § 300.603(b)(2)(ii) also would clarify that the hearing would consist of an opportunity to meet with the Assistant Secretary for the Office of Special Education and Rehabilitative Services to demonstrate why the Department should not make the determination. We propose this regulatory provision because the Department has determined that this type of hearing would provide the appropriate amount of process due a State prior to one of these determinations. Should specific enforcement action subsequently be contemplated, as provided for in section 616(e) of the Act, other hearing procedures then may apply, as provided for in proposed § 300.604 and in the General Education Provisions Act as amended, 20 U.S.C. 1221 *et seq.* (GEPA), and implementing regulations.

Proposed § 300.604 (Enforcement) would reflect new requirements in section 616(e) of the Act that set forth the various actions the Secretary takes with respect to each State's level of compliance as determined by the Secretary's review of the state performance reports under proposed § 300.603. Thus, if the Secretary determines that a State needs assistance, needs intervention, or needs significant intervention, there are specific enforcement actions that the Secretary may take. For example, if it is determined that a State needs substantial intervention, the Secretary takes one or more of the actions described in paragraph (c) of proposed § 300.604, including recovering funds under section 452 of GEPA, withholding in whole or in part any further payments to the State under Part B of the Act, referring the case to the Office of the Inspector General at the Department of Education, or referring the matter for appropriate enforcement action, which may include referral to the Department of Justice.

Under proposed § 300.604(d), the Secretary reports to appropriate congressional committees within 30 days of taking enforcement action against a State for any of the levels of compliance described in the preceding paragraph, describing the specific action that has been taken, and the reasons why the action was taken.

Proposed § 300.605(a), which reflects the language in section 616(e)(4)(A) of the Act on reasonable notice and the opportunity for a hearing prior to a withholding, would essentially be the same as current § 300.587(c)(4).

Proposed § 300.605(b) would reflect new language from section 616(e)(4)(B) of the Act that, pending the outcome of any hearing to withhold payments, the Secretary may do one or both of the following: Suspend payments to a recipient or suspend authority of the recipient to obligate funds under Part B of the Act provided that the recipient has been given reasonable notice and an opportunity to show cause why future payments or the authority to obligate Part B funds should not be suspended. Proposed § 300.605(c) on the nature of withholding actions would reflect the current regulatory provisions in § 300.587(c)(1) and (c)(2) with minor language revisions to make the section consistent with the language in section 616(e)(6) of the Act.

Proposed § 300.606, on bringing pending withholding actions to the attention of the public, would reflect the new language in section 616(e)(7) of the Act, which is very similar to the language in current § 300.587(c)(3), except that section 616(e)(7) of the Act would apply to States only and not to SEAs, LEAs, or other agencies.

Proposed § 300.607 regarding divided State responsibility would reflect the regulatory language in current § 300.587(e), which is consistent with the language from section 616(h) of the Act.

Proposed § 300.608 would reflect the new language in section 616(f) of the Act that requires an SEA to prohibit an LEA from reducing the LEA's maintenance of effort under 613(a)(2)(C) if the SEA determines that the LEA is not meeting the requirements of Part B of the Act, including the targets in the State's performance plan.

Consistent with the new statutory provisions in section 616(e) of the Act, proposed § 300.609 would provide that nothing in the proposed regulations restricts the Secretary from utilizing any authority under GEPA to monitor and enforce the requirements under the Act.

**Confidentiality of Information**

Proposed § 300.610 would reflect the provision in section 617(c) of the Act regarding confidentiality of information. Proposed §§ 300.611 through 300.627 on the confidentiality of information would be the same as current §§ 300.560 through 300.575 and 300.577, with minor updates to cross-references. (Current § 300.576 would be addressed in proposed § 300.229.)

**Reports—Program Information**

Proposed §§ 300.640 through 300.646 on program information would substantially reflect the regulatory provisions from current §§ 300.750 through 300.755, with some changes. Proposed § 300.640(a) would remove the requirement from current § 300.750 that the information required by section 618 of the Act be submitted no later than February 1 and would replace it with the requirement that the information be submitted at times specified by the Secretary. Proposed § 300.640(b) on reporting on forms provided by the Secretary would be the same as the

regulatory language in current § 300.750(b).

Proposed § 300.641(a) would revise the regulatory provisions in current § 300.751 by removing the age spans listed in current § 300.751(a)(1) through (a)(3). Proposed § 300.641 also would remove the requirement from current § 300.751(c) that reports must include the number of children with disabilities within each disability category. SEAs must specify information required by these regulatory provisions on the forms provided by the Secretary pursuant to proposed § 300.640(b). Finally, proposed § 300.641(a) would permit States to count children with disabilities for purposes of the reporting required by proposed § 300.640 on any date between October 1 and December 1 of each year. This change will provide States greater flexibility in coordinating their IDEA Part B child count date with counts they conduct for other State purposes, while providing reasonable consistency across States.

Proposed § 300.641(b), regarding age at count date, would be substantially the same as current regulation § 300.751(b), but would reflect the revision in the count date proposed in paragraph (a) of this section. Proposed § 300.641(c) and (d) would be substantially the same as the regulatory provisions in current § 300.751(e) and (f) regarding how to meet the reporting requirements.

Proposed § 300.642(a) would reflect the new provisions in section 618(b)(1) of the Act requiring each State to report data in a manner that does not result in disclosure of personally identifiable information. Proposed § 300.642(b) on sampling, which reflects the language in section 618(b)(2) of the Act, would be substantially unchanged from current § 300.751(d).

Proposed § 300.643 on certification of the annual report of children served is substantially unchanged from current § 300.752.

Proposed § 300.644 on criteria for counting children in the annual report of children served would be substantially unchanged from current § 300.753(a). Current 300.753(b) on reporting on children receiving special education that is solely funded by the Federal government would be removed as unnecessary because the funding formula is no longer based on child count. Proposed § 300.644(c) clarifies current § 300.753(a)(3) regarding the counting of children enrolled by their parents in private schools.

Proposed § 300.645 on other responsibilities of the SEA related to the annual report of children served would be the same as current § 300.754.

Proposed § 300.646(a) would revise the regulatory provisions in current § 300.755 on determination of significant disproportionality to reflect changes in section 618(d) of the Act. Proposed § 300.646(a) would include new language requiring States to collect and examine data on disproportionality based on ethnicity as well as race. Proposed § 300.646(a) also would require States to determine if significant disproportionality is occurring in the State as well as within the LEAs of the State. Proposed § 300.646(a)(1) and (a)(2) on collecting and examining data related to identification of children with disabilities would be the same as the regulatory language in current § 300.755(a)(1) and (a)(2). Proposed § 300.646(a)(3) would reflect the new provisions in section 618(d)(1)(C) of the Act requiring States to collect and examine race and ethnicity data with respect to the incidence, duration and type of disciplinary actions, including suspensions and expulsions.

Proposed § 300.646(b)(1) concerning the review and revision of policies, practices and procedures, which reflects the language in section 618(d)(2) of the Act, would be the same as current § 300.755(b). Proposed § 300.646(b)(2) would incorporate the new requirement in section 618(d)(2)(B) of the Act that States must ensure that any LEA identified under proposed § 300.646(b)(1) as having policies, practices, or procedures that do not comply with Part B of the Act reserves the maximum amount of funds under section 613(f) of the Act to provide comprehensive coordinated early intervening services to children in the LEA, particularly children in those groups that were significantly overidentified. Proposed § 300.646(b)(3) would incorporate new language from section 618(d)(2)(C) of the Act that requires the LEA to report on the revision of policies, practices and procedures that do not comply with the Act.

*Subpart G: Authorization; Allotment; Use of Funds; Authorization of Appropriations*

Proposed subpart G would reflect the provisions in section 611 of the Act regarding the Department's allocation of Part B section 611 funds to States, outlying areas, the freely associated States, and the Secretary of the Interior. The proposed title of subpart G, ''Authorization; Allotment; Use of Funds; Authorization of Appropriations,'' would be revised from ''Allocation of Funds; Reports'' to reflect the statutory headings listed under section 611 of the Act.

Proposed § 300.700, regarding grants to States, would contain the language in current § 300.701 but would be revised to reflect the order of, and revisions to, section 611(a) of the Act. Specific revisions would include the changes that were made in: (1) Section 611(a)(1) of the Act to include a reference to freely associated States as receiving Part B grants; (2) section 611(a)(2)(A) of the Act to clarify that the current definition of the maximum amount a State may receive applies for fiscal years 2005 and 2006; and (3) section 611(a)(2)(B) of the Act to clarify the maximum amount a State may receive for fiscal year 2007 and subsequent fiscal years and to allow for adjustments described in 611(a)(2)(B)(iii) of the Act. The adjustments would be reflected in proposed § 300.700(b)(2)(iii). Current § 300.700, regarding the special definition of the term State, and current § 300.702, regarding the definition of average per-pupil expenditure in public elementary and secondary schools in the United States, would not be substantively changed but would be moved to proposed § 300.717 to a general ''Definitions'' section for subpart G.

Proposed § 300.701, regarding grants to outlying areas and freely associated States, and the Secretary of the Interior, would incorporate the language in the current regulations in §§ 300.715(a), 300.717, 300.719, and 300.720, as revised to reflect changes in section 611(b) of the Act. Proposed § 300.701 would not contain the definition of ''freely associated states'' from section 611(b)(1)(C) of the Act. The definition of ''freely associated states,'' which is substantively unchanged, would be in proposed § 300.717 in the general ''Definitions'' section for subpart G. As noted in the preceding paragraph, current § 300.701, regarding grants to States, would be moved to proposed § 300.700, consistent with the structure of section 611 of the Act. Proposed § 300.701(a)(1)(ii) would clarify the provision in section 611(b)(1)(A)(ii) of the Act that requires that, as a condition of receiving a grant under this part, each freely associated State must meet the ''applicable requirements of Part B of the Act.'' The proposed revision would specify what the ''applicable requirements'' are, similar to what is done with respect to information requirements for the Secretary of the Interior in current § 300.260 (proposed § 300.708).

Proposed § 300.702, regarding technical assistance, would contain the language in section 611(c) of the Act, which allows the Secretary to reserve Part B funds to support technical

assistance activities authorized under section 616(i) of the Act.

Proposed § 300.703, regarding allocations to States, would be revised to incorporate the language of current §§ 300.703 and 303.706 through 303.709. The proposed regulation would be revised to reflect section 611(d) of the Act, which: (1) Requires the Secretary to allocate Part B funds to States after reserving funds for technical assistance under section 611(c) of the Act and making payments to outlying areas, the freely associated States and the Secretary of Interior under section 611(b); (2) removed language regarding interim and permanent formulas; and (3) established 1999 as the base year for minimum state allocations under section 611(d)(3)(A)(i)(I) and (B)(ii)(I) of the Act and calculations of ratable reductions if the amount available for allocations to States is less than the amount allocated for the preceding fiscal year under section 611(d)(4) of the Act.

Proposed § 300.704, regarding State-level activities, would incorporate certain provisions of section 611(e) of the Act regarding the use of Part B funds under section 611 of the Act for authorized State-level activities. Proposed § 300.704(a)(1) and (2) would contain the new maximum amount States and outlying areas may reserve for State administration. The proposed regulation would establish fiscal year 2004 as the base year for States (as defined under proposed § 300.717) and the greater of $35,000 or five percent of the Part B grant for outlying areas and would provide for cumulative annual adjustments based on the rate of inflation to the maximum amount a State may reserve, consistent with section 611(e)(1)(A) and (B) of the Act. Proposed § 300.704(a)(3) would contain the new certification requirement language in section 611(e)(1)(C) of the Act that prior to the expenditure of funds under section 611(e)(1) of the Act, the State must certify to the Secretary that the arrangements to establish financial responsibility for services pursuant to section 612(a)(12)(A) of the Act are current. Proposed § 300.704(a)(4) would contain a regulatory provision that would allow SEAs that reserve funds under § 300.704(a) to use Part B State administration funds to administer Part C of the Act if the SEA is the lead agency designated under Part C, consistent with section 611(e)(1)(D) of the Act.

Proposed § 300.704(b)(1) and (2) would generally reflect and clarify the new requirements in section 611(e)(2)(A) of the Act regarding the amount of funds that States may reserve for other State-level activities, depending on the amount they reserve for administration and whether they establish a high-cost fund under section 611(e)(3) of the Act. Proposed § 300.704(b)(3) would incorporate the new provision in section 611(e)(2)(B) of the Act, but would clarify that some portion of funds reserved for other State-level activities under § 300.704(b)(1) must be used for monitoring, enforcement and complaint investigation, and to establish and implement the mediation process required under section 615(e) of the Act. Proposed § 300.704(b)(3) would not prohibit States from using State funds for these monitoring, enforcement, complaint investigation, or mediation activities.

Proposed § 300.704(b)(4) would incorporate section 611(e)(2)(C) of the Act, which allows funds reserved for other State-level activities under § 300.704(b)(1) to be used for certain authorized activities. These activities would include support and direct services, paperwork reduction activities and capacity building activities, and improving the delivery of services by LEAs, improving the use of technology in the classroom and supporting its use, developing and implementing postsecondary transition programs, providing technical assistance to schools and LEAs identified for improvement under section 1116 of the ESEA, and assisting LEAs in providing positive behavioral interventions and supports and appropriate mental health services for children with disabilities and meeting personnel shortages.

Proposed § 300.704(c) would contain a new provision that incorporates the language of section 611(e)(3) of the Act regarding the State's option to use ten percent of the amount it reserves for other State-level activities under § 300.704(b)(1) for financing an LEA high cost fund and would set forth detailed content and timeline requirements for the State's plan for the high cost fund. Proposed § 300.704(c)(1)(i)(A) would clarify the statutory language by providing that these funds would be used by a State to finance the high cost fund and to make disbursements from that fund. Proposed § 300.704(c)(1)(i)(B) and (ii) would reflect the statutory language on using the high cost fund to support innovative cost sharing and the special definition of LEA that applies in this context. Proposed § 300.704(c)(2)(i) would generally reflect the language in section 611(e)(3)(B)(i) of the Act, but also would clarify that the funds reserved for the high cost fund are solely for disbursement to the LEAs and may not be used for costs associated with establishing, supporting, and otherwise administering the high cost fund. This provision also would specify that the State may use State administration funds under § 300.704(a) for those administrative costs, consistent with the language in section 611(e)(3)(B)(i) of the Act.

Proposed § 300.704(c)(2)(ii) would limit States to not more than five percent of the funds they reserve each fiscal year under proposed § 300.704(c) to support innovative cost sharing, consistent with section 611(e)(3)(B)(ii) of the Act.

Proposed § 300.704(c)(3) would incorporate the requirements in section 611(e)(3)(C) of the Act, regarding the State plan for the high cost fund, with one addition. Proposed § 300.704(c)(3)(i)(C) would add a requirement that the State plan establish criteria to ensure that the placements of children whose costs are supported under the high cost fund are made consistent with the LRE requirements. This would reinforce that the funds would not be used to encourage inappropriate placements outside of the general education environment. Nothing in the proposed regulations would prohibit an SEA from using high cost funds to support costs of providing appropriate services in a general education environment when those costs meet the standard established by the State in its State plan. Proposed § 300.704(c)(3)((i)(A)(2) would incorporate the requirement in section 611(e)(3)(C)(ii)(I)(bb) of the Act that the State must establish a definition of a high need child with a disability that, at a minimum, ensures that the cost of the high need child with a disability is greater than three times the average per pupil expenditure (APPE). Under this provision, a State could, for example, establish a definition that ensures that the cost of a high need child with a disability is four times greater than the APPE.

Proposed § 300.704(c)(4) through (c)(6) would incorporate the requirements in section 611(e)(3)(D) through (F) of the Act regarding disbursements from the fund, legal fees, and assurance of FAPE, with two additions. In proposed § 300.704(c)(4)(ii), we would add language on appropriate costs to clarify that the costs of room and board for a necessary residential placement could be supported by the high cost fund. Proposed § 300.704(c)(4)(iii) would provide that the funds in the high cost fund would remain under the control of the SEA until disbursed, under the State

plan, to support a specific child, or until reallocated to LEAs in the subsequent year. This provision is needed to make clear that these funds must be distributed to LEAs under the high cost State plan formula.

Proposed § 300.704(c)(7) through (9) would incorporate the provisions of section 611(e)(3)(G) through (I) of the Act regarding the special rule for risk pool and high need assistance programs that predated the new statute, the effect on Medicaid services, and the reallocation of funds remaining at the end of the fiscal year. Proposed § 300.704(c)(9) generally would reflect and clarify the requirement in section 611(e)(3)(I) of the Act that funds reserved for a high cost fund, but not spent in accordance with section 611(e)(3)(D) of the Act before the beginning of their last year of availability for obligation, must be allocated to LEAs in the same manner as other funds from the appropriation for that fiscal year are allocated to LEAs under section 611(f) of the Act during their final year of availability. States that are not reserving funds for the high cost fund, but that offer LEAs support for extraordinary expenses for particular children from other funds would not need to develop a State plan for a high cost fund under the proposed regulations.

Proposed § 300.704(d) would incorporate the language of section 611(e)(4) of the Act, which contains the exemptions of funds reserved for administration and other State-level activities from Part B's commingling and nonsupplanting provisions in sections 612(a)(17)(B) and (C) of the Act. Proposed § 300.704(e) would incorporate section 611(e)(6) of the Act, which allows a State to use funds reserved for administration under § 300.704(a)(1) as a result of inflationary increases to carry out activities such as providing support and direct services, assisting LEAs in providing positive behavioral interventions and supports, assisting LEAs in meeting personnel shortages, and supporting capacity building, as authorized under § 300.704(b)(4)(i), (iii), (vii), or (viii). Proposed § 300.704(f) would incorporate the new provisions of section 611(e)(7) of the Act that allow flexibility in using certain Part B funds (identified in sections 611(e)(1)(A), 611(f)(3) and 619(f)(5) of the Act). States may use these funds to develop and implement a State policy option that is available under section 635(c) of the Act for making Part C early intervention services available to children beyond age three who are eligible under section 619 under the circumstances set forth under proposed § 300.704 and Part C of the Act.

Proposed § 300.705, regarding subgrants to LEAs, would contain the language in current §§ 300.711, 300.712, and 300.714 and would incorporate section 611(f) of the Act regarding State subgrants to LEAs using Part B section 611 funds. Proposed § 300.705(a) would specify that LEAs include public charter schools that operate as LEAs, consistent with section 611(f)(1) of the Act. The language in current § 300.713 regarding former Chapter 1 State agencies would be removed as the corresponding statutory provision was also removed. Proposed § 300.705(b)(1) and (2) would establish 1999 as the base year for allocation to LEAs, consistent with section 611(f)(2)(A) of the Act.

Proposed § 300.706 would contain the language in current § 300.710 regarding allocations to a State in which a by-pass is implemented for parentally-placed private school children with disabilities, consistent with section 612(f) of the Act, with cross-references updated.

**Secretary of The Interior—Eligibility**

Proposed §§ 300.707 through 300.716 would incorporate and update current §§ 300.260 through 300.267 and §§ 300.715 through 300.716 based on the requirements in section 611(h) of the Act concerning the payment to the Secretary of the Interior.

Proposed § 300.707(a) would add new definitions of *Reservation* and *Tribal governing body of a school* to apply for purposes of §§ 300.707 through 300.716. The term *reservation* would be defined to mean Indian Country under 18 U.S.C. 1151. The term *tribal governing body of a school* would be defined to mean the body or bodies of the Indian tribe involved and that represent at least 90 percent of the students served by the school. Adding these definitions should provide clarity to the responsibilities of the Department of the Interior under the IDEA.

The Department of Education seeks comment on the necessity of adding a new definition of LEA for the purposes of regulations related to schools operated or funded by the Secretary of the Department of the Interior. The Department of Education also seeks comment on the necessity of adding a new definition of SEA for the purposes of regulations related to schools operated or funded by the Secretary of the Department of the Interior.

Proposed § 300.707(b) would incorporate current § 300.715(b) and add the new requirement in section 611(h)(1)(A)(i) and (ii) of the Act that 80 percent of the amount allotted under section 611(b)(2) of the Act must be allocated to elementary schools and secondary schools operated or funded by the Secretary of the Interior by July 1, after the Secretary of the Interior reserves funds for administration under proposed § 300.710. The remaining 20 percent must be allocated to those schools by September 30. Current § 300.715(a) is reflected in section 611(b)(2) of the Act and would be incorporated in proposed § 300.701(b) to align with the order of section 611. Current § 300.715 (c) has been removed from the regulations because a State can no longer require a BIA funded school to attain or maintain State accreditation. This provision is not applicable at this time. Paragraph (c) of proposed § 300.707 would reflect the language in section 611(h)(1)(C) of the Act concerning children aged 3 through 21 on reservations. This provision would replace current § 300.300(c) to align with the order of the statute. Under paragraph (c) of proposed § 300.707, with respect to all other children aged 3 through 21 on reservations, the SEA of the state in which the reservation is located, must ensure that all of the requirements of Part B of the Act are implemented. Generally, if the reservation were located in more than one State, the State in which the student resides would be responsible for ensuring the requirements of Part B of the Act are met for that student.

Proposed § 300.708 would incorporate current § 300.260, update references to the eligibility requirements that apply to the Secretary of the Interior to reflect the new requirements in the Act, and add one new paragraph discussed as follows. Paragraph (a) of proposed § 300.708 would modify current § 300.260(a) by updating references to section 612 of the Act and adding the new requirements in section 612 of the Act that apply to the Secretary of the Interior. Paragraph (b) of proposed § 300.708 would incorporate current § 300.260(b). Paragraph (c) of proposed § 300.708 would incorporate current § 300.260(c) with updated references to section 613 of the Act. Paragraph (c) of proposed § 300.708 also would clarify that references to LEAs in section 613 of the Act that are included in proposed § 300.708(c) must be read as references to elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior. Proposed § 300.708 would add a new paragraph (d) that would reflect the requirements in section 611(h)(2)(A) and (F) and section 611(h)(3) of the Act, which provide that the monitoring and enforcement requirements in section 616 of the Act apply to the Secretary of

the Interior. Paragraph (d) of proposed § 300.708 would also clarify that references to LEAs in section 616 of the Act must be read as references to elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior.

Proposed paragraphs (e) through (j) of proposed § 300.708 would incorporate current § 300.260(d) through (i), with cross-references updated. Consistent with section 611(h)(3) of the Act, proposed § 300.708(j) would remove the sentence in current § 300.260(i) that section 616(a) of the Act applies to the information described in this section. Instead, the proposed regulation would add a sentence providing that the Secretary withholds payments under § 300.707 with respect to the requirements described in this section in the same manner as the Secretary withholds payments under section 616(e)(6) of the Act.

Proposed §§ 300.709 through 300.710 would incorporate the current regulations in §§ 300.261 through 300.262 concerning public participation and use of Part B funds for administration, with cross-references updated.

Proposed § 300.711 would add a provision that would permit the Secretary of the Interior to allow each elementary school and secondary school for Indian children operated or funded by the Secretary of the Interior to use funds to develop and implement coordinated, early intervening services consistent with section 613(f) of the Act.

Proposed § 300.712 would incorporate the current regulation in § 300.716 concerning payments for education and services for Indian children with disabilities aged three through five with cross-references updated.

Proposed § 300.713 would incorporate the current regulation in § 300.263 regarding the plan for coordination of services. This provision does not make the BIA responsible for services for children with disabilities not enrolled in BIA funded schools. The Department of Education seeks comment on the best way to implement section 611(h)(5) of the Act for developing a plan for coordination of services on reservations. The Department of Education seeks comments on how a plan would be developed to cover those reservations where the State provides all services and those reservations where the State and BIA provide services.

The proposed regulations would remove current § 300.264, which sets out the definition of Indian and Indian tribe. Proposed § 300.21 would incorporate the definition of Indian and Indian tribe.

Proposed §§ 300.714 through 715 would incorporate current §§ 300.265 through 300.266 regarding the establishment of the advisory board and annual reports.

Proposed § 300.716 would incorporate current § 300.267 regarding the regulatory provisions that apply to the Secretary of the Interior, with cross-references updated and regulatory provisions added that implement the new statutory requirements that apply to the Secretary of the Interior.

Proposed § 300.717 would contain definitions that would be substantively unchanged from current regulations and that would apply only in subpart G. The defined terms would be: ''freely associated States'' (from section 611(b)(1)(C) of the Act), ''outlying areas'' (from section 602(22) of the Act), ''State'' (from section 611(g) of the Act), and ''Average per-pupil expenditure in public elementary and secondary schools in the United States'' (from section 611(g) of the Act). The definitions for ''outlying areas,'' ''State,'' and ''Average per-pupil expenditure in public elementary and secondary schools in the United States'' are contained in current §§ 300.718, 300.700, and 300.702, respectively.

Proposed § 300.718, regarding the acquisition of equipment and the construction or alteration of facilities, would incorporate the requirements of current § 300.756.

Current requirements in §§ 300.750 through 300.755 regarding State Part B data reporting requirements under section 618 of the Act would be moved to proposed §§ 300.640 through 300.646 in subpart F, consistent with the structure of the Act.

*Subpart H—Preschool Grants for Children With Disabilities*

Proposed §§ 300.800 through 300.818 would reflect an overall change in the placement of the Preschool Grants for Children with Disabilities Program from current 34 CFR part 301 to subpart H of part 300. Proposed §§ 300.800 through 300.810 and §§ 300.812 through 300.818 would incorporate current language from 34 CFR part 301, but with minor changes to reflect statutory language and the structure of the Act. Proposed § 300.811 would be added to clarify how the Secretary would make allocations under section 619 of the Act for a State in which a by-pass is implemented for parentally-placed private school children with disabilities. Proposed § 300.813(b) would reflect the statutory change in section 619(e) of the Act that a State may use funds reserved for administration for the administration of Part C of the Act even if the SEA is not the lead agency under Part C of the Act. Proposed § 300.814 would incorporate two new substantive amendments from section 619(f) of the Act concerning the use of funds reserved for other State-level activities.

Proposed § 300.800 would reflect the language in section 619(a) of the Act describing the general purpose of the program. This provision would replace current § 301.1.

Consistent with a change made in subpart A, the current § 301.4, regarding applicable regulations, would be removed, as those regulations apply by their own terms.

Proposed § 300.803 would specify the definition of State, which would be the same as the definition used in current § 301.5, except that it would add the phrase, ''As used in this subpart'' to reflect different usages of the term in other subparts. Other definitions in current § 301.5 would be removed as unnecessary or as already covered in subpart A.

Proposed § 300.804 would describe a State's eligibility for grants under section 619 of the Act, consistent with section 619(b) of the Act. This provision would replace current § 301.10.

Proposed § 300.806, concerning sanctions, would update current § 301.12(c) to be consistent with section 681(e) of the Act. Paragraphs (a) and (b) of current § 301.12 would be removed. Paragraph (a) of current § 301.12 would be reflected in proposed § 300.804. Paragraph (b) of current § 301.12 appears in section 611(d)(2) of the Act and would be incorporated in proposed § 300.703(b).

Proposed § 300.807 on allocations to States would amend current § 301.20 to reflect changes in the statutory language. Consistent with section 619(c)(1) of the Act, proposed § 300.807 would remove the phrase, ''After reserving funds for studies and evaluations under section 674(e) of the Act.'' Proposed § 300.807 would also update a cross-reference to allocations provisions in proposed §§ 300.808 through 300.810.

Proposed § 300.808 on increases in appropriated funds would amend current § 301.21 to reflect changes in statutory language. Proposed § 300.808 would also update the cross-references to other allocations provisions to be consistent with other proposed regulations.

Proposed § 300.809 on limitations in State allocations would update all cross-references to other proposed regulations from those in current § 301.22, and make other minor changes to conform to the statutory language.

Proposed § 300.810 would make minor technical changes to current § 301.23 to reflect statutory language, but would retain most of the regulatory language on the decrease in funds. However, paragraph (b)(2) of current § 301.23 would be removed as unnecessary, because it would be incorporated into proposed § 300.810(b) by adding the words ''or less than'' after ''is equal to'' and by substituting ''fiscal year 1997, ratably reduced, if necessary'' for ''that year.'' Proposed § 300.810 also would update the cross-reference to other regulations addressing allocations to States.

Proposed § 300.811 would be added to clarify how the Secretary would make allocations under section 619 of the Act for States in which a by-pass is implemented for parentally-placed private school children with disabilities, consistent with section 612(f)(2) of the Act.

Proposed § 300.812 on reservation for State activities would be substantively unchanged from current § 301.24, but would make a few changes, including updating the cross-references to State administration and State-level activities provisions, and substituting the word, ''reserve'' for the word ''retain.''

Proposed § 300.813 on State administration would make technical changes to current § 301.25 to conform to revised statutory language. Consistent with section 619(e)(2) of the Act, proposed § 300.813(b) would remove the phrase ''if the SEA is the lead agency for the State under that Part'' from current § 301.25(b) to clarify that a State may use funds reserved for administration for the administration of Part C of the Act even if the SEA is not the lead agency under that Part.

Proposed § 300.814 relating to use of State funds for other State-level activities under section 619 of the Act reflects both substantive and technical changes to conform current § 301.26 to revised language in section 619(f) of the Act. Proposed § 300.814 would require States to use funds they reserve under § 300.812, but do not use for administration under § 300.813, for one or more of the activities outlined in § 300.814(a) through (f). Proposed § 300.814 also would update both the cross-references to other proposed regulations (reservation for State activities and State administration) and the cross-reference to the applicable sections in the Act.

Proposed § 300.814(e) would, in conformity with section 619(f)(5) of the Act, provide that a State may use any funds reserved for State activities and not used for administration to provide early intervention services in accordance with Part C of the Act to children with disabilities who are eligible for services under section 619 of the Act, and who previously received services under Part C of the Act, until such children enter, or are eligible under State law to enter kindergarten.

Proposed § 300.814(f) would, consistent with section 619(f)(6) of the Act, provide that a State that elects to provide early intervention services to children eligible under section 619 of the Act in accordance with section 635(c) of the Act may use funds reserved for State activities and not used for administration, to continue service coordination or case management for families who receive services under Part C of the Act, consistent with proposed § 300.814(e).

Proposed § 300.815 on subgrants to LEAs would amend current regulatory language in § 301.30 by updating cross-references and by making a few technical amendments consistent with statutory language in section 619(g)(1) of the Act.

Proposed § 300.816 on allocations to LEAs would update the cross-reference to subgrants to LEAs and would make technical changes to current § 301.31, consistent with minor changes to the language in section 619(g)(1) of the Act.

Proposed § 300.817 on reallocation of LEA funds would reflect technical changes to current § 301.32 consistent with the statutory language in section 619(g)(2) of the Act. The proposed language would also be similar to current § 300.32, except that current § 301.32(b) would be removed. Current § 301.32(b) reflects the requirement in section 613(g) of the Act and would be incorporated in the proposed § 300.227 consistent with the structure of the Act.

Proposed § 300.818 would incorporate the statutory language from section 619(h) of the Act on the circumstances of Part C inapplicability. This provision would replace current § 301.6.

*Part 304—Service Obligations Under Special Education—Personnel Development To Improve Services and Results for Children With Disabilities*

Current §§ 304.2, 304.4, and 304.20, all of which refer to the personnel preparation grant program generally, would be removed because the Department intends for part 304 to focus on the service obligation component of the program only and not on the personnel preparation grant program generally.

Proposed § 304.3 would remove the reference to the terms defined in 34 CFR part 77 because those definitions apply to all personnel preparation grant competitions. Proposed § 304.3(c), regarding early intervention services, would change current § 304.3(b)(2), to clarify that an infant or toddler with a disability, as defined in section 632(5) of the Act, includes, at a State's discretion, at risk infants and toddlers. In addition, proposed § 304.3(f) would define the term *repayment* instead of *payback* (defined in the current § 304.3(b)) to conform to the language used elsewhere in this proposed part 304.

Proposed §§ 304.21 and 304.22, regarding allowable costs and requirements for grantees in disbursing scholarships, would clarify that stipends are not included in the cost of attendance and thus are not limited by the cap in proposed 304.22(b), which references Title IV of the Higher Education Act of 1965, as amended.

Proposed § 304.23 would retain the grantee's obligation to enter into an agreement with the scholar. However, the requirements that the scholar must carry out with respect to the service obligation would be moved to proposed § 304.30 to more clearly identify the obligations of the scholar. Also, while retaining the requirements that the grantee establish exit certification policies and provide necessary information and notices to the Secretary, proposed § 304.23 would conform these requirements to the new statutory language in section 662(h)(3) of the Act, which requires that the Secretary, rather than grantees, ensure that scholars comply with the service obligation requirements.

Proposed § 304.30 would consolidate all the requirements imposed on scholars into one section and eliminate some duplicative provisions. Proposed § 304.30 would describe the content of the agreement that grantees must enter into with scholars, which is contained in the current § 304.23, and the consequences of a scholar failing to meet the service obligation requirements, which are contained in current § 304.32. Proposed § 304.30(i) would require the scholar to provide information to the Secretary, reflecting the new language in section 662(h)(3) of the Act, which requires that the Secretary rather than grantees ensure that scholars comply with the service obligation requirements.

Proposed § 304.30(e) would clearly state how a scholar could satisfy the work obligation through positions in supervision, postsecondary faculty, and research. Proposed § 304.30(e) also would clarify that a scholar who goes on to receive a more advanced degree can satisfy the work obligation requirement for a lesser degree in special education by maintaining relevant employment in

the areas of supervision, postsecondary faculty, or research. Likewise, § 304.30(e) would allow a scholar who receives a scholarship from a leadership preparation program (for an advanced degree) to satisfy the work obligation by providing special education, related services, or early intervention services.

Proposed § 304.31 would reflect the new statutory language in section 662(h)(3) of the Act, which requires that the Secretary rather than grantees ensure that scholars comply with the service obligation requirements. Proposed § 304.31 also would delete the specific deferrals in current § 304.31(5) and (6) for scholars with a temporary disability that prevents the scholar from working or for scholars who are unable to secure employment by reason of care provided to a disabled family member. The Department believes that these deferrals are inappropriate.

**Executive Order 12866**

*1. Potential Costs and Benefits*

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

Summary of Potential Costs and Benefits Costs and Benefits of Statutory Changes

For the information of readers, the following is an analysis of the costs and benefits of the most significant statutory changes made by the Act that are incorporated into the proposed regulations governing the Assistance to States for the Education of Children with Disabilities program under Part B of the IDEA. In conducting this analysis, the Department examined the extent to which the proposed regulations would add to or reduce the costs for public agencies and others in relation to the costs of implementing the program regulations prior to the enactment of the new statute. Based on this analysis, the Secretary has concluded that the statutory changes reflected in these proposed regulations would not impose significant net costs in any one year, and may result in savings to SEAs and LEAs. An analysis of specific provisions follows:

Requirement for State Certification for Highly Qualified Special Education Teachers

Proposed § 300.156(c) would require that persons employed as special education teachers in elementary or secondary schools be highly qualified as defined in proposed § 300.18 by no later than the end of the 2005–2006 school year. Proposed § 300.18(b)(1) would require that every public elementary and secondary school special education teacher obtain full State certification as a special education teacher or pass the State special education teacher licensing examination, and hold a license to teach in the State as a special education teacher as one of the conditions of being considered highly qualified to teach special education. Previously, special education teachers were not required by Federal law to be certified as special education teachers in their States. The proposed regulation would preclude teachers for whom the special education certification or licensure requirements were waived on an emergency, temporary, or provisional basis from meeting the definition of a highly qualified special education teacher. Teachers employed by a public charter school would be exempt from these requirements and subject to the requirements for highly qualified teachers in their State's public charter school law.

The impact of the requirement in the proposed regulation that all special education teachers have full special education certification by the end of the 2005–2006 school year will depend on whether States and districts comply with the requirement by helping existing teachers who lack certification acquire it, or by hiring new fully-certified teachers, or some combination of the two.

According to State-reported data collected by the Department's Office of Special Education Programs, certification or licensure requirements have been waived for eight percent of special education teachers or approximately 30,000 teachers. If States and districts responded to the proposed regulation by hiring certified teachers to fill these positions, it would cost well over $1 billion to cover the salaries for a single year. (Occupational Employment and Wages Survey, November 2003, indicates a median national salary of $42,630 for elementary school teachers and $44,920 for secondary school teachers.) However, given that the *Study of Personnel Needs in Special Education* (SPENSE) found that in 1999–2000, 12,241 positions for special education teachers were left vacant or filled by substitute teachers because suitable candidates could not be found, it is unlikely that States and districts would be able to meet this requirement through hiring.

The SPENSE study also found that 12 percent of special education teachers who lack full certification in their main teaching assignment field are fully certified in another State. This means that States should be able to certify an estimated 3,600 additional special education teachers at relatively little expense through reciprocal certification agreements with other States.

Responses to the 1999–2000 *Schools and Staffing Survey* indicate that nearly 10 percent (approximately 3,000 teachers) of special education teachers who lacked full certification, including those teaching under provisional, temporary, or emergency certification, were enrolled in a program to obtain State certification. If teachers already participating in a certification program are presumed to be within 10 semester hours of meeting their coursework requirements and the estimated cost of a semester hour in a university or college program is $200, then it would cost $6 million to help these teachers obtain full State certification. If teachers require more than 10 semester hours to complete their certification programs, they are unlikely to obtain certification through coursework by the end of the 2005–2006 school year.

States and districts are unlikely to be able to meet the requirements of the proposed regulation entirely through reciprocity agreements and college and university programs. The above estimates involve fewer than 7,000 of the approximately 30,000 teachers who lack full certification. Other options States and districts might use to certify the more than 23,000 remaining teachers include assessments of academic skill and subject matter knowledge and professional development. Assessment requirements for special education teachers vary across States and teaching assignment fields, but most States require at least two subject matter tests, a general test on core content knowledge, and a disability-specific test, for special education teacher certification. The average cost of each test is $75. The SPENSE study found that one-fourth of beginning special education teachers who took a certification test reported having to take it more than once before passing. If States and districts certified the remaining 23,000 teachers through existing assessments and 25 percent of the teachers took the tests twice, the cost would be approximately $4.3 million.

Some subset of special education teachers currently teaching through waivers will require additional training to obtain special education certification. The cost of certifying these teachers will depend on State special education certification requirements and the types of professional development needed to help these teachers meet the requirements. Most studies found that district expenditures for professional

development range from one to four percent of a district's total budget or $2,062 per teacher in 2000 dollars. If 18,000 teachers need additional training, costing an average expenditure of $2,000 per teacher for professional development, the cost of certifying these teachers through training would be $36 million.

Because there is little information available on what would be required to implement this proposed regulation and the cost of doing so, the Secretary concludes that the cost may be significant given the number of special education teachers who lack certification. The Secretary further concludes that the benefits of State certification may not necessarily outweigh the costs.

The Secretary believes that teacher certification can be a valuable tool in ensuring that teachers have the knowledge and skills they need to help students meet high academic standards. Since the highly qualified teacher requirements in the No Child Left Behind Act, which focus on content knowledge, already applied to special education teachers providing instruction in core academic subjects, the benefits of requiring special education teachers to also meet State certification requirements for special education teachers will largely depend on the extent to which these requirements reflect pedagogical knowledge and other teacher characteristics that are likely to have a positive effect on achievement of students with disabilities. As of now, there is a dearth of research showing the relationship between special education certification and academic achievement for students with disabilities.

**Special Education Teachers Teaching To Alternate Achievement Standards**

Section 9101 of the ESEA requires that teachers of a core academic subject have full State teacher certification, hold at least a bachelor's degree, and be able to demonstrate knowledge of the subject matter they teach by the end of the 2005–2006 school year. Elementary level teachers may demonstrate subject matter expertise by passing a rigorous State test of their subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary school curriculum, but middle or secondary school teachers must demonstrate a high level of competence in each of the academic subjects that they teach.

Proposed § 300.18(c) would permit special education teachers who teach core academic subjects exclusively to children who are assessed against the alternate achievement standards, established under 34 CFR 200.1(d), to fulfill the highly qualified teacher requirements in section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, to meet the requirements for an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided, including at a minimum, subject matter knowledge at the elementary level or above, as determined by the State, needed to effectively teach to those standards.

The cost of demonstrating subject area competence under current law depends on the number of special education teachers who teach core academic subjects exclusively to children assessed against alternate achievement standards, the number of these teachers who already would be considered highly qualified under section 9101(23) of the ESEA and the number who would not, and the cost of helping special education teachers who are not highly qualified meet the highly qualified teacher requirements for teaching core academic subjects at the middle and high school levels (or replacing them with highly qualified teachers). The proposed regulation would generate savings for public agencies to the extent that the cost of helping teachers demonstrate subject area competence at the elementary level and obtain the knowledge appropriate to the level of instruction needed to teach to alternate achievement standards is lower than the cost of demonstrating subject matter competence at the level (middle or high school) at which they are teaching.

Under 34 CFR 200.1(d), States are permitted to assess up to one percent of students against alternate achievement standards. Based on projections of school enrollment in 2005–2006 using school enrollment data collected by the National Center for Education Statistics (NCES) for the 2002–2003 school year, States could assess up to 257,650 students in the middle and secondary levels (grades 6–12) against alternate achievement standards. Based on a typical ratio of one teacher for every six students for instruction based on alternate achievement standards, as many as 43,000 special education teachers may be able to demonstrate that they fulfill the requirements for highly qualified teachers in section 9101 of the ESEA by demonstrating subject matter knowledge appropriate to the level of instruction being provided instead of the student's grade level. The number of affected teachers will depend on the extent to which these special education teachers are teaching exclusively children assessed against alternate achievement standards.

Although it is difficult to estimate the potential savings from this proposed regulation, the Secretary would expect some savings to be produced because affected special education teachers would not be required to demonstrate the same level of content knowledge as other middle and high school teachers of core academic subjects, thereby reducing the amount of additional coursework or professional development that might have been needed to meet State standards. The savings would depend on the gap between what State standards require in terms of content knowledge for middle and high school teachers in various academic areas and what the affected teachers would have been able to demonstrate in the academic subjects they are teaching. Any savings will be offset in part by the cost of developing a means for the affected teachers to demonstrate subject matter knowledge appropriate to the level of instruction being provided. However, this cost is not expected to be significant. Since States have already developed standards for demonstration of core academic subject competence at the elementary level, States would not likely develop additional High Objective Uniform State Standards of Evaluation (HOUSSE) or subject matter competence evaluations for use with special education teachers to comply with the proposed regulation. On balance, the Secretary concludes that the proposed regulation could produce significant savings without adversely affecting the quality of instruction provided to children assessed against alternate achievement standards.

Special Education Teachers Teaching Multiple Subjects

Consistent with current law, proposed § 300.18(d) would permit special education teachers who are not new to the profession and teach two or more core academic subjects exclusively to children with disabilities to demonstrate competence in all the core academic subjects that the teacher teaches in the same manner as other teachers, including through a single HOUSSE covering multiple subjects. The proposed regulation would allow more time (two years after the date of employment) for new special education teachers who teach multiple subjects and who have met the highly qualified requirements for mathematics, language arts, or science to demonstrate competence in other core academic

subjects that they teach, as required by 34 CFR 200.56(c).

We are unable at this time to estimate the number of new teachers who teach two or more core academic subjects exclusively to children with disabilities who might be affected by the additional time afforded by the proposed regulation. However, the extent of savings would relate to the number of subjects taught by teachers of multiple subjects and the benefits of enabling the affected teachers to take whatever coursework they need to demonstrate competence in those additional areas over a longer period of time. Under prior law, public agencies might have needed to employ additional teachers (or redeploy some existing teachers) in those subject areas in which their newly hired teachers could not immediately demonstrate competence. The Secretary concludes that the benefits of being able to hire teachers who are qualified in at least one subject area outweigh any costs to students being taught by teachers who currently do not meet the requirements in other areas but are working to demonstrate their knowledge in other areas in which they teach.

Limitation on Number of Reevaluations in a Single Year

Proposed § 300.303(b)(1) would prohibit conducting more than one reevaluation in a single year without the agreement of the school district and the parent. The current regulations require reevaluations when conditions warrant one or at the request of either the child's parent or teacher.

Multiple evaluations in a single year are rare and are conducted in instances in which parents are not satisfied with the evaluation findings or methodology, children have a degenerative condition that affects the special education and related services needed, or very young children (ages three through four) are experiencing rapid development that may affect the need for services. The proposed regulation would not significantly affect the number of evaluations in the latter two instances because public agencies and parents are likely to agree that multiple evaluations are warranted. These cases, however, account for a very small number of the cases in which multiple evaluations are conducted each year.

Because evaluation findings may be used to support complaints, we can use data on the number of requests for due process hearings to estimate the number of cases in which more than one evaluation in a single year would have been conducted because parents were not satisfied with the evaluation findings or methodology. Based on data from the recent Government Accountability Office (GAO) report, ''Special Education: Numbers of Formal Disputes Are Generally Low and States Are Using Mediation and Other Strategies to Resolve Conflicts'' (GAO–03–897), in which States reported receiving 11,068 requests for due process hearings during 1999–2000, we estimate that States would receive 20 requests for every 10,000 students with disabilities during the 2005–2006 school year. Based on the prevalence of complaints by parents, we estimate that, of the 1.7 million children estimated to be eligible for reevaluation in 2005–2006, multiple evaluations would have been requested by parents for an estimated 3,400 children. If we assume that these additional evaluations would cost about $1,000 each, public agencies could save $3.4 million under the proposed regulation by not agreeing to more than one evaluation of children in these instances.

Triennial Evaluations

The current regulations require a school district to conduct an evaluation of each child served under the Act every three years to determine, among other things, whether the child is still eligible for special education. The current regulations permit the evaluation team to dispense with additional tests to determine the child's continued eligibility if the team concludes that this information is not needed and the parents provide consent. Proposed § 300.303(b)(2) would permit districts to dispense with the triennial evaluation altogether when the child's parents and the public agency agree that a reevaluation is unnecessary. The impact of this change will depend on the following factors: the number of children eligible for a reevaluation, the cost of the evaluation, and the extent to which districts and parents agree to waive reevaluations.

Published estimates of the cost of multidisciplinary evaluations range from $500 to $2,500, but these estimates may overestimate potential savings because testing is a significant factor in the cost of evaluations, and districts are already permitted to dispense with additional testing when extant data are sufficient for reevaluation. The extent to which States and districts eliminated unnecessary testing during triennial evaluations under the current regulations is unclear, but program officers estimate that additional testing or observation by a school psychologist is not needed for as many as half of the approximately 1.7 million children eligible for triennial evaluations each year. In the estimated 850,000 cases in which additional testing is not needed, review of the extant data may still be warranted to determine if a child still needs special education and related services under the Act or to assess whether any additions or modifications to the special education and related services being provided are needed to help the child meet his or her IEP goals. Even if additions or modifications to special education and related services are not likely, parents may not want to dispense with the triennial evaluation if they believe further information could be gained from the extant data or they want to compare their child's progress against his or her previous assessments. If parents and the district agree that a reevaluation is not needed in 15 percent, or 127,500, of these cases and a reevaluation using only extant data would have cost $150, the proposed regulation could save $19.125 million.

These savings would be partially offset by increased administrative costs associated with obtaining consent from parents to dispense with reevaluation. To estimate the cost of obtaining parental consent, the Department assumes that schools could use a standard pre-printed document that would take approximately 15 minutes of administrative personnel time to fill out and send to parents. In addition, we estimate that an average of 2.5 additional written notices or telephone calls would be needed to obtain consent, requiring 15 minutes of administrative personnel time per additional contact. At an average hourly compensation of $24, the cost to public agencies of obtaining parental consent would be $2.7 million, resulting in estimated net savings to public agencies from the proposed regulation of $16.4 million.

IEP Team Attendance

Proposed § 300.321(e)(1) would permit a member of the IEP team to be excused from attending an IEP meeting, in whole or in part, if the parent of the child with a disability and the public agency agree in writing that the member's attendance is not necessary because the member's area of the curriculum or related services is not being modified or discussed. The current regulations require that all IEP meetings include the parents of the child, at least one regular education teacher (if the child is, or may be, participating in the regular education environment), at least one special education teacher, a representative of the public agency, and someone who could interpret the instructional implications of the evaluation results (who may be one of the other required

IEP team members). The extent to which public agencies may realize savings from the proposed regulation depends on which team members are excused from how much of the meeting. If the average IEP meeting lasts 1.5 hours and requires a half an hour of teacher preparation, then we estimate that the opportunity costs for a teacher of attending a meeting (based on average compensation per hour of $46.25) would be $92.50. If we assume an average of 1.2 IEP meetings are held for each of the 6.933 million children with disabilities, then 8.32 million IEP meetings will be held in 2005–2006. If one teacher could be excused from five percent of these meetings, the proposed regulation could result in savings of $38.5 million.

These savings would be partially offset by increased administrative costs associated with obtaining written consent from parents and public agency staff. Based on the above estimate of the cost of obtaining consent from parents under proposed § 300.303(b)(2), the Department estimates that cost to public agencies of obtaining written consent for these parents would be $8.7 million, resulting in net savings to public agencies from the proposed regulation of $29.8 million.

Proposed § 300.321(e)(2) would permit members of an IEP team to be excused from attending an IEP meeting that involves a modification to or discussion of the member's area of the curriculum or related service if the parent and the public agency consent in writing to the excusal and the member submits written input to the parent and the other members of the IEP team prior to the meeting. The proposed change is unlikely to generate notable savings because reduced time spent in meetings is likely to be offset by the time required to draft written input, send it to the parents and other IEP team members, and secure the consent of parents and public agency to the excusal. In cases in which IEP meetings take longer than the average time of 1.5 hours, there are likely to be controversial issues or significant modifications to the IEP under discussion. Parents are presumably less likely to consent to the excusal of team members in these instances.

Definition of Individualized Education Program

Proposed § 300.320(a)(2)(i) would require that each IEP include a statement of measurable annual goals, including academic and functional goals, for the child. The current regulations require that each IEP contain benchmarks or short-term objectives for each of the annual goals. By eliminating the need to develop benchmarks or short-term objectives, the proposed regulation could result in teachers spending less time on each IEP. Under proposed § 300.320(a)(2)(ii), however, IEPs for the estimated 488,000 children with disabilities who take alternate assessments aligned to alternate achievement standards would still be required to include a statement of benchmarks or short-term objectives.

Based on average compensation for teachers of $46.25 per hour, a reduction in time as modest as 15 minutes could save approximately $11.56 per IEP or $74.5 million total in opportunity costs for teachers related to the development of IEPs during the 2005–2006 school year for the 6.445 million children with disabilities who do not take alternate assessments aligned to alternate achievement standards.

Amendments to an IEP

When changes to a child's IEP are needed after the annual IEP meeting for the school year has been held, proposed § 300.324(a)(4) would allow the parent of a child with a disability and the public agency to agree to forego a meeting and develop a written document to amend or modify the child's current IEP. Under the current regulations, the IEP team must be reconvened in order to make amendments to an IEP. Based on our estimate of an average of 1.2 IEP meetings per child per year, approximately 1.4 million IEP meetings beyond the required annual IEP meeting would be held during the 2005–2006 school year. If half of these meetings concerned amendments or modifications to an IEP and parents and agency representatives agreed to forego a meeting and develop a written document in half of these cases, then 346,650 IEP meetings would not be needed. The combined opportunity costs for personnel participating in a typical IEP meeting are estimated at $297. If drafting a written document to amend or modify an IEP is assumed to cost half as much as a meeting, then this change could result in savings of $51.4 million.

Procedural Safeguards Notice

Proposed § 300.504(a), which incorporates changes in section 615(d)(1) of the Act, would require that a copy of the procedural safeguards notice be given to parents of children with disabilities only once a year, except that a copy must also be given: when an initial evaluation or request for an evaluation occurs; the first time a due process hearing is requested during a school year; and when a parent requests the notice. The prior law required that a copy of the procedural safeguards notice be given to the parents upon initial referral for an evaluation, each notification of an IEP team meeting, each reevaluation of the child, and the registration of each request for a due process hearing. Under the proposed regulation, a copy of the procedural safeguards notice would no longer have to be given to parents upon each notice for an IEP team meeting or every time a request for a due process hearing is received. Instead, the document only would have to be given to parents once a year, and the first time a due process hearing is requested in a year, when a copy of the document is specifically requested by a parent, or when an initial evaluation or request for a reevaluation occurs.

To determine the impact of this change, it is necessary to estimate the savings created by providing fewer notices to parents who are notified about more than one IEP meeting during the year or who file more than one request for a due process hearing. Given the small number of hearing requests in a year (about 20 per 10,000 children with disabilities), our analysis will focus on the number of parents involved in more than one IEP meeting. Although we lack detailed data on the number of IEP meetings conducted each year, we estimate that approximately 6.933 million children with disabilities will be served in school year 2005–2006. For the vast majority of these children, we believe there will only be one IEP meeting during the year. For purposes of estimating an upper limit on savings, if we assume an average of 1.2 meetings per year per child, 1.39 million children will have two IEP meetings each year and the change reflected in proposed § 300.504(a) will result in 1.39 million fewer procedural notices provided to parents. While some people may believe this change represents a significant reduction in paperwork for schools, the actual savings are likely to be minimal given the low cost of producing a notice of this size (about 10 pages) and the small amount of administrative staff time involved in providing this notice to parents (about 10 minutes). Taking all of this into consideration, total savings are unlikely to exceed $5 million.

Due Process Request Notices

Proposed § 300.511(d) would prohibit the party who requested the due process hearing from raising issues not raised in the due process request notice, unless the other party agrees. Under current regulations, there is no prohibition on raising issues at due process hearings

that were not raised in the due process notice.

By encouraging the party requesting the hearing to clearly identify and articulate issues sooner, the proposed regulation could generate actual savings by facilitating early resolution of disagreements through less costly means, such as mediation or resolution sessions. But early identification of issues could come at the cost of more extensive involvement of attorneys earlier in the process. At the same time, prohibiting the party requesting the hearing from raising new issues at the time of the hearing could result in additional complaints or protracted conflict and litigation. On balance, net costs or savings are not likely to be significant.

Using data from recent State data collections conducted by the Consortium for Appropriate Dispute Resolution in Special Education (CADRE), in which States reported receiving 12,914 requests for due process hearings during 2000–2001, we estimate that there will be approximately 14,031 requests in 2005–2006. Because some parties already hire attorneys or consult other resources such as advocates or parent training centers to develop the request for due process, the Department assumes that only a portion of the requests would be affected by this new requirement. Although we have no reliable data on average attorneys' fees in due process cases, for purposes of this analysis, the Department assumes an hourly rate of $300 as an upper limit. The Department further assumes that each instance in which a party chooses to hire an attorney sooner as a result of this change will involve no more than three additional hours of work. Even if we assume that parties requesting the hearing will incur this additional cost in the case of 8,000 of the expected requests for due process, the total costs would not be significant (less than $8 million), and could be outweighed by the benefits of early identification and resolution of issues. Although such benefits are largely unquantifiable, early identification and resolution of disputes would likely benefit all parties involved in disputes.

Resolution Sessions

Proposed § 300.510 would require the parents, relevant members of the IEP team, and a representative of the public agency to participate in a resolution session, prior to the initiation of a due process hearing, unless the parents and LEA agree to use mediation or agree to waive the requirement for a resolution session. The impact of this proposed regulation will depend on the following factors: The number of requests for due process hearings, the extent to which disagreements are already resolved without formal hearings, the likelihood that parties will agree to participate in mandatory resolution sessions instead of other potentially more expensive alternatives to due process hearings (*e.g.*, mediation), and the likelihood that parties will avoid due process hearings by reaching agreement as a result of mandatory resolution sessions.

Available data suggest that overall savings are not likely to be significant because of the small number of due process requests and the extent to which disagreements are already being successfully resolved through mediation.

Based on data reported in a recent CADRE State data collection in which States reported receiving 12,914 requests for due process hearings during 2000–2001, we estimate that there will be approximately 14,031 requests for due process hearings in school year 2005–2006. Based on data from the same study, we also estimate that the large majority of these disagreements will be successfully resolved through mediation or dropped. Out of the 12,914 requests for school year 2000–2001, approximately 5,536 went to mediation and only 3,659 ended up in formal hearings. Assuming no change in the use and efficacy of mediation, we predict that 6,021 requests would go to mediation in school year 2005–2006. We further predict that another 4,035 complaints will be dropped, leaving no more than 3,975 requests for due process that would require resolution sessions.

Because of the high cost of due process hearings and the low expected cost of conducting a resolution session, there would likely be some savings for all parties involved if resolution sessions are relatively successful in resolving disagreements. For example, California reports an average cost of $18,600 for a due process hearing, while Texas reports having spent an average of $9,000 for a hearing officer's services. Anticipating that attorneys will participate in approximately 40 percent of the predicted 3,945 resolution sessions (including drafting legally binding agreements when parties reach agreement), we expect resolution sessions to cost just over twice the average cost of IEP meetings, or approximately $700 per session. Even with a very low success rate (eight percent), given the expected costs of these sessions compared to the high cost of conducting a hearing, all parties involved would likely realize some modest savings. However, because disputes that result in formal hearings tend to be the most difficult to resolve, we do not expect that mandatory resolution sessions will be highly successful in resolving such cases. By definition, these are cases in which the parties are not amenable to using existing alternatives to formal hearings such as mediation. Moreover, assuming an average cost of between $10,000 and $20,000 per due process hearing, even if as many as 20 percent of the 3,975 complaints were successfully resolved through resolution sessions, net savings still would not exceed $10 million. (Note that it is unclear to what extent data on average mediation and due process hearing costs account for LEA opportunity costs (*e.g.*, cost per teacher and/or administrator participating). To the extent that these data do not reflect the opportunity costs of participating LEA officials and staff, we have underestimated the potential savings from resolution session).

Beyond those savings to all parties resulting from reductions in the total number of formal hearings, we would also expect some additional savings to the extent parties agree to participate in resolution sessions instead of mediation, particularly if the resolution sessions are as effective as mediation in resolving disagreements. However, unlike due process, the expected cost of conducting a resolution session ($700 per session) is only somewhat less than the cost of a mediation session (between $600 and $1,800 per session). Because the cost differential between resolution sessions and mediations is relatively small (compared to the difference in cost between resolutions sessions and due process hearings) the potential for savings generated by parties agreeing to resolution sessions instead of mediation is minimal.

The Secretary concludes that requiring parties to participate in resolution sessions prior to due process hearings could generate modest savings for all parties to disputes, insofar as mandatory resolution sessions could result in fewer due process hearings and may be used as a less expensive alternative to mediation.

Manifestation Determination Review Procedures

Proposed § 300.530(e) and (f) would incorporate the change in the statutory standard for conducting manifestation determination reviews. Under the prior law, the IEP team could conclude that the behavior of a child with a disability was not a manifestation of his or her disability only after considering a list of factors, determining that the child's IEP

and placement were appropriate, and that FAPE, supplemental services, and behavioral intervention strategies were being provided in a manner consistent with the child's IEP. Previous law also required the IEP team to consider whether a child's disability impaired his or her ability to understand the impact and consequences of the behavior in question, and to control such behavior. The new statute eliminated or substantially revised these requirements. The proposed regulations would simply require IEP teams to review all relevant information in the student's file to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability, or if the conduct in question was the direct result of the LEA's failure to implement the IEP. The purpose of the change in the law is to simplify the discipline process and make it easier for school officials to discipline children with disabilities when discipline is appropriate and justified.

Because fewer factors would need to be considered during each manifestation determination review, the time required to conduct such reviews would likely be reduced, and some minimal savings may be realized. However, the more significant impact relates to secondary effects. Because it would be less burdensome for school personnel to conduct manifestation determinations, it is reasonable to expect an overall increase in the number of these reviews as school personnel take advantage of the streamlined process to pursue disciplinary actions against those students with disabilities who commit serious violations of student codes of conduct. Even more importantly, the changes in the law would make it less difficult for review team members to conclude that the behavior in question is not a manifestation of a child's disability, enabling school personnel to apply disciplinary sanctions in more cases involving children with disabilities.

We have minimal data on the number of manifestation determination reviews being conducted. However, State-reported data for the 2002–2003 school year suggest that schools are conducting a relatively small number of manifestation reviews. According to these data, for every 1,000 children with disabilities, approximately 11 will be suspended or expelled for longer than 10 days during the school year (either through a single suspension or as a result of multiple short-term suspensions)—the disciplinary action triggering a manifestation review. (Please note that we have no way of accurately estimating what portion of short-term suspensions that sum to 10 days would be determined by school personnel to constitute a change in placement. Therefore, we assume, for purposes of this analysis, that 100 percent of these instances would require a manifestation review because they would be deemed a change in placement). Based on a recent GAO study, which concludes there is little difference in how school personnel discipline regular and special education students, we assume that under previous law, at least 85 percent of manifestation reviews resulted in disciplinary actions (*e.g.*, long-term suspensions or expulsion). In other words, approximately 15 percent of all manifestation reviews did not result in disciplinary action because the behavior in question was determined to be a manifestation of the child's disability.

Without taking into consideration increases in the frequency of manifestation reviews, using suspension and expulsion data from previous years, we estimate that the total number of manifestation reviews in 2005–2006 would be approximately 87,701. If we assume that the streamlining reflected in the proposed regulation would produce a 20 percent increase in the total number of manifestation reviews, we predict that 17,540 additional meetings would occur, for a total of 105,241 meetings.

Under the proposed regulation, the Secretary also expects an increase in the total number of manifestation reviews resulting in disciplinary actions, but it is not likely to be a significant increase. GAO's finding that there is little practical difference in how school personnel disciplined regular and special education students under previous law suggests that manifestation reviews are already highly likely to result in disciplinary actions.

The Secretary concludes that the proposed regulation would generate some minimal savings from the reduction in time required to conduct the manifestation reviews. Schools would also realize some unquantifiable benefits related to the increased likelihood that the outcome of the review will result in disciplinary action, thereby fostering a school environment that is safer, more orderly, and more conducive to learning. The Secretary acknowledges that the proposed regulation could create additional costs for parents of children who, but for this change, would not have been subject to disciplinary removals to the extent that such parents disagree with the manifestation determination and choose to appeal it. On balance, the Secretary believes that the benefits likely to result from this change relating to school safety and order outweigh the costs to families.

Authority To Remove Students With Disabilities to Interim Alternative Educational Settings

Proposed §§ 300.530(g) through 300.532 would incorporate two significant statutory changes relating to the authority of school personnel to remove children with disabilities to interim alternative educational settings. First, the Act now gives school personnel the authority to remove students who have inflicted serious bodily injury to interim alternative educational settings. Under previous law, school personnel were only authorized to remove students to alternative settings for misconduct involving: (1) The use and possession of weapons; and (2) the knowing possession, sale, or use of illegal drugs or controlled substances. The Act added the commission of serious bodily injury to this list. In cases involving serious bodily injury, school personnel would be able to unilaterally remove children with disabilities to interim alternative educational settings for up to 45 school days without having to request a hearing officer review of the facts to determine whether or not the student is substantially likely to harm himself or others. Second, the 45-day rule has changed. Under previous law, students could not be removed to interim alternative settings for more than 45 days. Now, under the Act, the comparable time limitation is 45 *school* days.

Although the addition of serious bodily injury significantly simplifies the process for removing a student who has engaged in such misconduct, the data suggest that the savings from the proposed regulation would be minimal. Recent Department of Justice data show that ''fighting without a weapon'' is by far the most common type of serious misconduct engaged in by all students. However, State-reported data suggest that of the 20,000 instances in 2002–2003 in which children with disabilities were suspended or expelled for longer than 10 days, only 1,200 involved serious bodily injury or removal ''by a hearing officer for likely injury.'' We estimate that approximately 6.933 million students with disabilities will be served during the 2005–2006 school year. Using these data, we project that there would have been approximately 1,258 instances in 2005–2006 in which a school district might have requested approval from a hearing officer to remove a child for inflicting serious

bodily injury, if the law had not been changed. Taking into account the time that would have been spent by both relevant school administrators and the hearing officers and their estimated hourly wages (about $125 per hour for hearing officers and $50 per hour for school administrators), we conclude that the unilateral authority afforded school officials under the proposed regulation produces only minimal savings (less than $1 million).

A much more significant benefit relates to the enhanced ability of school officials to provide for a safe and orderly environment for all students in the 1,258 cases in which school officials would have been expected to seek and secure hearing officer approval for removing a student to an alternative setting and the other cases in which they might not have taken such action, but where removal of a student who has caused injury is justified and produces overall benefits for the school.

The change in how days are to be counted (*e.g.*, from ''calendar days'' under previous law to ''school days'' under the proposed regulation) would allow school officials to extend placements in alternative settings for approximately two additional weeks. This would generate some savings to the extent that it obviates the need for school officials to seek hearing officer approval to extend a student's placement in an alternative setting.

While school personnel are not required to use the new authority to remove children who have inflicted serious bodily injury or to remove children for the total amount of time that is authorized, we acknowledge that it would create additional costs for schools that choose to take full advantage of this authority because of the added costs of providing educational services in an alternative setting. Using data from a recent GAO study, we estimate that approximately 3,000 students will be removed to an alternative interim setting in 2005–2006 for misconduct involving drugs or weapons and at least another 1,258 for misconduct involving serious bodily injury. Although we do not have data on the costs of educating these students in an alternative setting for 45 school days, the Secretary concludes that the costs of doing so would be outweighed by the unquantifiable benefits to schools associated with ensuring students a safe and orderly environment that is conducive to learning.

*Costs and Benefits of Proposed Non-Statutory Regulatory Provisions*

The following is an analysis of the costs and benefits of the proposed non-statutory regulatory provisions that includes consideration of the special effects these changes may have on small entities.

The proposed regulations would primarily affect SEAs and LEAs, which are responsible for carrying out the requirements of Part B of the Act as a condition of receiving Federal financial assistance under the Act. Some of the proposed changes would also affect children attending private schools and consequently indirectly affect private schools.

For purposes of this analysis as it relates to small entities, the Secretary has focused on LEAs because these regulations most directly affect local public agencies. The analysis uses a definition of small school district developed by the NCES for purposes of its recent publication, *Characteristics of Small and Rural School Districts*. In that publication, NCES defines a small school district as ''one having fewer students in membership than the sum of (a) 25 students per grade in the elementary grades it offers (usually K–8) and (b) 100 students per grade in the secondary grades it offers (usually 9–12).'' Using this definition, approximately 38 percent of the nation's public agencies in the 2002–2003 *Common Core of Data* were considered small and served three percent of the Nation's students. Approximately 17 percent of students in small districts had IEPs.

Both small and large districts would be affected economically by the proposed regulations, but no data are available to analyze the effect on small districts separately. For this reason, this analysis assumes that the effect of the proposed regulations on small entities would be roughly proportional to the number of children with disabilities served by those districts.

For school year 2005–2006, we project that approximately 48.8 million children will be enrolled in public elementary and secondary schools. Using the NCES definition and assuming that all districts grew at the same rate between school year 2002–2003 and 2005–2006, we estimate that in the 2005–2006 school year approximately 1.48 million children will be enrolled in small districts. Based on the percentage of students in small districts with IEPs in 2002–2003, we estimate that in the 2005–2006 school year these districts will serve approximately 251,000 children with disabilities of the 6.9 million children with disabilities served nationwide.

There are many provisions in the proposed regulations that are expected to result in economic impacts, both positive and negative. The following analysis estimates the impact of the proposed regulations that were not required by the Act:

*Procedures for Evaluating Children With Specific Learning Disabilities*

Proposed § 300.307(a) would require that States adopt criteria for determining whether a child has a specific learning disability. Under the proposed regulation, States may not require, but may prohibit, that LEAs use criteria based on a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability. The proposed regulation would also require that criteria adopted by States permit the use of a process that determines if the child responds to scientific, research-based intervention. States would also be permitted to use other alternative procedures to determine if a child has a specific learning disability.

Before determining that a child has a specific learning disability, proposed § 300.309(b) would require that the evaluation team consider data that demonstrate that prior to, or as part of the referral process, the child received appropriate high-quality, research-based instruction in regular education settings and that data-based documentation of repeated assessments of achievement during instruction was provided to the child's parents. If the child had not made adequate progress under these conditions after an appropriate period of time, the proposed regulation would further require that the public agency refer the child for an evaluation to determine if special education and related services are needed. Under the proposed regulation, the child's parents and the team of qualified professionals, described in proposed § 300.308, would be permitted to extend the evaluation timelines described in proposed §§ 300.301 through 300.303 by mutual written agreement.

If the estimated number of initial evaluations each year is 1.7 million and the percentage of evaluations involving children with specific learning disabilities is equivalent to the percentage of all children served under Part B of the Act with specific learning disabilities, then the proposed regulation would affect approximately 816,000 evaluations each year. Depending on the criteria adopted by their States pursuant to proposed § 300.307(a), public agencies could realize savings under the proposed regulation by reducing the amount of a school psychologist's time involved in conducting cognitive assessments that would have been needed to document

an IQ discrepancy. However, these savings could be offset by increased costs associated with documenting student achievement through regular formal assessments of their progress, as required under proposed § 300.309(b).

Although the cost of evaluating children suspected of having specific learning disabilities might be affected by the proposed regulations, the Department expects that the most significant benefits of the proposed changes would be achieved through improved identification of children suspected of having specific learning disabilities. By requiring that States permit alternatives to an IQ-discrepancy criterion, the proposed regulation would facilitate more appropriate and timely identification of children with specific learning disabilities, so that they can benefit from research-based interventions that have been shown to produce better achievement and behavioral outcomes.

The proposed regulations may impose additional costs on small public agencies that lack capacity currently to conduct repeated assessments of achievement during instruction and provide parents with documentation of the formal assessments of their child's progress. These costs are likely to be offset by reduced need for psychologists to administer intellectual assessments. To the extent that small districts may not employ school psychologists, the proposed criteria may alleviate testing burdens felt disproportionately by small districts under an IQ discrepancy evaluation model.

Transition Requirements

Proposed § 300.321(b) would modify current regulations regarding transition services planning for children with disabilities who are 16 through 21 years old. Public agencies would still be required to invite other agencies that are likely to be responsible for providing or paying for transition services to the child's IEP meeting. If the invited agency does not send a representative, public agencies would no longer be required to take additional steps to obtain the participation of those agencies in the planning of transition, as required under current § 300.344(b)(3)(ii).

Public agencies would realize savings from the proposed change to the extent that they would not have to continue to contact agencies that declined to participate in IEP meetings on transition planning. In school year 2005–2006, we project that public agencies will conduct 1,191,218 meetings for students with disabilities who are 16 through 21 years old. We used data from the *National Longitudinal Transition Study 2* (NLTS2) on school contacts of outside agency personnel to project the number of instances in which outside agencies would be invited to IEP meetings during the 2005–2006 school year. Based on these data, we project that schools will invite 1,490,241 personnel from other agencies to IEP meetings for these students during the 2005–2006 school year. The NLTS2 also collected data on the percentage of students with a transition plan for whom outside agency staff were actively involved in transition planning. Based on these data, we project that 436,047 (29 percent) of the contacts will result in the active participation of outside agency personnel in transition planning for students with disabilities 16 through 21.

We base our estimate of the potential savings from the proposed change on the projected 1,054,194 (71 percent) instances in which outside agencies would not participate in transition planning despite school contacts that, under the current regulations, would include both an invitation to participate in the child's IEP meeting and additional follow-up attempts. If public agencies made only one additional attempt to contact the outside agency and each attempt required 15 minutes of administrative personnel time, then the proposed change would save $6.3 million (based on an average hourly compensation for office and administrative support staff of $24).

Studies of best practices conducted by the National Center on Secondary Education and Transition indicate that effective transition planning requires structured interagency collaboration. Successful approaches cited in the studies included memoranda of understanding between relevant agencies and interagency teams or coordinators to ensure that educators, State agency personnel and other community service providers share information with parents and children with disabilities. The current regulation focuses on administrative contact instead of active strategic partnerships between agencies that facilitate seamless transitions for students with disabilities between school and adult settings. For this reason, the Department believes that the proposed elimination of the non-statutory requirement that public agencies make additional attempts to contact other agencies would reduce administrative burden and allow public agencies to focus their efforts on interagency collaborative transition planning for children with disabilities.

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 (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 number heading; for example, § 300.172 Access to instructional materials.)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulation 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 this proposed regulation 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 impose significant net costs in any one year, and may result in savings to SEAs and LEAs.

The small entities that would be affected by these proposed regulations are small local educational agencies (LEAs) receiving Federal funds under this program. Both small and large school districts will be affected economically by the proposed regulations. The effect of the proposed regulations on small entities would be roughly proportional to the number of children with disabilities served by those districts.

To the extent that small districts may not employ school psychologists, the proposed changes to the procedures for evaluating children with specific learning disabilities may alleviate testing burdens felt disproportionately by small districts that would no longer be required to use a discrepancy model.

*Paperwork Reduction Act of 1995*

These proposed regulations contain information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of these provisions is given below with an estimate of the annual recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

The Department invites comments on:

- Whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- The accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- The quality, usefulness, and clarity of the information we collect; and
- Ways to minimize the burden on 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 submission of responses.

The proposed IDEA regulation includes 21 information collection requirements associated with the following provisions: Proposed §§ 300.100 through 300.176, § 300.182, § 300.199, §§ 300.201 through 300.213, § 300.224, § 300.226, §§ 300.506 through 300.507, § 300.511, §§ 300.601 through 300.602, § 300.640, § 300.704, § 300.804, and §§ 304.1 through 304.31 In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department has submitted the information collections provisions of this proposed rule to OMB for review. The Department recognizes that information collection requests requiring aggregate data on race and ethnicity do not reflect the 1997 OMB Standards for Data on Race and Ethnicity. The Department anticipates providing guidance to implement those standards in forthcoming collections.

Interested persons are requested to send comments regarding the information collections to the Department of Education within 60 days after publication of the proposed rule. This comment period does not affect the deadline for public comments associated with the proposed rule.

*Collection of Information:* Annual State Application under Part B of the Act. §§ 300.100 through 300.176 and § 300.182, and § 300.804. Each State is eligible for assistance under Part B of the Act for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets the eligibility criteria under Part B of the Act and these proposed regulations. Under the new statute, States will no longer be required to have on file with the Secretary policies and procedures to demonstrate to the satisfaction of the Secretary that the State meets specific conditions for assistance under Part B of the Act. Information collection 1820–0030 has been revised to reflect this change in the statute and appropriate proposed regulations.

Annual reporting and recordkeeping burden for this collection of information is estimated to average eight hours for each response for 57 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and recordkeeping burden for information collection 1820–0030 is estimated to be 456 hours. This new statutory change will result in a reduction in the burden to States and in the overall cost to the Federal Government.

Under 34 CFR 1320.11, we requested that OMB review information collection 1820–0030 on an emergency basis. Although OMB has approved this information collection on an emergency basis, we continue to invite your comments on this collection.

*Collection of Information:* Part B State Performance Plan (SPP) and Annual Performance Report (APR). §§ 300.601 through 300.602. Each State must have in place, not later than one year after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, a performance plan that evaluates the State's efforts to implement the requirements and purposes of Part B of the Act and these proposed regulations and describe how the State will improve such implementation. Each State shall report annually to the public on the performance of each LEA located in the State on the targets in the State's performance plan. The State must report annually to the Secretary on the performance of the State under the State's performance plan. A notice was initially published in the **Federal Register** on March 8, 2005 giving the public 60 days to comment on this information collection (OMB No. 1820–0624). The initial comment period for this collection ended on May 9, 2005. Comments regarding this information collection are being reviewed and revisions are being made to the collection based on the comments received. A second notice will be published in the **Federal Register** notifying the public of an additional 30-day public comment period. Once the information collection is approved, the Department will disseminate the collection instrument to the public and collect the required information. If, as a result of the final regulations adopted by the Department, additional changes are required to the collection, the Department will revise the information collection and resubmit the collection for public comment.

Annual reporting and record keeping burden for this collection of information is estimated to average 300 hours for each response for 60 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and recordkeeping burden for information collection 1820–0624 is estimated to be 18,000 hours.

*Collection of Information:* LEA Application under Part B of the Act. §§ 300.201 through 300.213, § 300.224, and § 300.226. Each LEA must submit a plan to the SEA that provides assurances to the SEA that the LEA meets each of the conditions in proposed §§ 300.201 through 300.213, if applicable, meets the requirements in § 300.224, and, if applicable, reports to the SEA on the number of children served under proposed § 300.226 and the number of children served under § 300.226 who subsequently receive special education and related services under Part B of the Act during the preceding two year period. Under the new statute, LEAs are no longer required to have on file with the SEA information to demonstrate that the agency meets such requirements. Information collection 1820–0600 has been revised to reflect these changes and the appropriate proposed regulations.

Annual reporting and recordkeeping burden for this collection of information is estimated to average two hours for each response for 15,000 respondents, including the time for reviewing the collection of information. Thus, the total annual reporting and recordkeeping burden for information collection 1820–0600 is estimated to be 30,000 hours.

*Collection of Information:* List of Hearing Officers and Mediators. §§ 300.506(b)(3)(i) and 300.511(c)(3). Each State must maintain a list of

individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. Each public agency must also keep a list of the persons who serve as hearing officers. Information collection 1820–0509 has been revised to reflect appropriate proposed regulations.

Annual reporting and recordkeeping burden for this collection of information is estimated to average three hours annually for each of 57 States and 14,312 public agencies to develop and maintain these lists. Thus, the total annual reporting and recordkeeping burden for information collection 1820–0509 is estimated to be 43,107 hours.

*Collection of Information:* Complaint Procedures. §§ 300.151 through 300.153. Each SEA is required to adopt written procedures for resolving any complaint that meets the requirements in these proposed regulations.

Annual reporting and recordkeeping burden for this collection of information is estimated to average 10 hours to issue a written decision to a complaint. It is estimated there are 1,191 complaints resolved annually. Thus, the annual reporting and recordkeeping burden for information collection 1820–0599 is estimated to be 11,910 hours.

*Collection of Information:* Early Intervening Services Annual Report. §§ 300.208(a)(2) and 300.226. Each LEA that develops and maintains coordinated, early intervening services is required to annually report to the SEA on the number of children served through early intervening services and the number of children who subsequently receive special education and related services under Part B of the Act during the preceding two year period. The Secretary has determined that it is necessary to require each State to report these data to the Secretary to assist in determining that these provisions are properly implemented.

Annual reporting and recordkeeping burden for this collection of information is estimated to average 22 hours for each of 5,691 LEAs to gather the data needed and prepare information to submit to SEAs. It is estimated to average 16 hours annually for each of 60 SEAs to collect, review, and maintain data received from LEAs and seven hours for each SEA to prepare and report the data to the Secretary. Thus, the total annual reporting and recordkeeping burden for this new collection is estimated to be 126,582 hours.

*Collection of Information:* LEA Consultation with Private School Representatives. §§ 300.134(e) and 300.135. The LEA is required to provide to private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract and, when timely and meaningful consultation as required under Part B of the Act has occurred, the LEA is required to obtain a written affirmation signed by the representatives of participating private schools and forward the documentation of the consultation process to the SEA.

Annual reporting and recordkeeping burden for this collection of information is estimated to average 12 hours for each of 2,849 LEAs to obtain a written affirmation and forward documentation to the SEA and 24 hours for each SEA to review and maintain records. Thus, the total annual reporting and recordkeeping burden for this new collection is estimated to be 35,556 hours.

*Collection of Information:* Private School Complaint of Noncompliance with Consultation Requirements. § 300.136. A private school official is permitted to submit a complaint to the SEA that the LEA did not engage in consultation that was meaningful and timely, or did not give due consideration of the private school official. Further, a private school official may submit a complaint to the Secretary if the official is dissatisfied with the decision of the SEA.

Annual reporting and recordkeeping burden for this collection of information is estimated to average two hours for each of 200 private school officials to submit a complaint to the SEA, two hours for each of 30 private school officials to submit a complaint to the Secretary, 16 hours for each SEA decision rendered for each of 200 complaints, two hours for the SEA to forward documentation to the Secretary for each of 30 complaints, and four hours for each of 200 LEAs to forward documentation to the SEA, including the time for reviewing the collection of information. Thus, the total annual reporting and recordkeeping burden for this new collection is estimated to be 4,520 total hours.

*Collection of Information:* Identification of State-Imposed Rules, Regulations, or Policies. § 300.199. Each State that receives funds under Part B of the Act must identify in writing to LEAs located in the State and the Secretary any rule, regulation, or policy as a State-imposed requirement that is not required by Part B of the Act and Federal regulations.

It is estimated that 50 States will be required to inform LEAs and the Secretary in writing of State-imposed requirements that are not required by Federal regulations implementing Part B of the Act. It is estimated that it will take respondents 40 hours to identify all State-imposed requirements and inform LEAs and the Secretary in writing. The total annual reporting and recordkeeping burden for this new collection is estimated to be 2,000 hours annually.

*Collection of Information:* Number of Children with Disabilities Enrolled in Private Schools by Their Parents. § 300.132. Each LEA is required to maintain in its records and annually provide to the SEA the number of children enrolled in private schools by their parents that are evaluated by the LEA to determine whether they are children with disabilities under Part B of the Act, the number of children determined to be children with disabilities under Part B of the Act, and the number of children receiving special education and related services in accordance with Part B of the Act.

Annual reporting and recordkeeping burden for this collection of information is estimated to average 10 hours for each of 14,229 LEAs to maintain a record of the number of children and report the numbers to the SEA and 20 hours for each SEA to process, review, and maintain the reports. Thus, the total annual reporting and recordkeeping burden for this new collection is estimated to be 143,430 hours.

*Collection of Information:* State Plan for High Cost Fund. § 300.704(c)(3)(ii). Any SEA that chooses to reserve funds under Part B of the Act shall annually review, and amend as necessary, a State plan for the high cost fund.

Annual reporting and recordkeeping burden for this collection of information is estimated to average 40 hours for each response for 40 respondents, including the time for reviewing the collection of information. Thus, the total annual reporting and recordkeeping burden for this new collection is estimated to be 1,600 hours.

*Collection of Information:* Free and Low-Cost Legal Services. § 300.507(b). Each public agency must inform the parent of any free or low-cost legal or other relevant services available in the area if the parent requests the information or the parent or agency requests a hearing under Part B of the Act.

Annual reporting and recordkeeping burden for this collection of information is estimated to average 30 minutes for each response for 13,056 requests, including the time for preparing the information. Thus, the total annual reporting and recordkeeping burden for this new collection is estimated to be 6,528 hours.

*Collection of Information:* Confidentiality Pledge Prior to the

Commencement of Mediation. § 300.506(b)(9). Parties to mediation may be required to sign a confidentiality pledge prior to the commencement of mediation to ensure that all discussions that occur during mediation remain confidential.

Annual reporting and recordkeeping burden for this collection of information is estimated to average 30 minutes for each response for 4,668 requests, including the time for preparing the information and obtaining the signed pledge. Thus, the total annual reporting and recordkeeping burden for this new collection is estimated to be 2,334 hours.

*Collection of Information:* Report of Children with Disabilities Receiving Special Education under Part B of the Individuals with Disabilities Education Act. § 300.160. Each State that receives assistance under Part B of the Act shall provide data each year to the Secretary and the public on children with disabilities by race/ethnicity, disability, gender, and Limited English Proficiency status receiving special education and related services in each State.

Annual reporting and recordkeeping burden for this collection is estimated to be 8.5 hours for each of 60 State agencies and 2 hours for each of an average of 260 LEAs per State. Thus, the total annual reporting and recordkeeping burden for collection 1820–0043 is 31,710.

*Collection of Information:* Special Education-Personnel Preparation to Improve Services and Results for Children with Disabilities. §§ 304.1 through 304.31. Individuals who receive a scholarship through personnel preparation projects funded under the Act must subsequently provide early intervention, special education or related services to children with disabilities. These proposed regulations would implement requirements governing, among other things, the service obligation for scholars, oversight by grantees, repayment of scholarship, and procedures for obtaining deferrals or exemptions from service or repayment obligations.

Annual reporting and recordkeeping burden for this collection of information is estimated to average 4 hours for a grantee to establish written agreements and maintain information on each scholarship recipient. It is estimated that each of the 375 grantees will establish agreements and maintain information for 20 scholars. It is estimated to average 2 hours for each of 4,000 scholars to provide information to the Secretary of their progress in meeting the service requirement. Thus, the total annual reporting burden for collection 1820–0622 is 38,000 hours.

*Collection of Information:* Report of the Participation and Performance of Students with Disabilities on State Assessments. § 300.160(d). Each State (or, in the case of a district-wide assessment, the LEA) must report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, by grade and subject, the number of children with disabilities served under part B of the Act that participated in regular assessments; regular assessments with accommodations; alternate assessments aligned with academic content and achievement standards; and alternate assessments aligned with alternate achievement standards, and the performance results of children with disabilities on regular assessments and on alternate assessments. Information collection 1820–0659 has been revised to reflect changes in the statute and appropriate proposed regulations.

Annual reporting and recordkeeping burden for this collection of information is estimated to average 60 hours for each of 60 State agencies, including the time for collecting and aggregating the data and reporting data to the Secretary. Thus, the total annual reporting and recordkeeping burden for information collection 1820–0659 is 3,600 hours.

*Collection of Information:* Report of Children with Disabilities Subject to Disciplinary Removal. § 300.640. Each State must provide data to the Secretary and the public by race, ethnicity, limited English proficiency status, gender, and disability category on children with disabilities who are removed to an interim alternative educational setting and the acts or items precipitating those removals. Data must also be reported by race, ethnicity, limited English proficiency status, gender, and disability category on the number of children with disabilities who are subject to long-term suspensions or expulsions. In addition, data must be reported on the number and percentage of children with disabilities who are removed to alternative educational settings or expelled as compared to children without disabilities, and on the incidence and duration of disciplinary actions, including suspensions of one day or more. Information collection 1820–0621 has been revised to reflect the new statutory requirements and the proposed regulations.

Annual reporting and record keeping burden for this collection of information is estimated to average 17.5 hours for each of an average of 260 LEAs per State to collect, review, and report the data and 74 hours per State agency (60) to collect, maintain, and report these data. Thus, the total annual reporting and recordkeeping burden for information collection 1820–0621 for all States (60) is estimated to be 277,440 hours.

*Collection of Information:* Personnel (in Full-time Equivalency of Assignments) Employed to Provide Special Education and Related Services for Children with Disabilities. § 300.207. Each LEA must ensure that all personnel are appropriately and adequately prepared and each SEA must establish and maintain qualifications to ensure that personnel are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities. To help ensure that these requirements are met, the Secretary must collect data that can be used to monitor these requirements. Information collection 1820–0518 has been revised to reflect the new statutory requirements and the proposed regulations.

Annual reporting and recordkeeping burden for this collection of information is estimated to average 0.5 hours for each of an average of 260 LEAs per State and 2.5 hours for each of 60 State agencies. Thus, the total annual reporting and recordkeeping burden for information collection 1820–0518 for all States is 7,950 hours.

*Collection of Information:* Report of Children with Disabilities Exiting Special Education. § 300.640. Each State must report to the Secretary children by race, ethnicity, limited English proficiency status, gender, and disability category, the number of children with disabilities aged 14 through 21 who stopped receiving special education and related services because of program completion (including graduation with a regular secondary school diploma), or other reasons, and the reasons why those children stopped receiving special education and related services. Information collection 1820–0521 has been revised to reflect the new statutory requirements and the proposed regulations.

Annual reporting and recordkeeping burden for this collection of information is estimated to average 6 hours for each of an average of 260 LEAs per State and 11 hours for each of 60 State agencies. Thus, the total annual reporting and recordkeeping burden for information collection 1820–0521 for all States is 94,260 hours.

*Collection of Information:* Part B, Individuals with Disabilities Education Act Implementation of FAPE Requirements. § 300.640. Each State

must provide to the Secretary and the public data on children with disabilities by race, ethnicity, limited English proficiency status, gender, and disability category who are receiving a free appropriate public education, participating in regular education, in separate classes, separate schools or facilities, or public or private residential facilities. Information collection 1820–0517 has been revised to reflect the new statutory requirement.

Annual reporting and recordkeeping burden for this collection of information is estimated to average 27 hours for each of an average of 260 LEAs per State and 28 hours for each of 60 State agencies. Thus, the total annual reporting and recordkeeping burden for information collection 1820–0517 for all States is 422,880 hours.

*Collection of Information:* Report of Dispute Resolution Under Part B of the Individuals with Disabilities Education Act: Complaints, Mediations, and Due Process Hearings. § 300.640. Each State must report to the Secretary and the public, the number of due process complaints filed under section 615 of the Act and the number of hearings conducted; the number of hearings requested under section 615(k) of the Act and the number of changes in placement ordered as a result of those hearings; and the number of mediations held and the number of settlement agreements reached through those mediations. This new information collection has been developed to reflect the new statutory requirement.

Annual reporting and recordkeeping burden for this collection of information is estimated to average 70 hours for each of 60 State agencies. Thus, the total annual reporting and recordkeeping burden for this new information collection is estimated to be 4,200 hours.

Requests for copies of the submission for OMB review may be accessed from *http//edicsweb.ed.gov* by selecting the ''Browse Pending Collections'' link. When you access the information collection, click on ''Download Attachments'' to view. Written request 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 the Internet address *OCIO_RIMG@ed.gov* or faxed to (202) 245–6621.

If you want to comment on the information collection requirements, please send your comments to Troy R. Justesen, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, room 5126, Washington, DC 20202–2641.

*Intergovernmental Review*

This program is subject to the 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 by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of the Department's 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.

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REDESIGNATION TABLE SHOWING EACH CURRENT REGULATORY SECTION IN 34 CFR PART 300 AND THE CORRESPONDING SECTION IN THIS NPRM [1]

| A. Current regulatory section number | B. Corresponding section in NPRM |
|---|---|
| **Subpart A—General** | |
| 300.1 Purposes | 300.1. |
| 300.2 Applicability of this part to State, local, and private agencies. | 300.2. |
| 300.3 Regulations that apply. | Removed. |

REDESIGNATION TABLE SHOWING EACH CURRENT REGULATORY SECTION IN 34 CFR PART 300 AND THE CORRESPONDING SECTION IN THIS NPRM [1]—Continued

| A. Current regulatory section number | B. Corresponding section in NPRM |
|---|---|
| **Definitions Used in This Part** | |
| 300.4 Act | 300.4. |
| 300.5 Assistive technology device. | 300.5. |
| 300.6 Assistive technology service. | 300.6. |
| 300.7 Child with a disability | 300.8. |
| 300.8 Consent | Removed. |
| 300.9 Day; business day; school day. | 300.11. |
| 300.10 Educational service agency. | 300.12. |
| 300.11 Equipment | 300.14. |
| 300.12 Evaluation | Removed. |
| 300.13 Free appropriate public education. | 300.17. |
| 300.14 Include | 300.20. |
| 300.15 Individualized education program. | Removed. |
| 300.16 Individualized education program team. | 300.23. |
| 300.17 Individualized family service plan. | 300.24. |
| 300.18 Local educational agency. | 300.28. |
| 300.19 Native language | 300.29. |
| 300.20 Parent | 300.30. |
| 300.21 Personally identifiable. | Removed. |
| 300.22 Public agency | 300.33. |
| 300.23 Qualified personnel | Removed. |
| 300.24 Related services | 300.34. |
| 300.25 Secondary school | 300.35. |
| 300.26 Special education | 300.38. |
| 300.27 State | 300.39. |
| 300.28 Supplementary aids and services. | 300.41. |
| 300.29 Transition services | 300.42. |
| 300.30 Definitions in EDGAR. | Removed. |
| **Subpart B—State and Local Eligibility** | |
| 300.110 Condition of assistance. | 300.100. |
| 300.111 Exception for prior State policies and procedures on file with the Secretary. | 300.176(a). |
| 300.112 Amendments to State policies and procedures. | 300.176(b) and (c). |
| 300.113 Approval by the Secretary. | 300.178. |
| (a) General. | |
| (b) Notice and hearing before determining a State is not eligible. | 300.179. |
| 300.121 Free appropriate public education (FAPE). | 300.101(a) |
| (a) General. | |
| (b) Required information | Removed. |

REDESIGNATION TABLE SHOWING EACH CURRENT REGULATORY SECTION IN 34 CFR PART 300 AND THE CORRESPONDING SECTION IN THIS NPRM [1]—Continued

| A. Current regulatory section number | B. Corresponding section in NPRM |
|---|---|
| (c) FAPE for children beginning at age 3. | 300.101(b). |
| (d) FAPE for children suspended or expelled from school. | 300.530(d) |
| (e) Children advancing from grade to grade.. | 300.101(c). |
| 300.122 Exception to FAPE for certain ages. | 300.102. |
| 300.123 Full educational opportunity goal (FEOG). | 300.109. |
| 300.124 FEOG—timetable | 300.109. |
| 300.125 Child find ..... | 300.111(a). |
| (a) General requirement. | |
| (b) Documents related to child find. | Removed. |
| (c) Child find for children from birth through age 2 when the SEA and lead agency for the Part C program are different. | Removed. |
| (d) Construction ..... | 300.111(d). |
| (e) Confidentiality of child find data. | Removed. |
| 300.126 Procedures for evaluation and determination of eligibility. | 300.122. |
| 300.127 Confidentiality of personally identifiable information. | 300.123. |
| 300.128 Individualized education programs. | 300.112. |
| (a) General | |
| (b) Required information | Removed. |
| 300.129 Procedural safeguards. | 300.121. |
| 300.130 Least restrictive environment. | 300.114. |
| 300.132 Transition of children from Part C to preschool programs. | 300.124. |
| 300.133 Children in private schools. | 300.129. |
| 300.134 [Reserved] | |
| 300.135 Comprehensive system of personnel development. | Removed. |
| 300.136 Personnel standards. | Removed. |
| 300.137 Performance goals and indicators. | 300.157. |
| 300.138 Participation in assessments. | 300.160. |
| 300.139 Reports relating to assessments. | 300.160(d). |
| 300.141 SEA responsibility for general superision. | Removed. |
| 300.142 Methods of ensuring services. | 300.154. |
| (a)–(c); (e)–(i). | |
| (d) Information ..... | Removed. |

REDESIGNATION TABLE SHOWING EACH CURRENT REGULATORY SECTION IN 34 CFR PART 300 AND THE CORRESPONDING SECTION IN THIS NPRM [1]—Continued

| A. Current regulatory section number | B. Corresponding section in NPRM |
|---|---|
| 300.143 SEA implementation of procedural safeguards. | 300.150. |
| 300.144 Hearings relating to LEA eligibility. | 300.155. |
| 300.145 Recovery of funds for misclassified children. | Removed. |
| 300.146 Suspension and expulsion rates. | 300.170. |
| 300.147 Additional information if SEA provides direct services. | 300.175. |
| 300.148 Public participation | 300.165. |
| (a) General; exception. (1) | |
| (2) [Conditions Re-(a)(1)] | Removed. |
| (b) Documentation ..... | Removed. |
| 300.150 State advisory panel. | Removed. |
| 300.151 [Reserved]. | |
| 300.152 Prohibition against commingling. | 300.162(b). |
| 300.153 State-level nonsupplanting. | 300.162(c), 300.164. |
| 300.154 Maintenance of State financial support. | 300.163. |
| 300.155 Policies and procedures for use of Part B funds. | 300.162(a). |
| 300.156 Annual description of use of Part B funds. | 300.171. |
| (a)(1)–(2) and (b). | |
| (a)(3) [Re: % to LEAs] ... | Removed. |
| **LEA and State Agency Eligibility** | |
| 300.180 Condition of assistance. | 300.200. |
| 300.181 Exception for prior LEA or State agency policies and procedures on file with the SEA. | 300.220(a). |
| 300.182 Amendments to LEA policies and procedures. | 300.220(b) and (c). |
| 300.184 Excess cost requirement. | 300.202(a)(2). |
| (a) General. | |
| (b) Definition ..... | 300.16. |
| (c) Limitation on use of Part B funds. | 300.202(b). |
| 300.185 Meeting the excess cost requirement. | 300.202(b)(2). |
| 300.190 Joint establishment of eligibility. | 300.202(b)(3), 300.223. |
| 300.192 Requirements for establishing eligibility. | 300.224. |
| 300.194 State agency eligibility. | 300.228. |
| 300.196 Notification of LEA or State agency in case of ineligibility. | 300.221. |
| 300.197 LEA and State agency compliance. | 300.222. |

REDESIGNATION TABLE SHOWING EACH CURRENT REGULATORY SECTION IN 34 CFR PART 300 AND THE CORRESPONDING SECTION IN THIS NPRM [1]—Continued

| A. Current regulatory section number | B. Corresponding section in NPRM |
|---|---|
| 300.200 Consistency with State policies. | |
| (a) General ..... | 300.201. |
| (b) Policies on file with SEA. | Removed. |
| 300.221 Implementation of CSPD. | |
| (a) ..... | 300.207. |
| (b) ..... | Removed. |
| 300.230 Use of amounts. ... | 300.202. |
| 300.231 Maintenance of effort. | 300.203. |
| 300.232 Exception to maintenance of effort. | 300.204. |
| 300.233 Treatment of federal funds in certain fiscal years. | 300.205. |
| 300.234 Schoolwide programs under title I of the ESEA. | 300.206. |
| 300.235 Permissive use of funds. | 300.208. |
| 300.240 Information for SEA. | |
| (a) ..... | 300.211. |
| (b) ..... | Removed. |
| 300.241 Treatment of charter schools and their students. | 300.209. |
| 300.242 Public information | 300.212. |
| 300.244 Coordinated services system. | Removed. |
| 300.245 School-based improvement plan. | Removed. |
| 300.246 Plan requirements | Removed. |
| 300.247 Responsibilities of the LEA. | Removed. |
| 300.248 Limitation ..... | Removed. |
| 300.249 Additional requirements. | Removed. |
| 300.250 Extension of plan .. | Removed. |
| **Secretary of the Interior** | |
| 300.260 Submission of information. | 300.708. |
| 300.261 Public participation | 300.709. |
| 300.262 Use of Part B funds. | 300.710. |
| 300.263 Plan for coordination of services. | 300.713. |
| 300.264 Definitions ..... | 300.21. |
| 300.265 Establishment of advisory board. | 300.714. |
| 300.266 Annual report by advisory board. | 300.715. |
| 300.267 Applicable regulations. | 300.716. |
| **Public Participation** | |
| 300.280 Public hearings before adopting State policies and procedures. | Removed. |
| 300.281 Notice ..... | Removed. |

REDESIGNATION TABLE SHOWING EACH CURRENT REGULATORY SECTION IN 34 CFR PART 300 AND THE CORRESPONDING SECTION IN THIS NPRM [1]—Continued

| A. Current regulatory section number | B. Corresponding section in NPRM |
|---|---|
| 300.282 Opportunity to participate; comment period. | Removed. |
| 300.283 Review of public comments before adopting policies and procedures. | Removed. |
| 300.284 Publication and availability of approved policies and procedures. | Removed. |
| 300.300 Provision of FAPE | 300.101. |
| 300.301 FAPE—methods and payments. | 300.103. |
| 300.302 Residential placement. | 300.104 |
| 300.303 Proper functioning of hearing aids. | 300.105(b). |
| 300.304 Full educational opportunity goal. | 300.109. |
| 300.305 Program options ... | 300.110. |
| 300.306 Nonacademic services. | 300.107. |
| 300.307 Physical education | 300.108. |
| 300.308 Assistive technology. | 300.105(a). |
| 300.309 Extended school year. | 300.106. |
| 300.311 FAPE requirements for students with disabilities in adult prisons. | 300.324(d). |
| 300.312 Children with disabilities in public charter schools. | 300.209. |
| 300.313 Children experiencing developmental delays. | 300.111(b). |
| 300.320 Initial evaluations .. | 300.301. |
| 300.321 Reevaluations ..... | 300.303. |
| 300.340 Definitions related to IEPs. | 300.320. |
| (a) Individualized education program. | |
| (b) Participating agency | Removed. |
| 300.341 Responsibility of SEA and other public agencies for IEPs. | Removed. |
| 300.342 When IEPs must be in effect. | 300.323. |
| 300.343 IEP Meetings ..... | 300.323(c). |
| 300.344 IEP team ..... | 300.321. |
| 300.345 Parent participation (a)–(d) and (f). | 300.322. |
| (e) Use of interpreters or other action as appropriate. | Removed. |
| 300.346 Development, review, and revision of IEP. | 300.324. |
| 300.347 Content of IEP ..... | 300.320. |
| 300.348 Agency responsibilities for transition services. | 300.324(c). |
| 300.349 Private school placements by public agencies. | 300.325. |
| 300.350 IEPs-accountability | Removed. |
| 300.360 Use of LEA allocation for direct services. | 300.227(a). |
| (a) General | |
| (b) SEA responsibility if an LEA does not apply for Part B funds. | 300.227(a)(1). |
| (c) SEA administrative procedures. | 300.227(a)(2). |
| 300.361 Nature and location of services. | 300.227(b). |
| 300.370 Use of SEA allocations. | 300.704. |
| 300.372 Nonapplicability of requirements that prohibit commingling and supplanting of funds. | 300.704(d). |
| 300.380 General CSPD requirements. | Removed. |
| 300.381 Adequate supply of qualified personnel. | Removed. |
| 300.382 Improvement strategies. | Removed. |
| **Private School Requirements** | |
| 300.400 Applicability of §§ 300.400–300.402. | 300.145. |
| 300.401 Responsibility of State educational agency. | 300.146. |
| 300.402 Implementation by State educational agency. | 300.147. |
| 300.403 Placement of children by parents if FAPE is at issue. | 300.148. |
| 300.450 Definition of "private school children with disabilities". | 300.130. |
| 300.451 Child find for private school children with disabilities. | 300.131. |
| 300.452 Provision of services—basic requirement. | 300.132. |
| 300.453 Expenditures ..... | 300.133. |
| 300.454 Services determined. | 300.137. |
| 300.455 Services provided | 300.138 |
| 300.456 Location of services; transportation. | 300.139. |
| 300.457 Complaints ..... | 300.140. |
| 300.458 Separate classes prohibited. | 300.143. |
| 300.459 Requirement that funds not benefit a private school. | 300.141. |
| 300.460 Use of public school personnel. | 300.142(a). |
| 300.461 Use of private school personnel. | 300.142(b). |
| 300.462 Requirements concerning property, equipment, and supplies for the benefit of private school children with disabilities. | 300.144. |
| 300.480 By-pass-general .... | 300.190. |
| 300.481 Provisions for services under a by-pass. | 300.191. |
| 300.482 Notice of intent to implement a by-pass. | 300.192. |
| 300.483 Request to show cause. | 300.193. |
| 300.484 Show cause hearing. | 300.194. |
| 300.485 Decision ..... | 300.195. |
| 300.486 Filing requirements | 300.196. |
| 300.487 Judicial review ..... | 300.197. |
| **Subpart E—Procedural Safeguards** | |
| 300.500 General responsibility of public agencies; definitions. | 300.500. |
| (a) Responsibility of SEA and other public agencies. | |
| (b) Definitions ..... | 300.9. |
| (1) Consent | |
| (2) Evaluation ..... | 300.15. |
| (3) Personally identifiable | 300.32. |
| 300.501 Opportunity to examine records; parent participation in meetings. | 300.501. |
| 300.502 Independent educational evaluation. | 300.502. |
| 300.503 Prior notice by the public agency; content of notice. | 300.503. |
| 300.504 Procedural safeguards notice. | 300.504. |
| 300.505 Parental consent ... | 300.300. |
| 300.506 Mediation ..... | 300.506. |
| 300.507 Impartial due process hearing; parent notice. | 300.507, 300.508, |
| 300.508 Impartial hearing officer. | 300.511(c). |
| 300.509 Hearing rights ..... | 300.512. |
| 300.510 Finality of decision; appeal; impartial review. | 300.514. |
| 300.511 Timelines and convenience of hearings and reviews. | 300.515. |
| 300.512 Civil action ..... | 300.516. |
| 300.513 Attorneys' fees ..... | 300.517. |
| 300.514 Child's status during proceedings. | 300.518. |
| 300.515 Surrogate parents | 300.519. |
| **Discipline Procedures** | |
| 300.517 Transfer of parental rights at age of majority. | 300.520. |
| 300.519 Change of placement for disciplinary removals. | 300.536. |
| 300.520 Authority of school personnel. | 300.530. |
| 300.521 Authority of hearing officer. | 300.532(b). |
| 300.522 Determination of setting. | 300.531. |

REDESIGNATION TABLE SHOWING EACH CURRENT REGULATORY SECTION IN 34 CFR PART 300 AND THE CORRESPONDING SECTION IN THIS NPRM [1]—Continued

| A. Current regulatory section number | B. Corresponding section in NPRM |
|---|---|
| 300.523 Manifestation determination review. | 300.530(e). |
| 300.524 Determination that behavior was not manifestation of disability. | 300.530(c). |
| 300.525 Parent appeal | 300.532. |
| 300.526 Placement during appeals. | 300.533. |
| 300.527 Protections for children not yet eligible for special education and related services. | 300.534. |
| 300.528 Expedited due process hearings. | 300.532(c). |
| 300.529 Referral to and action by law enforcement and judicial authorities. | 300.535. |
| **Procedures for Evaluation and Determination of Eligibility** | |
| 300.530 General | 300.121. |
| 300.531 Initial evaluation | 300.121, 300.301. |
| 300.532 Evaluation procedures. | 300.304. |
| 300.533 Determination of needed evaluation data. | 300.305. |
| 300.534 Determination of eligibility. | 300.306(a) and (b). |
| 300.535 Procedures for determining eligibility and placement. | 300.306(c). |
| 300.536 Reevaluation | 300.303. |
| **Additional Procedures for Evaluating Children With Specific Learning Disabilities** | |
| 300.540 Additional team members. | 300.308. |
| 300.541 Criteria for determining the existence of a specific learning disability. | 300.309. |
| 300.542 Observation | 300.310. |
| 300.543 Written report | 300.311. |
| **Least Restrictive Environment** | |
| 300.550 General LRE requirements. | 300.114. |
| 300.551 Continuum of alternative placements. | 300.115. |
| 300.552 Placements | 300.116. |
| 300.553 Nonacademic settings. | 300.117. |
| 300.554 Children in public or private institutions. | 300.118. |
| 300.555 Technical assistance and training activities. | 300.119. |
| 300.556 Monitoring activities. | 300.120. |

REDESIGNATION TABLE SHOWING EACH CURRENT REGULATORY SECTION IN 34 CFR PART 300 AND THE CORRESPONDING SECTION IN THIS NPRM [1]—Continued

| A. Current regulatory section number | B. Corresponding section in NPRM |
|---|---|
| **Confidentiality of Information** | |
| 300.560 Definitions | 300.611. |
| 300.561 Notice to parents | 300.612. |
| 300.562 Access rights | 300.613. |
| 300.563 Record of access | 300.614. |
| 300.564 Records on more than one child. | 300.615. |
| 300.565 List of types and locations of information. | 300.616. |
| 300.566 Fees | 300.617. |
| 300.567 Amendment of records at parent's request. | 300.618. |
| 300.568 Opportunity for a hearing. | 300.619. |
| 300.569 Result of hearing | 300.620. |
| 300.570 Hearing procedures. | 300.621. |
| 300.571 Consent | 300.622. |
| 300.572 Safeguards | 300.623. |
| 300.573 Destruction of information. | 300.624. |
| 300.574 Children's rights | 300.625. |
| 300.575 Enforcement | 300.626. |
| 300.576 Disciplinary information. | 300.229. |
| 300.577 Department use of personally identifiable information. | 300.627. |
| **Department Procedures** | |
| 300.580 Determination by the Secretary that a State is eligible. | 300.178. |
| 300.581 Notice and hearing before determining that a State is not eligible. | 300.179. |
| 300.582 Hearing official or panel. | 300.180. |
| 300.583 Hearing procedures. | 300.181. |
| 300.584 Initial decision; final decision. | 300.182. |
| 300.585 Filing requirements | 300.183. |
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[1] See explanation at the end of this table.

*Explanation of Table:* The purpose of this table is to help readers find where a given section number in the current regulations (column A of Table) is located in this NPRM, as shown under column B. (In general, the table *does not* include any new requirements added by Pub. L. 108–446, or any proposed new regulations that would be added.) In the Table, if a specific section of the current regulations would be removed by the NPRM (*e.g.*, ''Consent'' under current § 300.8, which includes a reference to the definition of ''Consent'' in § 300.500(b)(1)), it would be shown as ''Removed'' under column B. However, because the definition of ''consent'' under current § 300.500(b)(1) would be moved to Subpart A (''Definitions'') of this NPRM, its new location (§ 300.9) would be shown opposite § 300.500(b)(1) in column B of the Table.

**List of Subjects**

*34 CFR Part 300*

Administrative practice and procedure, Education of individuals with disabilities, Elementary and secondary education, Equal educational opportunity, Grant programs—education, Privacy, Private schools, Reporting and recordkeeping requirements.

*34 CFR Part 301*

Education of individuals with disabilities, Elementary and secondary education, Equal educational opportunity, Grant programs—education, Infants and children, Reporting and recordkeeping requirements

*34 CFR Part 304*

Service obligations under special education, Personnel development to improve services and results for children with disabilities.

Dated: June 10, 2005.

**Margaret Spellings,**

*Secretary of Education.*

For the reasons discussed in this preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations as follows:

1. Revise part 300 to read as follows:

## PART 300—ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

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**Authority:** 20 U.S.C. 1221e–3, 1406, 1411–1419, unless otherwise noted.

## Subpart A—General

### Purposes and Applicability

#### § 300.1 Purposes.

The purposes of this part are—

(a) To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

(b) To ensure that the rights of children with disabilities and their parents are protected;

(c) To assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities; and

(d) To assess and ensure the effectiveness of efforts to educate children with disabilities.

(Authority: 20 U.S.C. 1400(d))

#### § 300.2 Applicability of this part to State and local agencies.

(a) *States.* This part applies to each State that receives payments under Part B of the Act, as defined in § 300.4.

(b) *Public agencies within the State.* The provisions of this part—

(1) Apply to all political subdivisions of the State that are involved in the education of children with disabilities, including:

(i) The State educational agency (SEA).

(ii) Local educational agencies (LEAs), educational service agencies (ESAs), and public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA.

(iii) Other State agencies and schools (such as Departments of Mental Health and Welfare and State schools for children with deafness or children with blindness).

(iv) State and local juvenile and adult correctional facilities; and

(2) Are binding on each public agency in the State that provides special education and related services to children with disabilities, regardless of whether that agency is receiving funds under Part B of the Act.

(c) *Private schools and facilities.* Each public agency in the State is responsible for ensuring that the rights and protections under Part B of the Act are given to children with disabilities—

(1) Referred to or placed in private schools and facilities by that public agency; or

(2) Placed in private schools by their parents under the provisions of § 300.148(b)

(Authority: 20 U.S.C. 1412)

### Definitions Used in This Part

#### § 300.4 Act.

*Act* means the Individuals with Disabilities Education Act, as amended.

(Authority: 20 U.S.C. 1400(a))

#### § 300.5 Assistive technology device.

*Assistive technology device* means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of that device.

(Authority: 20 U.S.C. 1401(1))

#### § 300.6 Assistive technology service.

*Assistive technology service* means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes—

(a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

(Authority: 20 U.S.C. 1401(2))

**§ 300.7 Charter school.**

*Charter school* has the meaning given the term in section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 *et seq.* (ESEA).

(Authority: 20 U.S.C. 7221i(1))

**§ 300.8 Child with a disability.**

(a) *General.* (1) *Child with a disability* means a child evaluated in accordance with §§ 300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as emotional disturbance), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

(2)(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§ 300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.

(ii) If, consistent with § 300.38(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

(b) *Children aged three through nine experiencing developmental delays. Child with a disability* for children aged three through nine (or any subset of that age range, including ages three through five), may, at the discretion of the State and the LEA and in accordance with § 300.111(b), include a child—

(1) Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

(2) Who, by reason thereof, needs special education and related services.

(c) *Definitions of disability terms.* The terms used in this definition of a child with a disability are defined as follows:

(1) *Autism* means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(i) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section.

(ii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.

(2) *Deaf-blindness* means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

(3) *Deafness* means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.

(4)(i) *Emotional disturbance* means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.

(5) *Hearing impairment* means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

(6) *Mental retardation* means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.

(7) *Multiple disabilities* means concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.

(8) *Orthopedic impairment* means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (*e.g.*, poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (*e.g.*, cerebral palsy, amputations, and fractures or burns that cause contractures).

(9) *Other health impairment* means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia; and

(ii) Adversely affects a child's educational performance.

(10) *Specific learning disability.* (i) *General.* Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do

mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(ii) *Disorders not included.* Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(11) *Speech or language impairment* means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

(12) *Traumatic brain injury* means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

(13) *Visual impairment including blindness* means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

(Authority: 20 U.S.C. 1401(3); 1401(30))

**§ 300.9 Consent.**

*Consent* means that—

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and (c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.

(2) If a parent revokes consent, that revocation is not retroactive (*i.e.*, it does not negate an action that has occurred after the consent was given and before the consent was revoked).

(Authority: 20 U.S.C. 1414(a)(1)(D))

**§ 300.10 Core academic subjects.**

*Core academic subjects* means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

(Authority: 20 U.S.C. 1401(4))

**§ 300.11 Day; business day; school day.**

(a) *Day* means calendar day unless otherwise indicated as business day or school day.

(b) *Business day* means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in § 300.148(c)(1)(ii)).

(c)(1) *School day* means any day, including a partial day, that children are in attendance at school for instructional purposes.

(2) *School day* has the same meaning for all children in school, including children with and without disabilities.

(Authority: 20 U.S.C. 1221e–3)

**§ 300.12 Educational service agency.**

*Educational service agency* means—

(a) A regional public multiservice agency—

(1) Authorized by State law to develop, manage, and provide services or programs to LEAs;

(2) Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State;

(b) Includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school; and

(c) Includes entities that meet the definition of intermediate educational unit in section 602(23) of the Act as in effect prior to June 4, 1997.

(Authority: 20 U.S.C. 1401(5))

**§ 300.13 Elementary school.**

*Elementary school* means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

(Authority: 20 U.S.C. 1401(6))

**§ 300.14 Equipment.**

*Equipment* means—

(a) Machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and

(b) All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

(Authority: 20 U.S.C. 1401(7))

**§ 300.15 Evaluation.**

*Evaluation* means procedures used in accordance with §§ 300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

(Authority: 20 U.S.C. 1414(a)–(c))

**§ 300.16 Excess costs.**

*Excess costs* means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting—

(a) Amounts received—

(1) Under Part B of the Act;

(2) Under Part A of title I of the ESEA; and

(3) Under Parts A and B of title III of the ESEA and;

(b) Any State or local funds expended for programs that would qualify for assistance under any of the parts described in paragraph (a) of this section.

(Authority: 20 U.S.C. 1401(8))

**§ 300.17 Free appropriate public education.**

*Free appropriate public education* or *FAPE* means special education and related services that—

(a) Are provided at public expense, under public supervision and direction, and without charge;

(b) Meet the standards of the SEA, including the requirements of this part;

(c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and

(d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.320 through 300.324.

(Authority: 20 U.S.C. 1401(9))

**§ 300.18 Highly qualified special education teacher.**

(a) *General.* For any public elementary or secondary school special education teacher, the term *highly qualified* has the meaning given the term in section 9101 of the ESEA and 34 CFR 200.56, except that the requirements for highly qualified also—

(1) Include the requirements described in paragraph (b) of this section; and

(2) Include the option for teachers to meet the requirements of section 9101 of the ESEA by meeting the requirements of paragraphs (c) and (d) of this section.

(b) *Requirements for highly qualified special education teachers.* (1) When used with respect to any public elementary school or secondary school special education teacher teaching in a State, highly qualified means that—

(i) The teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, highly qualified means that the teacher meets the requirements set forth in the State's public charter school law;

(ii) The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) The teacher holds at least a bachelor's degree.

(2) A teacher will be considered to meet the standard in paragraph (b)(1)(i) of this section if that teacher is participating in an alternative route to certification program under which—

(i) The teacher—

(A) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;

(B) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

(C) Assumes functions as a teacher only for a specified period of time not to exceed three years; and

(D) Demonstrates satisfactory progress toward full certification as prescribed by the State; and

(ii) The State ensures, through its certification and licensure process, that the provisions in paragraph (b)(2)(i) of this section are met.

(3) Any public elementary school or secondary school special education teacher teaching in a State, who is not teaching a core academic subject, is highly qualified if the teacher meets the requirements of paragraph (b)(1) or (b)(2) of this section.

(c) *Requirements for highly qualified special education teachers teaching to alternate achievement standards.* When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under 34 CFR 200.1(d), highly qualified means the teacher, whether new or not new to the profession, may either—

(1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

(2) Meet the requirements of subparagraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of subparagraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.

(d) *Requirements for highly qualified special education teachers teaching multiple subjects.* When used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, highly qualified means that the teacher may either—

(1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56(b) or (c);

(2) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR 200.56(c) which may include a single, high objective uniform State standard of evaluation covering multiple subjects; or

(3) In the case of a new special education teacher who teaches multiple subjects, and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c), which may include a single, high objective State standard of evaluation covering multiple subjects.

(e) *Rule of construction.* Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this section or part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular SEA or LEA employee to be highly qualified.

(f) *Definition for purposes of the ESEA.* A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.

(g) The requirements in this section do not apply to teachers hired by private elementary schools and secondary schools.

(Authority: 20 U.S.C. 1401(10))

### § 300.19 Homeless children.

*Homeless children* has the meaning given the term *homeless children and youths* in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 *et seq.*

(Authority: 20 U.S.C. 1401(11))

### § 300.20 Include.

*Include* means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

(Authority: 20 U.S.C. 1221e–3)

### § 300.21 Indian and Indian tribe.

(a) *Indian* means an individual who is a member of an Indian tribe.

(b) *Indian tribe* means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.*).

(Authority: 20 U.S.C. 1401(12) and (13))

### § 300.22 Individualized education program.

*Individualized education program* or *IEP* means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with §§ 300.320 through 300.324.

(Authority: 20 U.S.C. 1401(14))

### § 300.23 Individualized education program team.

*Individualized education program team* or *IEP Team* means a group of individuals described in § 300.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

(Authority: 20 U.S.C. 1414(d)(1)(B))

### § 300.24 Individualized family service plan.

*Individualized family service plan* or *IFSP* has the meaning given the term in section 636 of the Act.

(Authority: 20 U.S.C. 1401(15))

**§ 300.25 Infant or toddler with a disability.**

*Infant or toddler with a disability* has the meaning given the term in section 632(5) of the Act.

(Authority: 20 U.S.C. 1401(16))

**§ 300.26 Institution of higher education.**

*Institution of higher education*—

(a) Has the meaning given the term in section 101 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1021 *et seq.* (HEA); and

(b) Also includes any community college receiving funds from the Secretary of the Interior under the Tribally Controlled Community College or University Assistance Act of 1978, 25 U.S.C. 1801, *et seq.*

(Authority: 20 U.S.C. 1401(17))

**§ 300.27 Limited English proficient.**

*Limited English proficient* has the meaning given the term in section 9101(25) of the ESEA.

(Authority: 20 U.S.C. 1401(18))

**§ 300.28 Local educational agency.**

(a) *General. Local educational agency* or *LEA* means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(b) *Educational service agencies and other public institutions or agencies.* The term includes—

(1) An educational service agency, as defined in § 300.12; and

(2) Any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public charter school that is established as an LEA under State law.

(c) *BIA funded schools.* BIA funded schools include an elementary school or secondary school funded by the Bureau of Indian Affairs, and not subject to the jurisdiction of any SEA other than the Bureau of Indian Affairs, but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the Act with the smallest student population.

(Authority: 20 U.S.C. 1401(19))

**§ 300.29 Native language.**

(a) *Native language,* when used with respect to an individual who is limited English proficient, means the following:

(1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section.

(2) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

(b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

(Authority: 20 U.S.C. 1401(20))

**§ 300.30 Parent.**

(a) *Parent* means—

(1) A natural or adoptive parent of a child;

(2) A foster parent, unless State law, regulations or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;

(3) A guardian (but not the State if the child is a ward of the State);

(4) An individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or

(5) A surrogate parent who has been appointed in accordance with sections 615(b)(2) or 639(a)(5) of the Act.

(b)(1) Except as provided in paragraph (b)(2) of this section, the natural or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the natural or adoptive parent does not have legal authority to make educational decisions for the child.

(2) If a judicial decree or order identifies a specific person or persons to act as the ''parent'' of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the ''parent'' for purposes of this section, except that a public agency that provides education or care for the child may not act as the parent.

(Authority: 20 U.S.C. 1401(23))

**§ 300.31 Parent training and information center.**

Parent training and information center means a center assisted under sections 671 or 672 of the Act.

(Authority: 20 U.S.C. 1401(25))

**§ 300.32 Personally identifiable.**

*Personally identifiable* means information that contains—

(a) The name of the child, the child's parent, or other family member;

(b) The address of the child;

(c) A personal identifier, such as the child's social security number or student number; or

(d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(Authority: 20 U.S.C. 1415(a))

**§ 300.33 Public agency.**

*Public agency* includes the SEA, LEAs, ESAs, public charter schools that are not otherwise included as LEAs or ESAs and are not otherwise included as LEAs or ESAs, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

(Authority: 20 U.S.C. 1412(a)(11))

**§ 300.34 Related services.**

(a) *General. Related services* means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also includes school health services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the IEP of the child, social work services in schools, and parent counseling and training.

(b) *Exception.* Related services do not include a medical device that is surgically implanted, the optimization of device functioning, maintenance of the device, or the replacement of that device.

(c) *Individual related services terms defined.* The terms used in this definition are defined as follows:

(1) *Audiology* includes—

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and

(vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) *Counseling services* means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) *Early identification and assessment of disabilities in children* means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) *Interpreting services*, as used with respect to children who are deaf or hard of hearing, includes oral transliteration services, cued language transliteration services, and sign language interpreting services.

(5) *Medical services* means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(6)(i) *Occupational therapy* means—

(i) Services provided by a qualified occupational therapist; and

(ii) Includes—

(A) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;

(B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(C) Preventing, through early intervention, initial or further impairment or loss of function.

(7) *Orientation and mobility services*—(i) Means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and

(ii) Includes travel training instruction, and teaching students the following, as appropriate:

(A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (*e.g.*, using sound at a traffic light to cross the street);

(B) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;

(C) To understand and use remaining vision and distance low vision aids; and

(D) Other concepts, techniques, and tools.

(8) *Parent counseling and training* means—

(i) Assisting parents in understanding the special needs of their child;

(ii) Providing parents with information about child development; and

(iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

(9) *Physical therapy* means services provided by a qualified physical therapist.

(10) *Psychological services* includes—

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(iv) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

(v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and

(vi) Assisting in developing positive behavioral intervention strategies.

(11) *Recreation* includes—

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in schools and community agencies; and

(iv) Leisure education.

(12) *Rehabilitation counseling services* means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 *et seq.*

(13) *School nurse services* means services provided by a qualified school nurse, designed to enable a child with a disability to receive FAPE as described in the child's IEP.

(14) *Social work services in schools* includes—

(i) Preparing a social or developmental history on a child with a disability;

(ii) Group and individual counseling with the child and family;

(iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;

(iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and

(v) Assisting in developing positive behavioral intervention strategies.

(15) *Speech-language pathology services* includes—

(i) Identification of children with speech or language impairments;

(ii) Diagnosis and appraisal of specific speech or language impairments;

(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

(iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and

(v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(16) *Transportation* includes—

(i) Travel to and from school and between schools;

(ii) Travel in and around school buildings; and

(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

(Authority: 20 U.S.C. 1401(26))

**§ 300.35 Secondary school.**

*Secondary school* means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

(Authority: 20 U.S.C. 1401(27))

**§ 300.36 Services plan.**

*Services plan* means a written statement that describes the special education and related services the LEA will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location

of the services and any transportation necessary, consistent with § 300.132, and is developed and implemented in accordance with §§ 300.137 through 300.139.

(Authority: 20 U.S.C. 1412(a)(10)(A))

**§ 300.37 Secretary.**

*Secretary* means the Secretary of Education.

(Authority: 20 U.S.C. 1401(28))

**§ 300.38 Special education.**

(a) *General.* (1) *Special education* means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—

(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(ii) Instruction in physical education.

(2) *Special education* includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section—

(i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;

(ii) Travel training; and

(iii) Vocational education.

(b) *Individual special education terms defined.* The terms in this definition are defined as follows:

(1) *At no cost* means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

(2) *Physical education:*

(i) Means the development of—

(A) Physical and motor fitness;

(B) Fundamental motor skills and patterns; and

(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and

(ii) Includes special physical education, adapted physical education, movement education, and motor development.

(3) *Specially designed instruction* means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—

(i) To address the unique needs of the child that result from the child's disability; and

(ii) To ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.

(4) *Travel training* means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to—

(i) Develop an awareness of the environment in which they live; and

(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (*e.g.*, in school, in the home, at work, and in the community).

(5) *Vocational education*: means (i) organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree; and

(ii) Includes vocational and technical education.

(6) *Vocational and technical education* means organized educational activities that—

(i) Offer a sequence of courses that—

(A) Provides individuals with the rigorous and challenging academic and technical knowledge and skills the individuals need to prepare for further education and for careers (other than careers requiring a Master's or doctoral degree) in current or emerging employment sectors;

(B) May include the provision of skills or courses necessary to enroll in a sequence of courses that meet the requirements of this subparagraph; and

(C) Provides, at the postsecondary level, for a 1-year certificate, an associate degree, or industry-recognized credential; and

(ii) Include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills, or an individual.

(Authority: 20 U.S.C.1401(29))

**§ 300.39 State.**

*State* means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

(Authority: 20 U.S.C. 1401(31))

**§ 300.40 State educational agency.**

*State educational agency* or *SEA* means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(Authority: 20 U.S.C. 1401(32))

**§ 300.41 Supplementary aids and services.**

*Supplementary aids and services* means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§ 300.112 through 300.116.

(Authority: 20 U.S.C. 1401(33))

**§ 300.42 Transition services.**

(a) *Transition services* means a coordinated set of activities for a child with a disability that—

(1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(2) Is based on the individual child's needs, taking into account the child's strengths, preferences and interests; and includes—

(i) Instruction;

(ii) Related services;

(iii) Community experiences;

(iv) The development of employment and other post-school adult living objectives; and

(v) If appropriate, acquisition of daily living skills and functional vocational evaluation.

(b) *Transition services* for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

(Authority: 20 U.S.C. 1401(34))

**§ 300.43 Universal design.**

Universal design has the meaning given the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002.

(Authority: 20 U.S.C. 1401(35))

**§ 300.44 Ward of the State.**

(a) General. Subject to paragraph (b) of this section, *ward of the State* means a child who, as determined by the State where the child resides, is—

(1) A foster child;

(2) A ward of the State; or

(3) In the custody of a public child welfare agency.

(b) *Exception.* Ward of the State does not include a foster child who has a foster parent who meets the definition of a *parent* in § 300.30.

(Authority: 20 U.S.C. 1401(36))

## Subpart B—State Eligibility

### General

#### § 300.100 Eligibility for assistance.

A State is eligible for assistance under Part B of the Act for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets the conditions in §§ 300.101 through 300.176.

(Authority: 20 U.S.C. 1412(a))

### FAPE Requirements

#### § 300.101 Free appropriate public education (FAPE).

(a) *General.* A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in § 300.530(d).

(b) *FAPE for children beginning at age 3.* (1) Each State must ensure that—

(i) The obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday; and

(ii) An IEP or an IFSP is in effect for the child by that date, in accordance with § 300.323(b).

(2) If a child's third birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP or IFSP will begin.

(c) *Children advancing from grade to grade.* (1) Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child is advancing from grade to grade.

(2) The determination that a child described in paragraph (a) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making those determinations.

(Authority: 20 U.S.C. 1412(a)(1)(A))

#### § 300.102 Limitation—exception to FAPE for certain ages.

(a) *General.* The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:

(1) Children aged 3, 4, 5, 18, 19, 20, or 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children of those ages.

(2)(i) Children aged 18 through 21 to the extent that State law does not require that special education and related services under Part B of the Act be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility—

(A) Were not actually identified as being a child with a disability under § 300.8; and

(B) Did not have an IEP under Part B of the Act.

(ii) The exception in paragraph (a)(2)(i) of this section does not apply to children with disabilities, aged 18 through 21, who—

(A) Had been identified as a child with a disability under § 300.8 and had received services in accordance with an IEP, but who left school prior to their incarceration; or

(B) Did not have an IEP in their last educational setting, but who had actually been identified as a child with a disability under § 300.8.

(3)(i) Children with disabilities who have graduated from high school with a regular high school diploma.

(ii) The exception in paragraph (a)(3)(i) of this section does not apply to students who have graduated but have not been awarded a regular high school diploma.

(iii) Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with § 300.503.

(4) Children with disabilities who are eligible under subpart H of this part, but who receive early intervention services under Part C of the Act.

(b) *Documents relating to exceptions.* The State must assure that the information it has provided to the Secretary regarding the exceptions in paragraph (a) of this section, as required by § 300.700 (for purposes of making grants to States under this part), is current and accurate.

(Authority: 20 U.S.C. 1412(a)(1)(B)–(C))

### Other FAPE Requirements

#### § 300.103 FAPE—methods and payments.

(a) Each State may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of this part. For example, if it is necessary to place a child with a disability in a residential facility, a State could use joint agreements between the agencies involved for sharing the cost of that placement.

(b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.

(c) Consistent with § 300.323(c), the State must ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

(Authority: 20 U.S.C. 1401(8), 1412(a)(1))

#### § 300.104 Residential placement.

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

(Authority: 20 U.S.C. 1412(a)(1), 1412(a)(10)(B))

#### § 300.105 Assistive technology; proper functioning of hearing aids.

(a)(1) Each public agency must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §§ 300.5 and 300.6, respectively, are made available to a child with a disability if required as a part of the child's—

(i) Special education under § 300.36;

(ii) Related services under § 300.34; or

(iii) Supplementary aids and services under §§ 300.38 and 300.114(a)(2)(ii).

(2) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive FAPE.

(b) Each public agency must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

(Authority: 20 U.S.C. 1412(a)(1), 1412(a)(12)(B)(i))

#### § 300.106 Extended school year services.

(a) *General.* (1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.

(2) Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with §§ 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.

(3) In implementing the requirements of this section, a public agency may not—

(i) Limit extended school year services to particular categories of disability; or

(ii) Unilaterally limit the type, amount, or duration of those services.

(b) *Definition.* As used in this section, the term extended school year services means special education and related services that—

(1) Are provided to a child with a disability—

(i) Beyond the normal school year of the public agency;

(ii) In accordance with the child's IEP; and

(iii) At no cost to the parents of the child; and

(2) Meet the standards of the SEA.

(Authority: 20 U.S.C. 1412(a)(1))

**§ 300.107 Nonacademic services.**

The State must ensure the following:

(a) Each public agency must take steps to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

(Authority: 20 U.S.C. 1412(a)(1))

**§ 300.108 Physical education.**

The State must ensure that public agencies in the State comply with the following:

(a) *General.* Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE.

(b) *Regular physical education.* Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless—

(1) The child is enrolled full time in a separate facility; or

(2) The child needs specially designed physical education, as prescribed in the child's IEP.

(c) *Special physical education.* If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs.

(d) *Education in separate facilities.* The public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with paragraphs (a) and (c) of this section.

(Authority: 20 U.S.C. 1412(a)(5)(A))

**§ 300.109 Full educational opportunity goal (FEOG).**

The State must have in effect policies and procedures to demonstrate that the State has established a goal of providing full educational opportunity to all children with disabilities, aged birth through 21, and a detailed timetable for accomplishing that goal.

(Authority: 20 U.S.C. 1412(a)(2))

**§ 300.110 Program options.**

The State must ensure that each public agency takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

(Authority: 20 U.S.C. 1412(a)(2), 1413(a)(1))

**§ 300.111 Child find.**

(a) *General.* (1) The State must have in effect policies and procedures to ensure that—

(i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and

(ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

(b) *Use of term developmental delay.* (1) The following provisions apply with respect to implementing the child find requirements of this section:

(i) A State that adopts a definition of *developmental delay* under § 300.8(b) determines whether the term applies to children aged three through nine, or to a subset of that age range (*e.g.*, ages three through five).

(ii) A State may not require an LEA to adopt and use the term *developmental delay* for any children within its jurisdiction.

(iii) If an LEA uses the term *developmental delay* for children described in § 300.8(b), the LEA must conform to both the State's definition of that term and to the age range that has been adopted by the State.

(iv) If a State does not adopt the term *developmental delay*, an LEA may not independently use that term as a basis for establishing a child's eligibility under this part.

(2) [Reserved].

(c) *Other children in child find.* Child find also must include—

(1) Children who are suspected of being a child with a disability under § 300.8 and in need of special education, even though they are advancing from grade to grade; and

(2) Highly mobile children, including migrant children.

(d) *Construction.* Nothing in the Act requires that children be classified by their disability so long as each child who has a disability that is listed in § 300.8 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.

(Authority: 20 U.S.C. 1401(3)); 1412(a)(3))

**§ 300.112 Individualized education programs (IEP).**

The State must ensure that an IEP, or an IFSP that meets the requirements of section 636(d) of the Act, is developed, reviewed, and revised for each child with a disability in accordance with §§ 300.320 through 300.324, except as provided in § 300.300(b)(3)(ii).

(Authority: 20 U.S.C. 1412(a)(4))

**§ 300.113 [Reserved]**

**Least Restrictive Environment (LRE)**

**§ 300.114 LRE requirements.**

(a) *General.* (1) Except as provided in § 300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and §§ 300.115 through 300.120.

(2) Each public agency must ensure that—

(i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

(ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if

the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(b) *Additional requirement-State funding mechanism.*

(1) *General.* (i) A State funding mechanism must not result in placements that violate the requirements of paragraph (a) of this section; and

(ii) A State must not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability FAPE according to the unique needs of the child, as described in the child's IEP.

(2) *Assurance.* If the State does not have policies and procedures to ensure compliance with paragraph (b)(1) of this section, the State must provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that the mechanism does not result in placements that violate that paragraph.

(Authority: 20 U.S.C. 1412(a)(5))

**§ 300.115 Continuum of alternative placements.**

(a) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

(b) The continuum required in paragraph (a) of this section must—

(1) Include the alternative placements listed in the definition of special education under § 300.38 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and

(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

(Authority: 20 U.S.C. 1412(a)(5))

**§ 300.116 Placements.**

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that—

(a) The placement decision—

(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(2) Is made in conformity with the LRE provisions of this subpart, including §§ 300.114 through 300.118;

(b) The child's placement—

(1) Is determined at least annually;

(2) Is based on the child's IEP; and

(3) Is as close as possible to the child's home, unless the parent agrees otherwise;

(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled, unless the parent agrees otherwise;

(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and

(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

(Authority: 20 U.S.C. 1412(a)(5))

**§ 300.117 Nonacademic settings.**

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 300.107, each public agency must ensure that each child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of that child.

(Authority: 20 U.S.C. 1412(a)(5))

**§ 300.118 Children in public or private institutions.**

Except as provided in § 300.149(d) (regarding agency responsibility for general supervision for some individuals in adult prisons), an SEA must ensure that § 300.114 is effectively implemented, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures).

(Authority: 20 U.S.C. 1412(a)(5))

**§ 300.119 Technical assistance and training activities.**

Each SEA must carry out activities to ensure that teachers and administrators in all public agencies—

(a) Are fully informed about their responsibilities for implementing § 300.114; and

(b) Are provided with technical assistance and training necessary to assist them in this effort.

(Authority: 20 U.S.C. 1412(a)(5))

**§ 300.120 Monitoring activities.**

(a) The SEA must carry out activities to ensure that § 300.112 is implemented by each public agency.

(b) If there is evidence that a public agency makes placements that are inconsistent with § 300.114, the SEA must—

(1) Review the public agency's justification for its actions; and

(2) Assist in planning and implementing any necessary corrective action.

(Authority: 20 U.S.C. 1412(a)(5))

**Additional Eligibility Requirements**

**§ 300.121 Procedural safeguards.**

(a) *General.* The State must have procedural safeguards in effect to ensure that each public agency in the State meets the requirements of §§ 300.500 through 300.536.

(b) *Procedural safeguards identified.* Children with disabilities and their parents must be afforded the procedural safeguards identified in paragraph (a) of this section.

(Authority: 20 U.S.C. 1412(a)(6)(A))

**§ 300.122 Evaluation.**

Children with disabilities must be evaluated in accordance with §§ 300.300 through 300.311 of subpart D of this part.

(Authority: 20 U.S.C. 1412(a)(7))

**§ 300.123 Confidentiality of personally identifiable information.**

The State must have policies and procedures in effect to ensure that public agencies in the State comply with §§ 300.610 through 300.626 related to protecting the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the Act.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

**§ 300.124 Transition of children from the Part C program to preschool programs.**

The State must have in effect policies and procedures to ensure that—

(a) Children participating in early intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9) of the Act;

(b) By the third birthday of a child described in paragraph (a) of this section, an IEP or, if consistent with § 300.323(b) and section 636(d) of the Act, an IFSP, has been developed and is being implemented for the child consistent with § 300.101(b); and

(c) Each affected LEA will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10) of the Act.

(Authority: 20 U.S.C. 1412(a)(9))

**§§ 300.125–300.128 [Reserved]**

**Children in Private Schools**

**§ 300.129 State responsibility regarding children in private schools.**

The State must have in effect policies and procedures that ensure that LEAs, and, if applicable, the SEA, meet the private school requirements in §§ 300.130 through 300.148.

(Authority: 20 U.S.C. 1412(a)(10))

**Children With Disabilities Enrolled by Their Parents in Private Schools**

**§ 300.130 Definition of parentally-placed private school children with disabilities.**

*Parentally-placed private school children with disabilities* means children with disabilities enrolled by their parents in private schools or facilities other than children with disabilities covered under §§ 300.145 through 300.147.

(Authority: 20 U.S.C. 1412(a)(10)(A))

**§ 300.131 Child find for parentally-placed private school children with disabilities.**

(a) *General.* Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, in accordance with paragraphs (b) through (e) of this section, and §§ 300.111 and 300.201.

(b) *Child find design.* The child find process must be designed to ensure—

(1) The equitable participation of parentally-placed private school children; and

(2) An accurate count of those children.

(c) *Activities.* In carrying out the requirements of this section, the LEA, or, if applicable, the SEA, must undertake activities similar to the activities undertaken for the agency's public school children.

(d) *Cost.* The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if an LEA has met its obligation under § 300.133.

(e) *Completion period.* The child find process must be completed in a time period comparable to that for other students attending public schools in the LEA consistent with § 300.301.

(Authority: 20 U.S.C. 1412(a)(10)(A)(ii))

**§ 300.132 Provision of services for parentally-placed private school children with disabilities—basic requirement.**

(a) *General.* To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services determined in accordance with § 300.137, unless the Secretary has arranged for services to those children under the by-pass provisions in §§ 300.190 through 300.198.

(b) *SEA responsibility—services plan.* In accordance with paragraph (a) of this section and §§ 300.137 through 300.139, a services plan must be developed and implemented for each private school child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services under this part.

(c) *Record keeping.* Each LEA must maintain in its records, and provide to the SEA, the following information related to parentally-placed private school children covered under §§ 300.130 through 300.144:

(1) The number of children evaluated;

(2) The number of children determined to be children with disabilities; and

(3) The number of children served.

(Authority: 20 U.S.C. 1412(a)(10)(A)(i))

**§ 300.133 Expenditures.**

(a) *Formula.* To meet the requirement of § 300.132(a), each LEA shall spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities:

(1) For children aged 3 through 21, an amount that is the same proportion of the LEA's total subgrant under section 611(g) of the Act as the number of private school children with disabilities aged 3 through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged 3 through 21.

(2) For children aged three through five, an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three through five.

(b) *Calculating proportionate amount.* In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, the LEA, after timely and meaningful consultation with representatives of private schools under § 300.134, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the LEA.

(c) *Child count.* (1) Each LEA must—

(i) Consult with representatives of parentally-placed private school children with disabilities (consistent with § 300.134) in deciding how to conduct the annual count of the number of parentally-placed private school children with disabilities; and

(ii) Ensure that the count is conducted on any date between October 1 and December 1 of each year.

(2) The child count must be used to determine the amount that the LEA must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year.

(d) *Supplement, not supplant.* State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities under this part.

(Authority: 20 U.S.C. 1412(a)(10)(A))

**§ 300.134 Consultation.**

To ensure timely and meaningful consultation, an LEA, or, if appropriate, an SEA, must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:

(a) *Child find.* The child find process, including—

(1) How parentally-placed private school children suspected of having a disability can participate equitably; and

(2) How parents, teachers, and private school officials will be informed of the process.

(b) *Proportionate share of funds.* The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under § 300.133(b), including the

determination of how the proportionate share of those funds was calculated.

(c) *Consultation process.* The consultation process among the LEA, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.

(d) *Provision of special education and related services.* How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of—

(1) The types of services, including direct services and alternate service delivery mechanisms; and

(2) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and

(3) How and when those decisions will be made;

(e) *Written explanation by LEA regarding services.* How, if the LEA disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract) the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.

(Authority: 20 U.S.C. 1412(a)(10)(A)(iii))

**§ 300.135 Written affirmation.**

(a) When timely and meaningful consultation, as required by § 300.134, has occurred, the LEA must obtain a written affirmation signed by the representatives of participating private schools.

(b) If the representatives do not provide the affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the SEA.

(Authority: 20 U.S.C. 1412(a)(10)(A)(iv))

**§ 300.136 Compliance.**

(a) *General.* A private school official has the right to submit a complaint to the SEA under §§ 300.151 through 300.153 that the LEA—

(1) Did not engage in consultation that was meaningful and timely; or

(2) Did not give due consideration to the views of the private school official.

(b) *Procedure.* (1) If the private school official wishes to submit a complaint, the official must provide to the SEA the basis of the noncompliance by the LEA with the applicable private school provisions in this part; and

(2) The LEA must forward the appropriate documentation to the SEA.

(3)(i) If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary by providing the information on noncompliance described in paragraph (b)(1) of this section; and

(ii) The SEA must forward the appropriate documentation to the Secretary.

(Authority: 20 U.S.C. 1412(a)(10)(A)(v))

**§ 300.137 Equitable services determined.**

(a) *No individual right to special education and related services.* No private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

(b) *Decisions.* (1) Decisions about the services that will be provided to parentally-placed private school children with disabilities under §§ 300.130 through 300.144 must be made in accordance with paragraph (c) of this section and § 300.134(c).

(2) The LEA must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.

(c) *Services plan for each child served under §§ 300.130 through 300.144.* If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from an LEA, the LEA must—

(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with § 300.138(b); and

(2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.

(Authority: 20 U.S.C. 1412(a)(10)(A))

**§ 300.138 Equitable services provided.**

(a) *General.* (1) The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools.

(2) Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

(b) *Services provided in accordance with a services plan.* (1) Each parentally-placed private school child with a disability who has been designated to receive services under § 300.132 must have a services plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined, through the process described in §§ 300.134 and 300.137, it will make available to parentally-placed private school children with disabilities.

(2) The services plan must, to the extent appropriate—

(i) Meet the requirements of § 300.320, or for a child ages three through five, meet the requirements of § 300.323(b) with respect to the services provided; and

(ii) Be developed, reviewed, and revised consistent with §§ 300.321 through 300.324.

(c) *Provision of equitable services.* (1) The provision of services pursuant to this section and §§ 300.139 through 300.143 must be provided:

(i) By employees of a public agency; or

(ii) Through contract by the public agency with an individual, association, agency, organization, or other entity.

(2) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

(Authority: 20 U.S.C. 1412(a)(10)(A)(vi))

**§ 300.139 Location of services and transportation.**

(a) *Services on private school premises.* Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.

(b) *Transportation.* (1) *General.*

(i) If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation—

(A) From the child's school or the child's home to a site other than the private school; and

(B) From the service site to the private school, or to the child's home, depending on the timing of the services.

(ii) LEAs are not required to provide transportation from the child's home to the private school.

(2) *Cost of transportation.* The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the

LEA has met the requirement of § 300.133.

(Authority: 20 U.S.C. 1412(a)(10)(A))

**§ 300.140 Due process complaints and State complaints.**

(a) *Due process not applicable, except for child find.* (1) Except as provided in paragraph (a)(2) of this section, the procedures in §§ 300.504 through 300.519 do not apply to complaints that an LEA has failed to meet the requirements of §§ 300.132 through 300.139, including the provision of services indicated on the child's services plan.

(2) The procedures in §§ 300.504 through 300.519 do apply to complaints that an LEA has failed to meet the requirements of § 300.131, including the requirements of §§ 300.300 through 300.311.

(b) *State complaints.* Complaints that an SEA or LEA has failed to meet the requirements of §§ 300.132 through 300.144 must be filed under the procedures in §§ 300.151 through 300.153.

(Authority: 20 U.S.C. 1412(a)(10)(A))

**§ 300.141 Requirement that funds not benefit a private school.**

(a) An LEA may not use funds provided under section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school.

(b) The LEA must use funds provided under Part B of the Act to meet the special education and related services needs of parentally-placed private school children with disabilities, but not for—

(1) The needs of a private school; or

(2) The general needs of the students enrolled in the private school.

(Authority: 20 U.S.C. 1412(a)(10)(A))

**§ 300.142 Use of personnel.**

(a) *Use of public school personnel.* An LEA may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities—

(1) To the extent necessary to provide services under §§ 300.130 through 300.144 for parentally-placed private school children with disabilities; and

(2) If those services are not normally provided by the private school.

(b) *Use of private school personnel.* An LEA may use funds available under sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under §§ 300.130 through 300.144 if—

(1) The employee performs the services outside of his or her regular hours of duty; and

(2) The employee performs the services under public supervision and control.

(Authority: 20 U.S.C. 1412(a)(10)(A))

**§ 300.143 Separate classes prohibited.**

An LEA may not use funds available under section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the students if—

(a) The classes are at the same site; and

(b) The classes include students enrolled in public schools and students enrolled in private schools.

(Authority: 20 U.S.C. 1412(a)(10)(A))

**§ 300.144 Property, equipment, and supplies.**

(a) A public agency must control and administer the funds used to provide special education and related services under §§ 300.137 through 300.139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the Part B program.

(c) The public agency must ensure that the equipment and supplies placed in a private school—

(1) Are used only for Part B purposes; and

(2) Can be removed from the private school without remodeling the private school facility.

(d) The public agency must remove equipment and supplies from a private school if—

(1) The equipment and supplies are no longer needed for Part B purposes; or

(2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.

(e) No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.

(Authority: 20 U.S.C. 1412(a)(10)(A)(vii))

**Children With Disabilities in Private Schools Placed or Referred by Public Agencies**

**§ 300.145 Applicability of §§ 300.145 through 300.147.**

Sections 300.146 through 300.147 apply only to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.

(Authority: 20 U.S.C. 1412(a)(10)(B))

**§ 300.146 Responsibility of State educational agency.**

Each SEA must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency—

(a) Is provided special education and related services—

(1) In conformance with an IEP that meets the requirements of §§ 300.320 through 300.325; and

(2) At no cost to the parents;

(b) Is provided an education that meets the standards that apply to education provided by the SEA and LEAs including the requirements of this part, except for § 300.18 and § 300.156(c); and

(c) Has all of the rights of a child with a disability who is served by a public agency.

(Authority: 20 U.S.C. 1412(a)(10)(B))

**§ 300.147 Implementation by State educational agency.**

In implementing § 300.146, the SEA must—

(a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

(b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and

(c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.

(Authority: 20 U.S.C. 1412(a)(10)(B))

**Children With Disabilities Enrolled by Their Parents in Private Schools When FAPE Is at Issue**

**§ 300.148 Placement of children by parents if FAPE Is at issue.**

(a) *General.* This part does not require an LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with §§ 300.131 through 300.144.

(b) *Reimbursement for private school placement.* If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing

officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.

(c) *Limitation on reimbursement.* The cost of reimbursement described in paragraph (b) of this section may be reduced or denied—

(1) If—

(i) At the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (c)(1)(i) of this section;

(2) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in § 300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(d) *Exception.* Notwithstanding the notice requirement in paragraph (c)(1) of this section, the cost of reimbursement—

(1) Must not be reduced or denied for failure to provide the notice if—

(i) The school prevented the parent from providing the notice;

(ii) The parents had not received notice, pursuant to section 615 of the Act, of the notice requirement in paragraph (c)(1) of this section; or

(iii) Compliance with paragraph (c)(1) of this section would likely result in physical harm to the child; and

(2) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if—

(i) The parent is not literate or cannot write in English; or

(ii) Compliance with paragraph (c)(1) of this section would likely result in serious emotional harm to the child.

(Authority: 20 U.S.C. 1412(a)(10)(C))

**§ 300.149 State educational agency responsibility for general supervision.**

(a) The SEA is responsible for ensuring—

(1) That the requirements of this part are carried out; and

(2) That each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency (but not including elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior)—

(i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA; and

(ii) Meets the educational standards of the SEA (including the requirements of this part).

(3) In carrying out this part with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 *et seq.*) are met.

(b) The State must have in effect policies and procedures to ensure that it complies with the monitoring and enforcement requirements in §§ 300.600 through 300.602 and §§ 300.606 through 300.608.

(c) Part B of the Act does not limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of FAPE to children with disabilities in the State.

(d) Notwithstanding paragraph (a) of this section, the Governor (or another individual pursuant to State law) may assign to any public agency in the State the responsibility of ensuring that the requirements of Part B of the Act are met with respect to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

(Authority: 20 U.S.C. 1412(a)(11); 1416)

**§ 300.150 State educational agency implementation of procedural safeguards.**

The SEA (and any agency assigned responsibility pursuant to § 300.149(d)) must have in effect procedures to inform each public agency of its responsibility for ensuring effective implementation of procedural safeguards for the children with disabilities served by that public agency.

(Authority: 20 U.S.C. 1412(a)(11); 1415(a))

**State Complaint Procedures**

**§ 300.151 Adoption of State complaint procedures.**

(a) *General.* Each SEA must adopt written procedures for—

(1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of § 300.153 by—

(i) Providing for the filing of a complaint with the SEA; and

(ii) At the SEA's discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint; and

(2) Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State procedures under §§ 300.151 through 300.153.

(b) *Remedies for denial of appropriate services.* In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address—

(1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child; and

(2) Appropriate future provision of services for all children with disabilities.

(Authority: 20 U.S.C. 1221e–3)

**§ 300.152 Minimum State complaint procedures.**

(a) *Time limit; minimum procedures.* Each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under § 300.153 to—

(1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;

(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(3) Provide the public agency with the opportunity to respond to the complaint, including, at a minimum—

(A) At the discretion of the public agency, a proposal to resolve the complaint; and

(B) With the consent of the parent, an opportunity for the public agency to engage the parent in mediation, or alternative means of dispute resolution;

(4) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part; and

(5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains—

(i) Findings of fact and conclusions; and

(ii) The reasons for the SEA's final decision.

(b) *Time extension; final decision; implementation.* The SEA's procedures described in paragraph (a) of this section also must—

(1) Permit an extension of the time limit under paragraph (a) of this section only if—

(i) Exceptional circumstances exist with respect to a particular complaint; or

(ii) The parent and the public agency involved agree to extend the time to conduct the activities pursuant to paragraph (a)(3)(B) of this section; and

(2) Include procedures for effective implementation of the SEA's final decision, if needed, including—

(i) Technical assistance activities;

(ii) Negotiations; and

(iii) Corrective actions to achieve compliance.

(c) *Complaints filed under this section and due process hearings under § 300.507 and §§ 300.530 through 300.532.* (1) If a written complaint is received that is also the subject of a due process hearing under § 300.507 or §§ 300.530 through 300.532, the State must set aside the complaint until the conclusion of the procedures in § 300.507 or §§ 300.530 through 300.532.

(2) If an issue is raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties—

(i) The due process hearing decision is binding on that issue; and

(ii) The SEA must inform the complainant to that effect.

(Authority: 20 U.S.C. 1221e–3)

**§ 300.153 Filing a complaint.**

(a) An organization or individual may file a signed written complaint under the procedures described in §§ 300.151 through 300.152.

(b) The complaint must include—

(1) A statement that a public agency has violated a requirement of Part B of the Act or of this part;

(2) The facts on which the statement is based;

(3) The signature and contact information for the complainant; and

(4) If alleging violations against a specific child—

(i) The name and address of the residence of the child;

(ii) The name of the school the child is attending;

(iii) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;

(iv) A description of the nature of the problem of the child, including facts relating to the problem; and

(v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(c) Except for complaints covered under § 300.507(a)(2), the complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with § 300.151.

(d) The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the SEA.

(Authority: 20 U.S.C. 1221e–3)

**Methods of Ensuring Services**

**§ 300.154 Methods of ensuring services.**

(a) *Establishing responsibility for services.* The Chief Executive Officer of a State or designee of that officer must ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency described in paragraph (b) of this section and the SEA, in order to ensure that all services described in paragraph (b)(1) of this section that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute under paragraph (a)(3) of this section. The agreement or mechanism must include the following:

(1) An identification of, or a method for defining, the financial responsibility of each agency for providing services described in paragraph (b)(1) of this section to ensure FAPE to children with disabilities. The financial responsibility of each noneducational public agency described in paragraph (b) of this section, including the State Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the LEA (or the State agency responsible for developing the child's IEP).

(2) The conditions, terms, and procedures under which an LEA must be reimbursed by other agencies.

(3) Procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

(4) Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in paragraph (b)(1) of this section.

(b) *Obligation of noneducational public agencies.* (1)(i) If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to paragraph (a) of this section, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in § 300.5 relating to assistive technology devices, § 300.6 relating to assistive technology services, § 300.34 relating to related services, § 300.41 relating to supplementary aids and services, and § 300.42 relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the State, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to paragraph (a) of this section or an agreement pursuant to paragraph (c) of this section.

(ii) A noneducational public agency described in paragraph (b)(1)(i) of this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

(2) If a public agency other than an educational agency fails to provide or pay for the special education and related services described in paragraph (b)(1) of this section, the LEA (or State agency responsible for developing the child's IEP) must provide or pay for these services to the child in a timely manner. The LEA or State agency is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency must reimburse the LEA or State agency in accordance with the terms of the interagency agreement or other mechanism described in paragraph (a) of this section.

(c) *Special rule.* The requirements of paragraph (a) of this section may be met through—

(1) State statute or regulation;

(2) Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

(3) Other appropriate written methods as determined by the Chief Executive Officer of the State or designee of that officer and approved by the Secretary.

(d) *Children with disabilities who are covered by public insurance.* (1) A public agency may use the Medicaid or other public insurance benefits programs in which a child participates to provide or pay for services required under this part, as permitted under the public insurance program, except as provided in paragraph (d)(2) of this section.

(2) With regard to services required to provide FAPE to an eligible child under this part, the public agency—

(i) May not require parents to sign up for or enroll in public insurance programs in order for their child to receive FAPE under Part B of the Act;

(ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parent otherwise would be required to pay;

(iii) May not use a child's benefits under a public insurance program if that use would—

(A) Decrease available lifetime coverage or any other insured benefit;

(B) Result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school;

(C) Increase premiums or lead to the discontinuation of insurance; or

(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and

(iv) Must obtain parental consent consistent with § 300.622.

(e) *Children with disabilities who are covered by private insurance.* (1) With regard to services required to provide FAPE to an eligible child under this part, a public agency may access a parent's private insurance proceeds only if the parent provides informed consent consistent with § 300.9.

(2) Each time the public agency proposes to access the parent's private insurance proceeds, the agency must—

(i) Obtain parental consent in accordance with paragraph (e)(1) of this section; and

(ii) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(f) *Use of Part B funds.* (1) If a public agency is unable to obtain parental consent to use the parent's private insurance, or public insurance when the parent would incur a cost for a specified service required under this part, to ensure FAPE the public agency may use its Part B funds to pay for the service.

(2) To avoid financial cost to parents who otherwise would consent to use private insurance, or public insurance if the parent would incur a cost, the public agency may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parent's insurance (*e.g.*, the deductible or co-pay amounts).

(g) *Proceeds from public or private insurance.* (1) Proceeds from public or private insurance will not be treated as program income for purposes of 34 CFR 80.25.

(2) If a public agency spends reimbursements from Federal funds (*e.g.*, Medicaid) for services under this part, those funds will not be considered ''State or local'' funds for purposes of the maintenance of effort provisions in §§ 300.163 and 300.203.

(h) *Construction.* Nothing in this part should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397aa through 1397jj, or any other public insurance program.

(Authority: 20 U.S.C. 1412(a)(12) and (e))

## Additional Eligibility Requirements

### § 300.155 Hearings relating to LEA eligibility.

The SEA must not make any final determination that an LEA is not eligible for assistance under Part B of the Act without first giving the LEA reasonable notice and an opportunity for a hearing under 34 CFR 76.401(d).

(Authority: 20 U.S.C. 1412(a)(13))

### § 300.156 Personnel qualifications.

(a) *General.* The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

(b) *Related services personnel and paraprofessionals.* The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that—

(1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and

(2) Ensure that related services personnel who deliver services in their discipline or profession—

(i) Meet the requirements of paragraph (b)(1) of this section; and

(ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.

(c) *Qualifications for special education teachers.* The qualifications described in paragraph (a) of this section must ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in section 1119(a)(2) of the ESEA.

(d) *Policy.* In implementing this section, a State must adopt a policy that includes a requirement that LEAs in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.

(e) *Rule of construction.* Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to—

(1) Create a right of action on behalf of an individual student for the failure of a particular SEA or LEA staff person to be highly qualified; or

(2) Prevent a parent from filing a complaint under §§ 300.151 through 300.153 about staff qualifications with the SEA as provided for under this part.

(Authority: 20 U.S.C. 1412(a)(14))

### § 300.157 Performance goals and indicators.

The State must—

(a) Have in effect established goals for the performance of children with disabilities in the State that—

(1) Promote the purposes of this part, as stated in § 300.1;

(2) Are the same as the State's objectives for progress by children in its definition of adequate yearly progress, including the State's objectives for progress by children with disabilities, under section 1111(b)(2)(C) of the ESEA, 20 U.S.C. 6311;

(3) Address graduation rates and dropout rates, as well as such other factors as the State may determine; and

(4) Are consistent, to the extent appropriate, with any other goals and academic standards for children established by the State;

(b) Have in effect established performance indicators the State will use to assess progress toward achieving the goals described in paragraph (a) of this section, including measurable annual objectives for progress by children with disabilities under section 1111(b)(2)(C)(v)(II)(cc) of the ESEA, 20 U.S.C. 6311; and

(c) Annually report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under paragraph (a) of this section, which may include elements of the reports required under section 1111(h) of the ESEA.

(Authority: 20 U.S.C. 1412(a)(15))

**§ 300.160 Participation in assessments.**

(a) *General.* The State must ensure that all children with disabilities are included in all general State and districtwide assessment programs, including assessments described in section 1111 of the ESEA, 20 U.S.C. 6311, with appropriate accommodations and alternate assessments, if necessary, and as indicated in their respective IEPs.

(b) *Accommodation guidelines.* The State (or, in the case of a districtwide assessment, the LEA) must develop guidelines for the provision of appropriate accommodations.

(c) *Alternate assessments.* (1) The State (or, in the case of a districtwide assessment, the LEA) must develop and implement alternate assessments and guidelines for the participation of children with disabilities in those alternate assessments for those children who cannot participate in regular assessments under paragraph (a) of this section with accommodations as indicated in their respective IEPs.

(2) The alternate assessments and guidelines under paragraph (c)(1) of this section must provide for alternate assessments that in the case of assessments of student academic progress—

(i) Are aligned with the State's challenging academic content standards and challenging student academic achievement standards; and

(ii) If the State has adopted alternate achievement standards permitted under the regulations promulgated to carry out section 1111(b)(1) of the ESEA, measure the achievement of children with disabilities against those standards.

(3) The State must conduct the alternate assessments described in this section.

(d) *Reports.* The SEA (or, in the case of a districtwide assessment, the LEA) must make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

(1) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations in order to participate in those assessments.

(2) The number of those children with disabilities participating in alternate assessments described in paragraph (c)(2)(i) of this section.

(3) The number of those children with disabilities participating in alternate assessments described in paragraph (c)(2)(ii) of this section.

(4) The performance results of children with disabilities on regular assessments and on alternate assessments if—

(i) The number of those children participating in those assessments is sufficient to yield statistically reliable information; and

(ii) Reporting that information will not reveal personally identifiable information about an individual student, compared with the achievement of all children, including children with disabilities, on those assessments.

(e) *Universal design.* The SEA (or, in the case of a districtwide assessment, the LEA) must, to the extent possible, use universal design principles in developing and administering any assessments under this section.

(Authority: 20 U.S.C. 1412(a)(16))

**§ 300.161 [Reserved]**

**§ 300.162 Supplementation of State, local, and other Federal funds.**

(a) *Expenditures.* Funds paid to a State under this part must be expended in accordance with all the provisions of this part.

(b) *Prohibition against commingling.* (1) Funds paid to a State under this part must not be commingled with State funds.

(2) The requirement in paragraph (b)(1) of this section is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of funds paid to a State under this part. Separate bank accounts are not required. (See 34 CFR 76.702 (Fiscal control and fund accounting procedures)).

(c) *State-level nonsupplanting.* (1) Except as provided in § 300.202, funds paid to a State under Part B of the Act must be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of the SEA or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act, and in no case to supplant those Federal, State, and local funds.

(2) If the State provides clear and convincing evidence that all children with disabilities have available to them FAPE, the Secretary may waive, in whole or in part, the requirements of paragraph (c)(1) of this section if the Secretary concurs with the evidence provided by the State under § 300.164.

(Authority: 20 U.S.C. 1412(a)(17))

**§ 300.163 Maintenance of State financial support.**

(a) *General.* A State must not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

(b) *Reduction of funds for failure to maintain support.* The Secretary reduces the allocation of funds under section 611 of the Act for any fiscal year following the fiscal year in which the State fails to comply with the requirement of paragraph (a) of this section by the same amount by which the State fails to meet the requirement.

(c) *Waivers for exceptional or uncontrollable circumstances.* The Secretary may waive the requirement of paragraph (a) of this section for a State, for one fiscal year at a time, if the Secretary determines that—

(1) Granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or

(2) The State meets the standard in § 300.164 for a waiver of the requirement to supplement, and not to supplant, funds received under Part B of the Act.

(d) *Subsequent years.* If, for any fiscal year, a State fails to meet the requirement of paragraph (a) of this section, including any year for which

the State is granted a waiver under paragraph (c) of this section, the financial support required of the State in future years under paragraph (a) of this section shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

(Authority: 20 U.S.C. 1412(a)(18))

**§ 300.164 Waiver of requirement regarding supplementing and not supplanting with Part B funds.**

(a) Except as provided under §§ 300.202 through 300.205, funds paid to a State under Part B of the Act must be used to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of SEAs or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act and in no case to supplant those Federal, State, and local funds. A State may use funds it retains under § 300.704(a) and (b) without regard to the prohibition on supplanting other funds.

(b) If a State provides clear and convincing evidence that all eligible children with disabilities throughout the State have FAPE available to them, the Secretary may waive for a period of one year in whole or in part the requirement under § 300.162 (regarding State-level nonsupplanting) if the Secretary concurs with the evidence provided by the State.

(c) If a State wishes to request a waiver under this section, it must submit to the Secretary a written request that includes—

(1) An assurance that FAPE is currently available, and will remain available throughout the period that a waiver would be in effect, to all eligible children with disabilities throughout the State, regardless of the public agency that is responsible for providing FAPE to them. The assurance must be signed by an official who has the authority to provide that assurance as it applies to all eligible children with disabilities in the State;

(2) All evidence that the State wishes the Secretary to consider in determining whether all eligible children with disabilities have FAPE available to them, setting forth in detail—

(i) The basis on which the State has concluded that FAPE is available to all eligible children in the State; and

(ii) The procedures that the State will implement to ensure that FAPE remains available to all eligible children in the State, which must include—

(A) The State's procedures under § 300.111 for ensuring that all eligible children are identified, located and evaluated;

(B) The State's procedures for monitoring public agencies to ensure that they comply with all requirements of this part;

(C) The State's complaint procedures under §§ 300.151 through 300.153; and

(D) The State's hearing procedures under §§ 300.511 through 300.516 and §§ 300.530 through 300.536;

(3) A summary of all State and Federal monitoring reports, and State complaint decisions (see §§ 300.151 through 300.153) and hearing decisions (see §§ 300.511 through 300.516 and §§ 300.530 through 300.536), issued within three years prior to the date of the State's request for a waiver under this section, that includes any finding that FAPE has not been available to one or more eligible children, and evidence that FAPE is now available to all children addressed in those reports or decisions; and

(4) Evidence that the State, in determining that FAPE is currently available to all eligible children with disabilities in the State, has consulted with the State advisory panel under § 300.167.

(d) If the Secretary determines that the request and supporting evidence submitted by the State makes a *prima facie* showing that FAPE is, and will remain, available to all eligible children with disabilities in the State, the Secretary, after notice to the public throughout the State, conducts a public hearing at which all interested persons and organizations may present evidence regarding the following issues:

(1) Whether FAPE is currently available to all eligible children with disabilities in the State.

(2) Whether the State will be able to ensure that FAPE remains available to all eligible children with disabilities in the State if the Secretary provides the requested waiver.

(e) Following the hearing, the Secretary, based on all submitted evidence, will provide a waiver, in whole or in part, for a period of one year if the Secretary finds that the State has provided clear and convincing evidence that FAPE is currently available to all eligible children with disabilities in the State, and the State will be able to ensure that FAPE remains available to all eligible children with disabilities in the State if the Secretary provides the requested waiver.

(f) A State may receive a waiver of the requirement of section 612(a)(18)(A) of the Act and § 300.164 if it satisfies the requirements of paragraphs (b) through (e) of this section.

(g) The Secretary may grant subsequent waivers for a period of one year each, if the Secretary determines that the State has provided clear and convincing evidence that all eligible children with disabilities throughout the State have, and will continue to have throughout the one-year period of the waiver, FAPE available to them.

(Authority: 20 U.S.C. 1412(a)(17)(C), (18)(C)(ii))

**§ 300.165 Public participation.**

(a) Prior to the adoption of any policies and procedures needed to comply with Part B of the Act (including any amendments to those policies and procedures), the State must ensure that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.

(b) Before submitting a State plan under this part, a State must comply with the public participation requirements in paragraph (a) of this section and those in 20 U.S.C. 1232d(b)(7).

(Authority: 20 U.S.C. 1412(a)(19); 20 U.S.C. 1232d(b)(7))

**§ 300.166 Rule of construction.**

In complying with §§ 300.162 and 300.163, a State may not use funds paid to it under this part to satisfy State-law mandated funding obligations to LEAs, including funding based on student attendance or enrollment, or inflation.

(Authority: 20 U.S.C. 1412(a)(20))

**State Advisory Panel**

**§ 300.167 State advisory panel.**

The State must establish and maintain an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State.

(Authority: 20 U.S.C. 1412(a)(21)(A))

**§ 300.168 Membership.**

(a) *General.* The advisory panel must consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, be representative of the State population and be composed of individuals involved in, or concerned with the education of children with disabilities, including—

(1) Parents of children with disabilities (ages birth through 26);

(2) Individuals with disabilities;

(3) Teachers;

(4) Representatives of institutions of higher education that prepare special

education and related services personnel;

(5) State and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act, (42 U.S.C. 11431 *et seq.*);

(6) Administrators of programs for children with disabilities;

(7) Representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;

(8) Representatives of private schools and public charter schools;

(9) Not less than one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;

(10) A representative from the State child welfare agency responsible for foster care; and

(11) Representatives from the State juvenile and adult corrections agencies.

(b) *Special rule.* A majority of the members of the panel must be individuals with disabilities or parents of children with disabilities (ages birth through 26).

(Authority: 20 U.S.C. 1412(a)(21)(B) and (C))

**§ 300.169 Duties.**

The advisory panel must—

(a) Advise the SEA of unmet needs within the State in the education of children with disabilities;

(b) Comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;

(c) Advise the SEA in developing evaluations and reporting on data to the Secretary under section 618 of the Act;

(d) Advise the SEA in developing corrective action plans to address findings identified in Federal monitoring reports under Part B of the Act; and

(e) Advise the SEA in developing and implementing policies relating to the coordination of services for children with disabilities.

(Authority: 20 U.S.C. 1412(a)(21)(D))

**Other Provisions Required for State Eligibility**

**§ 300.170 Suspension and expulsion rates.**

(a) *General.* The SEA must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities—

(1) Among LEAs in the State; or

(2) Compared to the rates for nondisabled children within those agencies.

(b) *Review and revision of policies.* If the discrepancies described in paragraph (a) of this section are occurring, the SEA reviews and, if appropriate, revises (or requires the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act.

(Authority: 20 U.S.C. 1412(a)(22))

**§ 300.171 Annual description of use of Part B funds.**

(a) In order to receive a grant in any fiscal year a State must annually describe—

(1) How amounts retained for State administration and State-level activities under § 300.704 will be used to meet the requirements of this part; and

(2) How those amounts will be allocated among the activities described in § 300.704 to meet State priorities based on input from LEAs.

(b) If a State's plans for use of its funds under § 300.704 for the forthcoming year do not change from the prior year, the State may submit a letter to that effect to meet the requirement in paragraph (a) of this section.

(c) The provisions of this section do not apply to the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the freely associated States.

(Authority: 20 U.S.C. 1411(e)(5))

**§ 300.172 Access to instructional materials.**

(a) *General.* The State must adopt the National Instructional Materials Accessibility Standard (NIMAS) for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after publication of the NIMAS in the **Federal Register**.

(b) *Rights and responsibilities of SEA.* (1) Nothing in this section shall be construed to require any SEA to coordinate with the National Instructional Materials Access Center (NIMAC).

(2) If an SEA chooses not to coordinate with the NIMAC, the agency must provide an assurance to the Secretary that the agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(3) Nothing in this section relieves an SEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats, but for whom the NIMAC may not provide assistance to the SEA, receive those instructional materials in a timely manner.

(c) *Preparation and delivery of files.* If an SEA chooses to coordinate with the NIMAC, not later than December 3, 2006, two years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, the agency, as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, must enter into a written contract with the publisher of the print instructional materials to—

(1) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or

(2) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

(d) *Assistive technology.* In carrying out this section, the SEA, to the maximum extent possible, must work collaboratively with the State agency responsible for assistive technology programs.

(e) *Definitions.* In this section and § 300.210—

(1) *Blind persons or other persons with print disabilities* means children served under this part who may qualify to receive books and other publications produced in specialized formats in accordance with the Act entitled ''An Act to provide books for adult blind,'' approved March 3, 1931, 2 U.S.C 135a;

(2) *National Instructional Materials Access Center or NIMAC* means the center established pursuant to section 674(e) of the Act;

(3) *National Instructional Materials Accessibility Standard or NIMAS* has the meaning given the term in section 674(e)(3)(B) of the Act; and

(4) *Specialized formats* has the meaning given the term in section 674(e)(3)(D) of the Act.

(Authority: 20 U.S.C. 1412(a)(23))

**§ 300.173 Overidentification and disproportionality.**

The State must have in effect, consistent with the purposes of this part and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate

representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in § 300.8.

(Authority: 20 U.S.C. 1412(a)(24))

**§ 300.174 Prohibition on mandatory medication.**

(a) *General.* The SEA must prohibit State and LEA personnel from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for a child as a condition of attending school, receiving an evaluation under §§ 300.300 through 300.311, or receiving services under this part.

(b) *Rule of construction.* Nothing in paragraph (a) of this section shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under § 300.111 (related to child find).

(Authority: 20 U.S.C. 1412(a)(25))

**§ 300.175 SEA as provider of FAPE or direct services.**

If the SEA provides FAPE to children with disabilities, or provides direct services to these children, the agency—

(a) Must comply with any additional requirements of §§ 300.201 and 300.202 and §§ 300.206 through 300.226 as if the agency were an LEA; and

(b) May use amounts that are otherwise available to the agency under Part B of the Act to serve those children without regard to § 300.202(b) (relating to excess costs).

(Authority: 20 U.S.C. 1412(b))

**§ 300.176 Exception for prior State plans.**

(a) *General.* If a State has on file with the Secretary policies and procedures approved by the Secretary that demonstrate that the State meets any requirement of § 300.100, including any policies and procedures filed under Part B of the Act as in effect before, December 3, 2004, the Secretary considers the State to have met the requirement for purposes of receiving a grant under Part B of the Act.

(b) *Modifications made by a State.* (1) Subject to paragraph (b)(2) of this section, policies and procedures submitted by a State in accordance with this subpart remain in effect until the State submits to the Secretary the modifications that the State determines necessary.

(2) The provisions of this subpart apply to a modification to an application to the same extent and in the same manner that they apply to the original plan.

(c) *Modifications required by the Secretary.* The Secretary may require a State to modify its policies and procedures, but only to the extent necessary to ensure the State's compliance with this part, if—

(1) After December 3, 2004, the provisions of the Act or the regulations in this part are amended;

(2) There is a new interpretation of this Act by a Federal court or a State's highest court; or

(3) There is an official finding of noncompliance with Federal law or regulations.

(Authority: 20 U.S.C. 1412(c)(2) and (3))

**§ 300.177 [Reserved]**

**Department Procedures**

**§ 300.178 Determination by the Secretary that a State is eligible to receive a grant.**

If the Secretary determines that a State is eligible to receive a grant under Part B of the Act, the Secretary notifies the State of that determination.

(Authority: 20 U.S.C. 1412(d))

**§ 300.179 Notice and hearing before determining that a State is not eligible to receive a grant.**

(a) *General.* (1) The Secretary does not make a final determination that a State is not eligible to receive a grant under Part B of the Act until providing the State—

(i) With reasonable notice; and

(ii) With an opportunity for a hearing.

(2) In implementing paragraph (a)(1)(i) of this section, the Secretary sends a written notice to the SEA by certified mail with return receipt requested.

(b) *Content of notice.* In the written notice described in paragraph (a)(2) of this section, the Secretary—

(1) States the basis on which the Secretary proposes to make a final determination that the State is not eligible;

(2) May describe possible options for resolving the issues;

(3) Advises the SEA that it may request a hearing and that the request for a hearing must be made not later than 30 days after it receives the notice of the proposed final determination that the State is not eligible; and

(4) Provides the SEA with information about the hearing procedures that will be followed.

(Authority: 20 U.S.C. 1412(d)(2))

**§ 300.180 Hearing official or panel.**

(a) If the SEA requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this program, to conduct a hearing.

(b) If more than one individual is designated, the Secretary designates one of those individuals as the Chief Hearing Official of the Hearing Panel. If one individual is designated, that individual is the Hearing Official.

(Authority: 20 U.S.C. 1412(d)(2))

**§ 300.181 Hearing procedures.**

(a) As used in §§ 300.179 through 300.184 the term party or parties means the following:

(1) An SEA that requests a hearing regarding the proposed disapproval of the State's eligibility under this part.

(2) The Department official who administers the program of financial assistance under this part.

(3) A person, group or agency with an interest in and having relevant information about the case that has applied for and been granted leave to intervene by the Hearing Official or Hearing Panel.

(b) Within 15 days after receiving a request for a hearing, the Secretary designates a Hearing Official or Hearing Panel and notifies the parties.

(c) The Hearing Official or Hearing Panel may regulate the course of proceedings and the conduct of the parties during the proceedings. The Hearing Official or Hearing Panel takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order, including the following:

(1) The Hearing Official or Hearing Panel may hold conferences or other types of appropriate proceedings to clarify, simplify, or define the issues or to consider other matters that may aid in the disposition of the case.

(2) The Hearing Official or Hearing Panel may schedule a prehearing conference with the Hearing Official or Hearing Panel and the parties.

(3) Any party may request the Hearing Official or Hearing Panel to schedule a prehearing or other conference. The Hearing Official or Hearing Panel decides whether a conference is necessary and notifies all parties.

(4) At a prehearing or other conference, the Hearing Official or Hearing Panel and the parties may consider subjects such as—

(i) Narrowing and clarifying issues;

(ii) Assisting the parties in reaching agreements and stipulations;

(iii) Clarifying the positions of the parties;

(iv) Determining whether an evidentiary hearing or oral argument should be held; and

(v) Setting dates for—

(A) The exchange of written documents;

(B) The receipt of comments from the parties on the need for oral argument or evidentiary hearing;

(C) Further proceedings before the Hearing Official or Hearing Panel (including an evidentiary hearing or oral argument, if either is scheduled);

(D) Requesting the names of witnesses each party wishes to present at an evidentiary hearing and estimation of time for each presentation; or

(E) Completion of the review and the initial decision of the Hearing Official or Hearing Panel.

(5) A prehearing or other conference held under paragraph (b)(4) of this section may be conducted by telephone conference call.

(6) At a prehearing or other conference, the parties must be prepared to discuss the subjects listed in paragraph (b)(4) of this section.

(7) Following a prehearing or other conference the Hearing Official or Hearing Panel may issue a written statement describing the issues raised, the action taken, and the stipulations and agreements reached by the parties.

(d) The Hearing Official or Hearing Panel may require parties to state their positions and to provide all or part of the evidence in writing.

(e) The Hearing Official or Hearing Panel may require parties to present testimony through affidavits and to conduct cross-examination through interrogatories.

(f) The Hearing Official or Hearing Panel may direct the parties to exchange relevant documents or information and lists of witnesses, and to send copies to the Hearing Official or Panel.

(g) The Hearing Official or Hearing Panel may receive, rule on, exclude, or limit evidence at any stage of the proceedings.

(h) The Hearing Official or Hearing Panel may rule on motions and other issues at any stage of the proceedings.

(i) The Hearing Official or Hearing Panel may examine witnesses.

(j) The Hearing Official or Hearing Panel may set reasonable time limits for submission of written documents.

(k) The Hearing Official or Hearing Panel may refuse to consider documents or other submissions if they are not submitted in a timely manner unless good cause is shown.

(l) The Hearing Official or Hearing Panel may interpret applicable statutes and regulations but may not waive them or rule on their validity.

(m)(1) The parties must present their positions through briefs and the submission of other documents and may request an oral argument or evidentiary hearing. The Hearing Official or Hearing Panel shall determine whether an oral argument or an evidentiary hearing is needed to clarify the positions of the parties.

(2) The Hearing Official or Hearing Panel gives each party an opportunity to be represented by counsel.

(n) If the Hearing Official or Hearing Panel determines that an evidentiary hearing would materially assist the resolution of the matter, the Hearing Official or Hearing Panel gives each party, in addition to the opportunity to be represented by counsel—

(1) An opportunity to present witnesses on the party's behalf; and

(2) An opportunity to cross-examine witnesses either orally or with written questions.

(o) The Hearing Official or Hearing Panel accepts any evidence that it finds is relevant and material to the proceedings and is not unduly repetitious.

(p)(1) The Hearing Official or Hearing Panel—

(i) Arranges for the preparation of a transcript of each hearing;

(ii) Retains the original transcript as part of the record of the hearing; and

(iii) Provides one copy of the transcript to each party.

(2) Additional copies of the transcript are available on request and with payment of the reproduction fee.

(q) Each party must file with the Hearing Official or Hearing Panel all written motions, briefs, and other documents and must at the same time provide a copy to the other parties to the proceedings.

(Authority: 20 U.S.C. 1412(d)(2))

**§ 300.182 Initial decision; final decision.**

(a) The Hearing Official or Hearing Panel prepares an initial written decision that addresses each of the points in the notice sent by the Secretary to the SEA under § 300.179 including any amendments to or further clarifications of the issues, under § 300.181(c)(7).

(b) The initial decision of a Hearing Panel is made by a majority of Panel members.

(c) The Hearing Official or Hearing Panel mails, by certified mail with return receipt requested, a copy of the initial decision to each party (or to the party's counsel) and to the Secretary, with a notice stating that each party has an opportunity to submit written comments regarding the decision to the Secretary.

(d) Each party may file comments and recommendations on the initial decision with the Hearing Official or Hearing Panel within 15 days of the date the party receives the Panel's decision.

(e) The Hearing Official or Hearing Panel sends a copy of a party's initial comments and recommendations to the other parties by certified mail with return receipt requested. Each party may file responsive comments and recommendations with the Hearing Official or Hearing Panel within seven days of the date the party receives the initial comments and recommendations.

(f) The Hearing Official or Hearing Panel forwards the parties' initial and responsive comments on the initial decision to the Secretary who reviews the initial decision and issues a final decision.

(g) The initial decision of the Hearing Official or Hearing Panel becomes the final decision of the Secretary unless, within 25 days after the end of the time for receipt of written comments and recommendations, the Secretary informs the Hearing Official or Hearing Panel and the parties to a hearing in writing that the decision is being further reviewed for possible modification.

(h) The Secretary rejects or modifies the initial decision of the Hearing Official or Hearing Panel if the Secretary finds that it is clearly erroneous.

(i) The Secretary conducts the review based on the initial decision, the written record, the transcript of the Hearing Official's or Hearing Panel's proceedings, and written comments.

(j) The Secretary may remand the matter to the Hearing Official or Hearing Panel for further proceedings.

(k) Unless the Secretary remands the matter as provided in paragraph (j) of this section, the Secretary issues the final decision, with any necessary modifications, within 30 days after notifying the Hearing Official or Hearing Panel that the initial decision is being further reviewed.

(Authority: 20 U.S.C. 1412(d)(2))

**§ 300.183 Filing requirements.**

(a) Any written submission by a party under §§ 300.179 through 300.184 must be filed by hand delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(b) The filing date under paragraph (a) of this section is the date the document is—

(1) Hand-delivered;

(2) Mailed; or

(3) Sent by facsimile transmission.

(c) A party filing by facsimile transmission is responsible for

confirming that a complete and legible copy of the document was received by the Department.

(d) If a document is filed by facsimile transmission, the Secretary, the Hearing Official, or the Hearing Panel, as applicable, may require the filing of a follow-up hard copy by hand delivery or by mail within a reasonable period of time.

(e) If agreed upon by the parties, service of a document may be made upon the other party by facsimile transmission.

(Authority: 20 U.S.C. 1412(d))

**§ 300.184 Judicial review.**

If a State is dissatisfied with the Secretary's final decision with respect to the eligibility of the State under section 612 of the Act, the State may, not later than 60 days after notice of that decision, file with the United States Court of Appeals for the circuit in which that State is located a petition for review of that decision. A copy of the petition must be transmitted by the clerk of the court to the Secretary. The Secretary then files in the court the record of the proceedings upon which the Secretary's decision was based, as provided in 28 U.S.C. 2112.

(Authority: 20 U.S.C. 1416(e)(8))

**§ 300.185 [Reserved]**

**§ 300.186 Assistance under other Federal programs.**

Part B of the Act may not be construed to permit a State to reduce medical and other assistance available, or to alter eligibility, under titles V and XIX of the Social Security Act with respect to the provision of FAPE for children with disabilities in the State.

(Authority: 20 U.S.C. 1412(e))

**By-Pass for Children in Private Schools**

**§ 300.190 By-pass—general.**

(a) If, on December 2, 1983, the date of enactment of the Education of the Handicapped Act Amendments of 1983, an SEA was prohibited by law from providing for the equitable participation in special programs of children with disabilities enrolled in private elementary schools and secondary schools as required by section 612(a)(10)(A) of the Act, or if the Secretary determines that an SEA, LEA, or other public agency has substantially failed or is unwilling to provide for such equitable participation then the Secretary shall, notwithstanding such provision of law, arrange for the provision of services to these children through arrangements which shall be subject to the requirements of section 612(a)(10)(A) of the Act.

(b) The Secretary waives the requirement of section 612(a)(10)(A) of the Act and of §§ 300.131 through 300.144 if the Secretary implements a by-pass.

(Authority: 20 U.S.C. 1412(f)(1))

**§ 300.191 Provisions for services under a by-pass.**

(a) Before implementing a by-pass, the Secretary consults with appropriate public and private school officials, including SEA officials, in the affected State, and as appropriate, LEA or other public agency officials to consider matters such as—

(1) Any prohibition imposed by State law that results in the need for a by-pass; and

(2) The scope and nature of the services required by private school children with disabilities in the State, and the number of children to be served under the by-pass.

(b) After determining that a by-pass is required, the Secretary arranges for the provision of services to private school children with disabilities in the State, LEA or other public agency in a manner consistent with the requirements of section 612(a)(10)(A) of the Act and §§ 300.131 through 300.144 by providing services through one or more agreements with appropriate parties.

(c) For any fiscal year that a by-pass is implemented, the Secretary determines the maximum amount to be paid to the providers of services by multiplying—

(1) A per child amount determined by dividing the total amount received by the State under Part B of the Act for the fiscal year by the number of children with disabilities served in the prior year as reported to the Secretary under section 618 of the Act; by

(2) The number of private school children with disabilities (as defined in §§ 300.8(a) and 300.130) in the State, LEA or other public agency, as determined by the Secretary on the basis of the most recent satisfactory data available, which may include an estimate of the number of those children with disabilities.

(d) The Secretary deducts from the State's allocation under Part B of the Act the amount the Secretary determines is necessary to implement a by-pass and pays that amount to the provider of services. The Secretary may withhold this amount from the State's allocation pending final resolution of any investigation or complaint that could result in a determination that a by-pass must be implemented.

(Authority: 20 U.S.C. 1412(f)(2))

**§ 300.192 Notice of intent to implement a by-pass.**

(a) Before taking any final action to implement a by-pass, the Secretary provides the SEA and, as appropriate, LEA or other public agency with written notice.

(b) In the written notice, the Secretary—

(1) States the reasons for the proposed by-pass in sufficient detail to allow the SEA and, as appropriate, LEA or other public agency to respond; and

(2) Advises the SEA and, as appropriate, LEA or other public agency that it has a specific period of time (at least 45 days) from receipt of the written notice to submit written objections to the proposed by-pass and that it may request in writing the opportunity for a hearing to show cause why a by-pass should not be implemented.

(c) The Secretary sends the notice to the SEA and, as appropriate, LEA or other public agency by certified mail with return receipt requested.

(Authority: 20 U.S.C. 1412(f)(3)(A))

**§ 300.193 Request to show cause.**

An SEA, LEA or other public agency in receipt of a notice under § 300.192 that seeks an opportunity to show cause why a by-pass should not be implemented must submit a written request for a show cause hearing to the Secretary, within the specified time period in the written notice in § 300.192(b)(2).

(Authority: 20 U.S.C. 1412(f)(3))

**§ 300.194 Show cause hearing.**

(a) If a show cause hearing is requested, the Secretary—

(1) Notifies the SEA and affected LEA or other public agency, and other appropriate public and private school officials of the time and place for the hearing;

(2) Designates a person to conduct the show cause hearing. The designee must not have had any responsibility for the matter brought for a hearing; and

(3) Notifies the SEA, LEA or other public agency, and representatives of private schools that they may be represented by legal counsel and submit oral or written evidence and arguments at the hearing.

(b) At the show cause hearing, the designee considers matters such as—

(1) The necessity for implementing a by-pass;

(2) Possible factual errors in the written notice of intent to implement a by-pass; and

(3) The objections raised by public and private school representatives.

(c) The designee may regulate the course of the proceedings and the

conduct of parties during the pendency of the proceedings. The designee takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order.

(d) The designee has no authority to require or conduct discovery.

(e) The designee may interpret applicable statutes and regulations, but may not waive them or rule on their validity.

(f) The designee arranges for the preparation, retention, and, if appropriate, dissemination of the record of the hearing.

(g) Within 10 days after the hearing, the designee—

(1) Indicates that a decision will be issued on the basis of the existing record; or

(2) Requests further information from the SEA, LEA, other public agency, representatives of private schools or Department officials.

(Authority: 20 U.S.C. 1412(f)(3))

**§ 300.195 Decision.**

(a) The designee who conducts the show cause hearing—

(1) Within 120 days after the record of a show cause hearing is closed, issues a written decision that includes a statement of findings; and

(2) Submits a copy of the decision to the Secretary and sends a copy to each party by certified mail with return receipt requested.

(b) Each party may submit comments and recommendations on the designee's decision to the Secretary within 30 days of the date the party receives the designee's decision.

(c) The Secretary adopts, reverses, or modifies the designee's decision and notifies all parties to the show cause hearing of the Secretary's final action. That notice is sent by certified mail with return receipt requested.

(Authority: 20 U.S.C. 1412(f)(3))

**§ 300.196 Filing requirements.**

(a) Any written submission under § 300.194 must be filed by hand-delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(b) The filing date under paragraph (a) of this section is the date the document is—

(1) Hand-delivered;

(2) Mailed; or

(3) Sent by facsimile transmission.

(c) A party filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Department.

(d) If a document is filed by facsimile transmission, the Secretary or the hearing officer, as applicable, may require the filing of a follow-up hard copy by hand-delivery or by mail within a reasonable period of time.

(e) If agreed upon by the parties, service of a document may be made upon the other party by facsimile transmission.

(f) A party must show a proof of mailing to establish the filing date under paragraph (b)(2) of this section as provided in 34 CFR 75.102(d).

(Authority: 20 U.S.C. 1412(f)(3))

**§ 300.197 Judicial review.**

If dissatisfied with the Secretary's final action, the SEA may, within 60 days after notice of that action, file a petition for review with the United States Court of Appeals for the circuit in which the State is located. The procedures for judicial review are described in section 612(f)(3)(B) through (D) of the Act.

(Authority: 20 U.S.C. 1412(f)(3)(B)–(D))

**§ 300.198 Continuation of a by-pass.**

The Secretary continues a by-pass until the Secretary determines that the SEA, LEA or other public agency will meet the requirements for providing services to private school children.

(Authority: 20 U.S.C. 1412(f)(2)(C))

**§ 300.199 State administration.**

(a) *Rulemaking.* Each State that receives funds under Part B of the Act must—

(1) Ensure that any State rules, regulations, and policies relating to this part conform to the purposes of this part;

(2) Identify in writing to LEAs located in the State and the Secretary any such rule, regulation, or policy as a State-imposed requirement that is not required by Part B of the Act and Federal regulations; and

(3) Minimize the number of rules, regulations, and policies to which the LEAs and schools located in the State are subject under Part B of the Act.

(b) *Support and facilitation.* State rules, regulations, and policies under Part B of the Act must support and facilitate LEA and school-level system improvement designed to enable children with disabilities to meet the challenging State student academic achievement standards.

(Authority: 20 U.S.C 1407)

## Subpart C—Local Educational Agency Eligibility

**§ 300.200 Condition of assistance.**

An LEA is eligible for assistance under Part B of the Act for a fiscal year if the agency submits a plan that provides assurances to the SEA that the LEA meets each of the conditions in §§ 300.201 through 300.213.

(Authority: 20 U.S.C. 1413(a))

**§ 300.201 Consistency with State policies.**

The LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under §§ 300.101 through 300.163, and §§ 300.165 through 300.174.

(Authority: 20 U.S.C. 1413(a)(1))

**§ 300.202 Use of amounts.**

(a) *General.* Amounts provided to the LEA under Part B of the Act—

(1) Must be expended in accordance with the applicable provisions of this part;

(2) Must be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with paragraph (b) of this section; and

(3) Must be used to supplement State, local, and other Federal funds and not to supplant those funds.

(b) *Excess cost requirement.* (1) *General.*

(i) The excess cost requirement prevents an LEA from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a child with a disability, subject to paragraph (b)(1)(ii) of this section.

(ii) The excess cost requirement does not prevent an LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the ages 3, 4, 5, 18, 19, 20, or 21, if no local or State funds are available for nondisabled children of these ages. However, the LEA must comply with the nonsupplanting and other requirements of this part in providing the education and services for these children.

(2)(i) An LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of the Act are used.

(ii) The amount described in paragraph (b)(2)(i) of this section is determined in accordance with the definition of *excess costs* in § 300.16.

That amount may not include capital outlay or debt service.

(3) If two or more LEAs jointly establish eligibility in accordance with § 300.223, the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of excess costs in § 300.16 in those agencies for elementary or secondary school students, as the case may be.

(Authority: 20 U.S.C. 1413(a)(2)(A))

**§ 300.203 Maintenance of effort.**

(a) *General.* Except as provided in §§ 300.204 and 300.205, funds provided to an LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

(b) *Standard.* (1) Except as provided in paragraph (b)(2) of this section, the SEA must determine that an LEA complies with paragraph (a) of this section for purposes of establishing the LEA's eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per-capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:

(i) Local funds only.

(ii) The combination of State and local funds.

(2) An LEA that relies on paragraph (b)(1)(i) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in paragraph (b)(1)(i) of this section was used to establish its compliance with this section.

(3) The SEA may not consider any expenditures made from funds provided by the Federal Government for which the SEA is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the SEA in determining an LEA's compliance with the requirement in paragraph (a) of this section.

(Authority: 20 U.S.C. 1413(a)(2)(A))

**§ 300.204 Exception to maintenance of effort.**

Notwithstanding the restriction in § 300.203(a), an LEA may reduce the level of expenditures by the LEA under Part B of the Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following:

(a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.

(b) A decrease in the enrollment of children with disabilities.

(c) The termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child—

(1) Has left the jurisdiction of the agency;

(2) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or

(3) No longer needs the program of special education.

(d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

(e) The assumption of cost by the high cost fund operated by the SEA under § 300.704(c).

(Authority: 20 U.S.C. 1413(a)(2)(B))

**§ 300.205 Adjustment to local fiscal efforts in certain fiscal years.**

(a) *Amounts in excess.* Notwithstanding § 300.202(a)(2) and (b) and § 300.203(a), and except as provided in paragraph (d) of this section and § 300.230(e)(2), for any fiscal year for which the allocation received by an LEA under section § 300.705 exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by § 300.203(a) by not more than 50 percent of the amount of that excess.

(b) *Use of amounts to carry out activities under ESEA.* If an LEA exercises the authority under paragraph (a) of this section, the LEA must use an amount of local funds equal to the reduction in expenditures under paragraph (a) of this section to carry out activities that could be supported with funds under the ESEA regardless of whether the LEA is using funds under the ESEA for those activities.

(c) *State prohibition.* Notwithstanding paragraph (a) of this section, if an SEA determines that an LEA is unable to establish and maintain programs of FAPE that meet the requirements of section 613(a) of the Act and this part or the SEA has taken action against the LEA under section 616 of the Act and subpart F of these regulations, the SEA must prohibit the LEA from reducing the level of expenditures under paragraph (a) of this section for that fiscal year.

(d) *Special rule.* The amount of funds expended by an LEA for early intervening services under § 300.226 shall count toward the maximum amount of expenditures that the LEA may reduce under paragraph (a) of this section.

(Authority: 20 U.S.C. 1413(a)(2)(C))

**§ 300.206 Schoolwide programs under title I of the ESEA.**

(a) *General.* Notwithstanding the provisions of §§ 300.202 and 300.203 or any other provision of Part B of the Act, an LEA may use funds received under Part B of the Act for any fiscal year to carry out a schoolwide program under section 1114 of the ESEA, except that the amount used in any schoolwide program may not exceed—

(1)(i) The amount received by the LEA under Part B of the Act for that fiscal year; divided by

(ii) The number of children with disabilities in the jurisdiction of the LEA; and multiplied by

(2) The number of children with disabilities participating in the schoolwide program.

(b) *Funding conditions.* The funds described in paragraph (a) of this section are subject to the following conditions:

(1) The funds must be considered as Federal Part B funds for purposes of the calculations required by § 300.202(a)(2) and (a)(3).

(2) The funds may be used without regard to the requirements of § 300.202(a)(1).

(c) *Meeting other Part B requirements.* Except as provided in paragraph (b) of this section, all other requirements of Part B of the Act must be met by an LEA using Part B funds in accordance with paragraph (a) of this section, including ensuring that children with disabilities in schoolwide program schools—

(1) Receive services in accordance with a properly developed IEP; and

(2) Are afforded all of the rights and services guaranteed to children with disabilities under the Act.

(Authority: 20 U.S.C. 1413(a)(2)(D))

**§ 300.207 Personnel development.**

The LEA must ensure that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared, subject to the requirements of § 300.156 (related to personnel qualifications) and section 2122 of the ESEA.

(Authority: 20 U.S.C. 1413(a)(3))

**§ 300.208 Permissive use of funds.**

(a) *Uses.* Notwithstanding §§ 300.202, 300.203(a), and § 300.162(b), funds provided to an LEA under Part B of the Act may be used for the following activities:

(1) *Services and aids that also benefit nondisabled children.* For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more nondisabled children benefit from these services.

(2) *Early intervening services.* To develop and implement coordinated, early intervening educational services in accordance with § 300.226.

(3) *High cost education and related services.* To establish and implement cost or risk sharing funds, consortia, or cooperatives for the LEA itself, or for LEAs working in a consortium of which the LEA is a part, to pay for high cost special education and related services.

(b) *Administrative case management.* An LEA may use funds received under Part B of the Act to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of children with disabilities, that is needed for the implementation of those case management activities.

(Authority: 20 U.S.C. 1413(a)(4))

**§ 300.209 Treatment of charter schools and their students.**

(a) *Rights of children with disabilities.* Children with disabilities who attend public charter schools and their parents retain all rights under this part.

(b) *Charter schools that are public schools of the LEA.* (1) In carrying out Part B of the Act and these regulations with respect to charter schools that are public schools of the LEA, the LEA must—

(i) Serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools; and

(ii) Provides funds under Part B of the Act to those charter schools—

(A) On the same basis as the LEA provides funds to the LEA's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and

(B) At the same time as the LEA distributes other Federal funds to the LEA's other public schools, consistent with the State's charter school law.

(2) If the public charter school is a school of an LEA that receives funding under § 300.705 and includes other public schools—

(i) The LEA is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity; and

(ii) The LEA must meet the requirements of paragraph (b)(1) of this section.

(c) *Public charter schools that are LEAs.* If the public charter school is an LEA, consistent with § 300.28, that receives funding under § 300.705, that charter school is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity.

(d) *Public charter schools that are not an LEA or a school that is part of an LEA.* (1) If the public charter school is not an LEA receiving funding under § 300.705, or a school that is part of an LEA receiving funding under § 300.705, the SEA is responsible for ensuring that the requirements of this part are met.

(2) Paragraph (d)(1) of this section does not preclude a State from assigning initial responsibility for ensuring the requirements of this part are met to another entity. However, the SEA must maintain the ultimate responsibility for ensuring compliance with this part, consistent with § 300.149.

(Authority: 20 U.S.C. 1413(a)(5))

**§ 300.210 Purchase of instructional materials.**

(a) *General.* Not later than December 3, 2006, two years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, an LEA that chooses to coordinate with the National Instructional Materials Access Center, when purchasing print instructional materials, must acquire those instructional materials in the same manner, and subject to the same conditions as an SEA under § 300.172.

(b) *Rights of LEA.* (1) Nothing in this section shall be construed to require an LEA to coordinate with the National Instructional Materials Access Center.

(2) If an LEA chooses not to coordinate with the National Instructional Materials Access Center, the LEA must provide an assurance to the SEA that the LEA will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(3) Nothing in this section relieves an LEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats but for whom the NIMAC may not provide assistance, receive those instructional materials in a timely manner.

(Authority: 20 U.S.C. 1413(a)(6))

**§ 300.211 Information for SEA.**

The LEA must provide the SEA with information necessary to enable the SEA to carry out its duties under Part B of the Act, including, with respect to §§ 300.157 and 300.160, information relating to the performance of children with disabilities participating in programs carried out under Part B of the Act.

(Authority: 20 U.S.C. 1413(a)(7))

**§ 300.212 Public information.**

The LEA must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the agency under Part B of the Act.

(Authority: 20 U.S.C. 1413(a)(8))

**§ 300.213 Records regarding migratory children with disabilities.**

The LEA must cooperate in the Secretary's efforts under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the States, health and educational information regarding those children.

(Authority: 20 U.S.C. 1413(a)(9))

**§§ 300.214–300.219 [Reserved]**

**§ 300.220 Exception for prior local plans.**

(a) *General.* If an LEA or a State agency described in § 300.228 has on file with the SEA policies and procedures that demonstrate that the LEA or State agency meets any requirement of § 300.200, including any policies and procedures filed under Part B of the Act as in effect before December 3, 2004, the SEA must consider the LEA or State agency to have met that requirement for purposes of receiving assistance under Part B of the Act.

(b) *Modification made by an LEA or State agency.* Subject to paragraph (c) of this section, policies and procedures submitted by an LEA or a State agency in accordance with this subpart remain in effect until the LEA or State agency submits to the SEA the modifications that the LEA or State agency determines are necessary.

(c) *Modifications required by the SEA.* The SEA may require an LEA or a State agency to modify its policies and procedures, but only to the extent necessary to ensure the LEA's or State agency's compliance with Part B of the Act or State law, if—

(1) After December 3, 2004, the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the applicable provisions of the Act (or the regulations developed to carry out the Act) are amended;

(2) There is a new interpretation of an applicable provision of the Act by Federal or State courts; or

(3) There is an official finding of noncompliance with Federal or State law or regulations.

(Authority: 20 U.S.C. 1413(b))

**§ 300.221 Notification of LEA or State agency in case of ineligibility.**

If the SEA determines that an LEA or State agency is not eligible under Part B of the Act, then the SEA must—

(a) Notify the LEA or State agency of that determination; and

(b) Provide the LEA or State agency with reasonable notice and an opportunity for a hearing.

(Authority: 20 U.S.C. 1413(c))

**§ 300.222 LEA and State agency compliance.**

(a) *General.* If the SEA, after reasonable notice and an opportunity for a hearing, finds that an LEA or State agency that has been determined to be eligible under this subpart is failing to comply with any requirement described in §§ 300.201 through 300.213, the SEA must reduce or must not provide any further payments to the LEA or State agency until the SEA is satisfied that the LEA or State agency is complying with that requirement.

(b) *Notice requirement.* Any State agency or LEA in receipt of a notice described in paragraph (a) of this section must, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this section to the attention of the public within the jurisdiction of the agency.

(c) *Consideration.* In carrying out its responsibilities under this section, each SEA must consider any decision resulting from a hearing held under §§ 300.511 through 300.533 that is adverse to the LEA or State agency involved in the decision.

(Authority: 20 U.S.C. 1413(d))

**§ 300.223 Joint establishment of eligibility.**

(a) *General.* An SEA may require an LEA to establish its eligibility jointly with another LEA if the SEA determines that the LEA will be ineligible under this subpart because the agency will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.

(b) *Charter school exception.* An SEA may not require a charter school that is an LEA to jointly establish its eligibility under paragraph (a) of this section unless the charter school is explicitly permitted to do so under the State's charter school statute.

(c) *Amount of payments.* If an SEA requires the joint establishment of eligibility under paragraph (a) of this section, the total amount of funds made available to the affected LEAs must be equal to the sum of the payments that each LEA would have received under § 300.705 if the agencies were eligible for those payments.

(Authority: 20 U.S.C. 1413(e)(1) and (2))

**§ 300.224 Requirements for establishing eligibility.**

(a) *Requirements for LEAs in general.* LEAs that establish joint eligibility under this section must—

(1) Adopt policies and procedures that are consistent with the State's policies and procedures under §§ 300.101 through 300.163, and §§ 300.165 through 300.174; and

(2) Be jointly responsible for implementing programs that receive assistance under Part B of the Act.

(b) *Requirements for educational service agencies in general.* If an educational service agency is required by State law to carry out programs under Part B of the Act, the joint responsibilities given to LEAs under Part B of the Act—

(1) Do not apply to the administration and disbursement of any payments received by that educational service agency; and

(2) Must be carried out only by that educational service agency.

(c) *Additional requirement.* Notwithstanding any other provision of §§ 300.223 through 300.224, an educational service agency must provide for the education of children with disabilities in the least restrictive environment, as required by § 300.112.

(Authority: 20 U.S.C. 1413(e)(3) and (4))

**§ 300.225 [Reserved]**

**§ 300.226 Early intervening services.**

(a) *General.* An LEA may not use more than 15 percent of the amount such agency receives under Part B of the Act for any fiscal year, less any amount reduced by the agency pursuant to § 300.205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who have not been identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

(b) *Activities.* In implementing coordinated, early intervening services under this section, an LEA may carry out activities that include—

(1) Professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

(2) Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

(c) *Construction.* Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability.

(d) *Reporting.* Each LEA that develops and maintains coordinated, early intervening services under this section must annually report to the SEA on—

(1) The number of children served under this section; and

(2) The number of children served under this section who subsequently receive special education and related services under Part B of the Act during the preceding two year period.

(e) *Coordination with ESEA.* Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.

(Authority: 20 U.S.C. 1413(f))

**§ 300.227 Direct services by the SEA.**

(a) *General.* (1) An SEA must use the payments that would otherwise have been available to an LEA or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that LEA, or for whom that State agency is responsible, if the SEA

determines that the LEA or State agency—

(i) Has not provided the information needed to establish the eligibility of the LEA or State agency, or elected not to apply for its Part B allotment, under Part B of the Act;

(ii) Is unable to establish and maintain programs of FAPE that meet the requirements of this part;

(iii) Is unable or unwilling to be consolidated with one or more LEAs in order to establish and maintain the programs; or

(iv) Has one or more children with disabilities who can best be served by a regional or State program or service delivery system designed to meet the needs of these children.

(2) *SEA administrative procedures.* (i) In meeting the requirements in paragraph (a)(1) of this section, the SEA may provide special education and related services directly, by contract, or through other arrangements.

(ii) The excess cost requirements of § 300.202(b) do not apply to the SEA.

(b) *Manner and location of education and services.* The SEA may provide special education and related services under paragraph (a) of this section in the manner and at the locations (including regional or State centers) as the SEA considers appropriate. The education and services must be provided in accordance with this part.

(Authority: 20 U.S.C. 1413(g))

**§ 300.228 State agency eligibility.**

Any State agency that desires to receive a subgrant for any fiscal year under § 300.705 must demonstrate to the satisfaction of the SEA that—

(a) All children with disabilities who are participating in programs and projects funded under Part B of the Act receive FAPE, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and

(b) The agency meets the other conditions of this subpart that apply to LEAs.

(Authority: 20 U.S.C. 1413(h))

**§ 300.229 Disciplinary information.**

(a) The State may require that a public agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children.

(b) The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child.

(c) If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child.

(Authority: 20 U.S.C. 1413(i))

**§ 300.230 SEA flexibility.**

(a) *Adjustment to State fiscal effort in certain fiscal years.* For any fiscal year for which the allotment received by a State under § 300.703 exceeds the amount the State received for the previous fiscal year and if the State in school year 2003–2004 or any subsequent school year pays or reimburses all LEAs within the State from State revenue 100 percent of the non-Federal share of the costs of special education and related services, the SEA, notwithstanding §§ 300.162 through 300.163 (related to State-level nonsupplanting and maintenance of effort), and § 300.175 (related to direct services by the SEA) may reduce the level of expenditures from State sources for the education of children with disabilities by not more than 50 percent of the amount of such excess.

(b) *Prohibition.* Notwithstanding paragraph (a) of this section, if the Secretary determines that an SEA is unable to establish, maintain, or oversee programs of FAPE that meet the requirements of this part, or that the State needs assistance, intervention, or substantial intervention under § 300.603, the Secretary prohibits the SEA from exercising the authority in paragraph (a) of this section.

(c) *Education activities.* If an SEA exercises the authority under paragraph (a) of this section, the agency must use funds from State sources, in an amount equal to the amount of the reduction under paragraph (a) of this section, to support activities authorized under the ESEA, or to support need-based student or teacher higher education programs.

(d) *Report.* For each fiscal year for which an SEA exercises the authority under paragraph (a) of this section, the SEA must report to the Secretary—

(1) The amount of expenditures reduced pursuant to that paragraph; and

(2) The activities that were funded pursuant to paragraph (c) of this section.

(e) *Limitation.* (1) Notwithstanding paragraph (a) of this section, an SEA may not reduce the level of expenditures described in paragraph (a) of this section if any LEA in the State would, as a result of such reduction, receive less than 100 percent of the amount necessary to ensure that all children with disabilities served by the LEA receive FAPE from the combination of Federal funds received under Part B of the Act and State funds received from the SEA.

(2) If an SEA exercises the authority under paragraph (a) of this section, LEAs in the State may not reduce local effort under § 300.205 by more than the reduction in the State funds they receive.

(Authority: 20 U.S.C. 1413(j))

## Subpart D—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

### Parental Consent

**§ 300.300 Parental consent.**

(a) Consent for initial evaluation. (1)(i) Except as provided in paragraph (a)(2) of this section (regarding consent for wards of the State), the public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under § 300.8 must obtain informed consent from the parent of the child before conducting the evaluation.

(ii) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.

(2)(i) If the child is a ward of the State and is not residing with the child's parent, the public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

(ii) The public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if—

(A) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;

(B) The rights of the parents of the child have been terminated in accordance with State law; or

(C) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(3) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under paragraph (a)(1) of this section, or the

parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in subpart E of this part (including the mediation procedures under § 300.506 or the due process procedures under §§ 300.507 through 300.516), if appropriate, except to the extent inconsistent with State law relating to such parental consent.

(b) *Parental consent for services.* (1) A public agency that is responsible for making FAPE available to a child with a disability must seek to obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

(2) If the parent of a child fails to respond or refuses to consent to services under paragraph (b)(1) of this section, the public agency may not use the procedures in Subpart E of this part (including the mediation procedures under § 300.506 or the due process procedures under §§ 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child.

(3) If the parent of the child refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the public agency—

(i) Will not be considered to be in violation of the requirement to make available FAPE to the child for the failure to provide the child with the special education and related services for which the public agency requests consent; and

(ii) Is not required to convene an IEP meeting or develop an IEP under §§ 300.320 and 300.324 for the child for the special education and related services for which the public agency requests such consent.

(c) *Parental consent for reevaluations.* (1) Subject to paragraph (c)(2) of this section, each public agency must obtain informed parental consent, in accordance with § 300.300(a), prior to conducting any reevaluation of a child with a disability.

(2) The informed parental consent described in paragraph (c)(1) of this ection need not be obtained if the public agency can demonstrate that—

(i) It had taken reasonable measures to obtain such consent; and

(ii) The child's parent has failed to respond.

(d) *Other consent requirements.*

(1) Parental consent is not required before—(i) Reviewing existing data as part of an evaluation or a reevaluation; or

(ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

(2) In addition to the parental consent requirements described in paragraph (a) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.

(3) A public agency may not use a parent's refusal to consent to one service or activity under paragraphs (a) and (d)(2) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.

(Authority: 20 U.S.C. 1414(a)(1)(D) and 1414(c))

## Evaluations and Reevaluations

### § 300.301 Initial evaluations.

(a) *General.* Each public agency must conduct a full and individual initial evaluation, in accordance with §§ 300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part.

(b) *Request for initial evaluation.* Consistent with the consent requirements in § 300.300, either a parent of a child, or a public agency, may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(c) *Procedures for initial evaluation.* The initial evaluation—

(1)(i) Must be conducted within 60 days of receiving parental consent for the evaluation; or

(ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and

(2) Must consist of procedures—

(i) To determine if the child is a child with a disability under § 300.8; and

(ii) To determine the educational needs of the child.

(d) *Exception.* The timeframe described in paragraph (c)(1) of this section shall not apply to a public agency if—

(1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(2)(i) A child enrolls in a school served by the public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under § 300.8.

(ii) The exception in paragraph (c)(2)(ii)(A) of this section applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.

(Authority: 20 U.S.C. 1414(a))

### § 300.302 Screening for instructional purposes is not evaluation.

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

(Authority: 20 U.S.C. 1414(a)(1)(E))

### § 300.303 Reevaluations.

(a) *General.* A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§ 300.304 through 300.311—

(1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(2) If the child's parent or teacher requests a reevaluation.

(b) *Limitation.* A reevaluation conducted under paragraph (a) of this section—

(1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and

(2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.

(Authority: 20 U.S.C. 1414(a)(2))

### § 300.304 Evaluation procedures.

(a) *Notice.* The public agency must provide notice to the parents of a child with a disability, in accordance with § 300.503, that describes any evaluation procedures the agency proposes to conduct.

(b) *Conduct of evaluation.* In conducting the evaluation, the public agency must—

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—

(i) Whether the child is a child with a disability under § 300.8; and

(ii) The content of the child's IEP, including information related to

enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

(2) Not use any single procedure as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(c) *Other evaluation procedures.* Each public agency must ensure that—

(1) Assessments and other evaluation materials used to assess a child under this part—

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

(iii) Are used for the purposes for which the assessments or measures are valid and reliable;

(iv) Are administered by trained and knowledgeable personnel; and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

(2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

(5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same academic year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

(6) In evaluating each child with a disability under §§ 300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

(Authority: 20 U.S.C. 1414(b)(1)–(3), 1412(a)(6)(B))

**§ 300.305 Additional requirements for evaluations and reevaluations.**

(a) *Review of existing evaluation data.* As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must—

(1) Review existing evaluation data on the child, including—

(i) Evaluations and information provided by the parents of the child;

(ii) Current classroom-based local or State assessments, and classroom-based observations; and

(iii) Observations by teachers and related services providers; and

(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—

(i)(A) Whether the child is a child with a disability, as defined in § 300.8, and the educational needs of the child; or

(B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;

(ii) The present levels of academic achievement and related developmental needs of the child;

(iii)(A) Whether the child needs special education and related services; or

(B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

(b) *Conduct of review.* The group described in paragraph (a) of this section may conduct its review without a meeting.

(c) *Source of data.* The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.

(d) *Requirements if additional data are not needed.*

(1) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of—

(i) That determination and the reasons for the determination; and

(ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.

(2) The public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents.

(e) *Evaluations before change in placement.*

(1) Except as provided in paragraph (e)(2) of this section, a public agency must evaluate a child with a disability in accordance with §§ 300.304 through 300.311 before determining that the child is no longer a child with a disability.

(2) The evaluation described in paragraph (e)(1) of this section is not required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.

(3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

(Authority: 20 U.S.C. 1414(c))

**§ 300.306 Determination of eligibility.**

(a) *General.* Upon completion of the administration of assessments and other evaluation measures—

(1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in § 300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and

(2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility to the parent.

(b) *Special rule for eligibility determination.* A child must not be determined to be a child with a disability under this part—

(1) If the determinant factor for that determination is—

(i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA);

(ii) Lack of instruction in math; or

(iii) Limited English proficiency; and

(2) If the child does not otherwise meet the eligibility criteria under § 300.8(a).

(c) *Procedures for determining eligibility and placement.* (1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under § 300.8, and the educational needs of the child, each public agency must—

(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and

(ii) Ensure that information obtained from all of these sources is documented and carefully considered.

(2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§ 300.320 through 300.324.

(Authority: 20 U.S.C. 1414(b)(4) and (5))

**Additional Procedures for Evaluating Children With Specific Learning Disabilities**

**§ 300.307 Specific learning disabilities.**

(a) *General.* A State must adopt, consistent with § 300.309, criteria for determining whether a child has a specific learning disability as defined in § 300.8. In addition, the criteria adopted by the State—

(1) May prohibit the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability as defined in § 300.8;

(2) May not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability as defined in § 300.8;

(3) Must permit the use of a process that determines if the child responds to scientific, research-based intervention as part of the evaluation procedures described in § 300.304; and

(4) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability as defined in § 300.8.

(b) *Consistency with State criteria.* A public agency must use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability.

(Authority: 20 U.S.C. 1221e–3; 1401(30); 1414(b)(6))

**§ 300.308 Group members.**

The determination of whether a child suspected of having a specific learning disability is a child with a disability, as defined in § 300.8, is made by the child's parents and the group described under § 300.306(a)(1) that—

(a) Is collectively qualified to—

(1) Conduct, as appropriate, individual diagnostic assessments in the areas of speech and language, academic achievement, intellectual development, and social-emotional development;

(2) Interpret assessment and intervention data, and apply critical analysis to those data;

(3) Develop appropriate educational and transitional recommendations based on the assessment data; and

(4) Deliver, and monitor specifically designed instruction and services to meet the needs of a child with a specific learning disability; and

(b) Includes—(1) A special education teacher;

(2)(i) The child's general education teacher; or

(ii) If the child does not have a general education teacher, a general education teacher qualified to teach a child of the child's age; and

(c) Other professionals, if appropriate, such as a school psychologist, reading teacher, or educational therapist.

(Authority: 20 U.S.C. 1221e–3; 1401(30); 1414(b)(6))

**§ 300.309 Determining the existence of a specific learning disability.**

(a) The group described in § 300.308 may determine that a child has a specific learning disability if—

(1) The child does not achieve commensurate with the child's age in one or more of the following areas, when provided with learning experiences appropriate for the child's age:

(i) Oral expression.

(ii) Listening comprehension.

(iii) Written expression.

(iv) Basic reading skill.

(v) Reading fluency skills.

(vi) Reading comprehension.

(vii) Mathematics calculation.

(viii) Mathematics problem solving.

(2)(i) The child fails to achieve a rate of learning to make sufficient progress to meet State-approved results in one or more of the areas identified in paragraph (a)(1) of this section when assessed with a response to scientific, research-based intervention process; or

(ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, or a pattern of strengths and weaknesses in performance, achievement, or both, relative to intellectual development, that is determined by the team to be relevant to the identification of a specific learning disability, using appropriate assessments consistent with §§ 300.304 and 300.305; and

(3) The group determines that its findings under paragraph (a)(1) and (2) of this section are not primarily the result of—

(i) A visual, hearing, or motor disability;

(ii) Mental retardation;

(iii) Emotional disturbance;

(iv) Cultural factors; or

(v) Environmental or economic disadvantage.

(b) For a child suspected of having a specific learning disability, the group must consider, as part of the evaluation described in §§ 300.304 through 300.306, data that demonstrates that—

(1) Prior to, or as a part of the referral process, the child was provided appropriate high-quality, research-based instruction in regular education settings, consistent with section 1111(b)(8)(D) and (E) of the ESEA, including that the instruction was delivered by qualified personnel; and

(2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, was provided to the child's parents.

(c) If the child has not made adequate progress after an appropriate period of time, during which the conditions in paragraphs (b)(1) and (2) of this section have been implemented, a referral for an evaluation to determine if the child needs special education and related services must be made.

(d) Once the child is referred for an evaluation to determine if the child needs special education and related services, the timelines described in §§ 300.301 and 300.303 must be adhered to, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in § 300.308.

(Authority: 20 U.S.C. 1221e–3; 1401(30); 1414(b)(6))

**§ 300.310 Observation.**

(a) At least one member of the group described in § 300.308, other than the child's current teacher, who is trained in observation, shall observe the child, and the learning environment, including the regular classroom setting, to document academic performance and behavior in the areas of difficulty.

(b) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

(Authority: 20 U.S.C. 1221e–3; 1401(30); 1414(b)(6))

**§ 300.311 Written report.**

(a) For a child suspected of having a specific learning disability, the evaluation report and the documentation of the determination of eligibility, as required by § 300.306(a)(2), must include a statement of—

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination, including an assurance that the determination has been made in accordance with § 300.306(c)(1);

(3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;

(4) The educationally relevant medical findings, if any;

(5) Whether the child does not achieve commensurate with the child's age;

(6) Whether there are strengths and weaknesses in performance or achievement or both, or there are strengths and weaknesses in performance or achievement, or both, relative to intellectual development in one or more of the areas described in § 300.309(a) that require special education and related services; and

(7) The instructional strategies used and the student-centered data collected if a response to scientific, research-based intervention process, as described in § 300.309 was implemented.

(b) Each group member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the group member must submit a separate statement presenting his or her conclusions.

(Authority: 20 U.S.C. 1221e–3; 1401(30); 1414(b)(6))

**Individualized Education Programs**

**§ 300.320 Definition of individualized education program.**

(a) *General.* As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§ 300.320 through 300.324, and that must include—

(1) A statement of the child's present levels of academic achievement and functional performance, including—

(i) How the child's disability affects the child's involvement and progress in the general education curriculum (*i.e.*, the same curriculum as for nondisabled children); or

(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

(2)(i) A statement of measurable annual goals, including academic and functional goals designed to—

(A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

(B) Meet each of the child's other educational needs that result from the child's disability;

(ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

(3) A description of—

(i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and

(ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

(4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child—

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;

(5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular education environment and in the activities described in paragraph (a)(4) of this section;

(6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with § 300.160; and

(ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why—

(A) The child cannot participate in the regular assessment; and

(B) The particular alternate assessment selected is appropriate for the child; and

(7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.

(b) *Transition services.* Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include—

(1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

(2) The transition services (including courses of study) needed to assist the child in reaching those goals.

(c) *Transfer of rights at age of majority.* Beginning not later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under § 300.520.

(d) *Construction.* Nothing in this section shall be construed to require—

(1) That additional information be included in a child's IEP beyond what is explicitly required in section 614 of the Act; or

(2) The IEP Team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

(Authority: 20 U.S.C. 1414(d)(1)(A) and (d)(6))

**§ 300.321 IEP Team.**

(a) *General.* The public agency must ensure that the IEP Team for each child with a disability includes—

(1) The parents of the child;

(2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);

(3) Not less than one special education teacher of the child, or where appropriate, not less then one special education provider of the child;

(4) A representative of the public agency who—

(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

(ii) Is knowledgeable about the general education curriculum; and

(iii) Is knowledgeable about the availability of resources of the public agency.

(5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;

(6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

(7) Whenever appropriate, the child with a disability.

(b) *Transition services participants.* (1) In accordance with paragraph (a)(7) of this section, the public agency must invite a child with a disability to attend the child's IEP meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under § 300.320(b).

(2) If the child does not attend the IEP meeting, the public agency must take other steps to ensure that the child's preferences and interests are considered.

(3) To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of paragraph (b)(1) of this section, the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

(c) *Determination of knowledge and special expertise.* The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section must be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team.

(d) *Designating a public agency representative.* A public agency may designate a public agency member of the IEP Team to also serve as the agency representative, if the criteria in paragraph (a)(4) of this section are satisfied.

(e) *IEP Team attendance.*

(1) A member of the IEP Team is not required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

(2) A member of the IEP Team may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if—

(i) The parent, in writing, and the public agency consent to the excusal; and

(ii) The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

(f) *Initial IEP meeting for child under Part C.* In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.

(Authority: 20 U.S.C. 1401(30), 1414(d)(1)(A)(7),(B))

**§ 300.322 Parent participation.**

(a) *Public agency responsibility—general.* Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including—

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b) *Information provided to parents.* (1) The notice required under paragraph (a)(1) of this section must—

(i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and

(ii) Inform the parents of the provisions in § 300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child).

(2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must—

(i) Indicate—

(A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with § 300.320(b); and

(B) That the agency will invite the student; and

(ii) Identifies any other agency that will be invited to send a representative.

(c) *Other methods to ensure parent participation.* If neither parent can attend, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with § 300.328 (related to alternative means of meeting participation).

(d) *Conducting an IEP meeting without a parent in attendance.* A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place.

(e) *Parent copy of child's IEP.* The public agency must give the parent a copy of the child's IEP at no cost to the parent.

(Authority: 20 U.S.C. 1414(d)(1)(B)(i))

**§ 300.323 When IEPs must be in effect.**

(a) *General.* At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in § 300.320.

(b) *IEP or IFSP for children aged three through five.*

(1) In the case of a child with a disability aged three through five (or, at the discretion of the SEA, a two-year-old child with a disability who will turn age three during the school year), the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is—

(i) Consistent with State policy; and

(ii) Agreed to by the agency and the child's parents.

(2) In implementing the requirements of paragraph (b)(1) of this section, the public agency must—

(i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and

(ii) If the parents choose an IFSP, obtain written informed consent from the parents.

(c) *Initial IEPs; provision of services.* Each public agency must ensure that—

(1) A meeting to develop an IEP for a child is conducted within 30-days of a determination that the child needs special education and related services; and

(2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

(d) *Accessibility of child's IEP to teachers and others.* Each public agency must ensure that the child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation.

(e) *Program for children who transfer public agencies.* (1)(i) In the case of a child with a disability who transfers public agencies within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same State, the public agency, in consultation with the parents, must provide FAPE to the child, including services comparable to those described in the previously held IEP, until such time as the public agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

(ii) In the case of a child with a disability who transfers public agencies within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in another State, the public agency, in consultation with the parents, must provide the child with FAPE, including services comparable to those described in the previously held IEP, until such time as the public agency conducts an evaluation pursuant to §§ 300.304 through 300.306, if determined to be necessary by the public agency, and develops a new IEP, if appropriate, that is consistent with Federal and State law.

(2) To facilitate the transition for a child described in paragraph (e)(1) of this section—

(i) The new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, pursuant to section 99.31(a)(2) of title 34, Code of Federal Regulations; and

(ii) The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency.

(Authority: 20 U.S.C. 1414(d)(2)(A)-(C))

**Development of IEP**

**§ 300.324 Development, review, and revision of IEP.**

(a) Development of IEP. (1) *General.* In developing each child's IEP, the IEP Team must consider—

(i) The strengths of the child;

(ii) The concerns of the parents for enhancing the education of their child;

(iii) The results of the initial or most recent evaluation of the child; and

(iv) The academic, developmental, and functional needs of the child.

(2) *Consideration of special factors.* The IEP Team must—

(i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;

(ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;

(iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

(iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

(v) Consider whether the child needs assistive technology devices and services.

(3) *Requirement with respect to regular education teacher.* A regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of—

(i) Appropriate positive behavioral interventions and supports and other strategies for the child; and

(ii) Supplementary aids and services, program modifications, and support for school personnel consistent with § 300.320(a)(4).

(4) *Agreement.* In making changes to a child's IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.

(5) *Consolidation of IEP Team meetings.* To the extent possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

(6) *Amendments.* Changes to the IEP may be made either by the entire IEP Team or, as provided in paragraph (a)(4) of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

(b) *Review and revision of IEPs.*

(1) *General.* Each public agency must ensure that, subject to paragraph (b)(2) of this section, the IEP Team—

(i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

(ii) Revises the IEP, as appropriate, to address—

(A) Any lack of expected progress toward the annual goals described in § 300.320(a)(2), and in the general education curriculum, if appropriate;

(B) The results of any reevaluation conducted under § 300.303;

(C) Information about the child provided to, or by, the parents, as described under § 300.305(a)(2);

(D) The child's anticipated needs; or

(E) Other matters.

(2) *Requirement with respect to regular education teacher.* A regular education teacher of the child, as a member of the IEP Team, must, consistent with paragraph (a)(3) of this section, participate in the review and revision of the IEP of the child.

(c) *Failure to meet transition objectives.*

(1) *Participating agency failure.* If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with § 300.320(b), the

public agency must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

(2) *Construction.* Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.

(d) *Children with disabilities in adult prisons.*

(1) *Requirements that do not apply.* The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

(i) The requirements contained in § 300.160 and § 300.320(a)(6) (relating to participation of children with disabilities in general assessments).

(ii) The requirements in § 300.320(b) (relating to transition planning and transition services), do not apply with respect to the children whose eligibility under Part B of the Act will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

(2) *Modifications of IEP or placement.*

(i) Subject to paragraph (c)(2)(ii) of this section, the IEP Team of a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the child's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(ii) The requirements of §§ 300.320 (relating to IEPs), and 300.112 (relating to LRE), do not apply with respect to the modifications described in paragraph (c)(1) of this section.

(Authority: 20 U.S.C. 1412(a)(1), 1412(a)(12)(A)(i), 1414(d)(3), (4)(B), and (7); and 1414(e))

**§ 300.325 Private school placements by public agencies.**

(a) *Developing IEPs.* (1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency must initiate and conduct a meeting to develop an IEP for the child in accordance with §§ 300.320 and 300.324.

(2) The agency must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(b) *Reviewing and revising IEPs.* (1) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.

(2) If the private school or facility initiates and conducts these meetings, the public agency must ensure that the parents and an agency representative—

(i) Are involved in any decision about the child's IEP; and

(ii) Agree to any proposed changes in the IEP before those changes are implemented.

(c) *Responsibility.* Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA.

(Authority: 20 U.S.C. 1412(a)(10)(B))

**§ 300.326 [Reserved]**

**§ 300.327 Educational placements.**

Consistent with § 300.501(c), each public agency must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

(Authority: 20 U.S.C. 1414(e))

**§ 300.328 Alternative means of meeting participation.**

When conducting IEP Team meetings and placement meetings pursuant to this subpart, and Subpart E, and carrying out administrative matters under section 615 of the Act (such as scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and a public agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.

(Authority: 20 U.S.C. 1414(f))

## Subpart E—Procedural Safeguards

### Due Process Procedures for Parents and Children

**§ 300.500 Responsibility of SEA and other public agencies.**

Each SEA must ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of §§ 300.500 through 300.536.

(Authority: 20 U.S.C. 1415(a))

**§ 300.501 Opportunity to examine records; parent participation in meetings.**

(a) *Opportunity to examine records.* The parents of a child with a disability must be afforded, in accordance with the procedures of §§ 300.610 through 300.628, an opportunity to inspect and review all education records with respect to—

(1) The identification, evaluation, and educational placement of the child; and

(2) The provision of FAPE to the child.

(b) *Parent participation in meetings.* (1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to—

(i) The identification, evaluation, and educational placement of the child; and

(ii) The provision of FAPE to the child.

(2) Each public agency must provide notice consistent with § 300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section.

(3) A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(c) *Parent involvement in placement decisions.* (1) Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.

(2) In implementing the requirements of paragraph (c)(1) of this section, the public agency must use procedures consistent with the procedures described in § 300.322(a) through (b)(1).

(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(4) A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement.

(Authority: 20 U.S.C. 1414(e), 1415(b)(1))

**§ 300.502 Independent educational evaluation.**

(a) *General.* (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.

(3) For the purposes of this subpart—

(i) *Independent educational evaluation* means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and

(ii) *Public expense* means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with § 300.103.

(b) *Parent right to evaluation at public expense.*

(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either—

(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

(3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the explanation by the parent may not be required and the public agency may not unreasonably delay either providing the independent educational evaluation at public expense or requesting a due process hearing to defend the public evaluation.

(c) *Parent-initiated evaluations.* If the parent obtains an independent educational evaluation at private expense, the results of the evaluation—

(1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and

(2) May be presented by any party as evidence at a hearing on a due process complaint under subpart E of this part regarding that child.

(d) *Requests for evaluations by hearing officers.* If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.

(e) *Agency criteria.* (1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(2) Except for the criteria described in paragraph (e)(1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

(Authority: 20 U.S.C. 1415(b)(1) and (d)(2)(A))

**§ 300.503 Prior notice by the public agency; content of notice.**

(a) *Notice.* Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency—

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(b) *Content of notice.* The notice required under paragraph (a) of this section must include—

(1) A description of the action proposed or refused by the agency;

(2) An explanation of why the agency proposes or refuses to take the action;

(3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

(4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

(5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;

(6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and

(7) A description of other factors that are relevant to the agency's proposal or refusal.

(c) *Notice in understandable language.* (1) The notice required under paragraph (a) of this section must be—

(i) Written in language understandable to the general public; and

(ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(2) If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure—

(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(ii) That the parent understands the content of the notice; and

(iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met.

(Authority: 20 U.S.C. 1415(b)(3) and (4), 1415(c)(1), 1414(b)(1))

**§ 300.504 Procedural safeguards notice.**

(a) *General.* A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a year, except that a copy also must be given to the parents—

(1) Upon initial referral or parent request for evaluation;

(2) Upon receipt of the first State complaint under §§ 300.151 through 300.153 or a due process complaint under § 300.507 in that school year; and

(3) Upon request by a parent.

(b) *Internet Web site.* A public agency may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists.

(c) *Contents.* The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under § 300.148, §§ 300.151 through 300.153, §§ 300.500 through 300.536, and §§ 300.610 through 300.627 relating to—

(1) Independent educational evaluations;

(2) Prior written notice;
(3) Parental consent;
(4) Access to educational records;
(5) Opportunity to present and resolve complaints through the due process complaint or State complaint procedures, including—
(i) The time period in which to file a complaint;
(ii) The opportunity for the agency to resolve the complaint; and
(iii) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;
(6) The availability of mediation;
(7) The child's placement during pendency of hearings on due process complaints;
(8) Procedures for students who are subject to placement in an interim alternative educational setting;
(9) Requirements for unilateral placement by parents of children in private schools at public expense;
(10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
(11) State-level appeals (if applicable in that State);
(12) Civil actions, including the time period in which to file those actions; and
(13) Attorneys' fees.
(d) *Notice in understandable language.* The notice required under paragraph (a) of this section must meet the requirements of § 300.503(c).

(Authority: 20 U.S.C. 1415(d)(1) and (2))

**§ 300.505 Electronic mail.**

A parent of a child with a disability may elect to receive notices required by §§ 300.503, 300.504, and 300.508 by an electronic mail communication, if the public agency makes that option available.

(Authority: 20 U.S.C. 1415(n))

**§ 300.506 Mediation.**

(a) *General.* Each public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.
(b) *Requirements.* The procedures must meet the following requirements:
(1) The procedures must ensure that the mediation process—
(i) Is voluntary on the part of the parties;
(ii) Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Act; and
(iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
(2) A public agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party—
(i) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under section 671 or 672 of the Act; and
(ii) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.
(3)(i) The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.
(ii) The SEA must select mediators on a random, rotational, or other impartial basis.
(4) The State must bear the cost of the mediation process, including the costs of meetings described in paragraph (b)(2) of this section.
(5) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.
(6) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that—
(i) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding arising from that dispute; and
(ii) Is signed by both the parent and a representative of the agency who has the authority to bind such agency.
(7) A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States.
(8) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceedings arising from that dispute.
(9) The parties to mediation may be required to sign a confidentiality pledge prior to the commencement of the mediation to ensure that all discussions that occur during mediation remain confidential.
(c) *Impartiality of mediator.* (1) An individual who serves as a mediator under this part—
(i) May not be an employee of the SEA or the LEA that is involved in the education or care of the child; and
(ii) Must not have a personal or professional interest that conflicts with the person's objectivity.
(2) A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency described under § 300.228 solely because he or she is paid by the agency to serve as a mediator.

(Authority: 20 U.S.C. 1415(e))

**§ 300.507 Filing a due process complaint.**

(a) *General.* (1) A parent or a public agency may file a due process complaint on any of the matters described in § 300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).
(2) The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in § 300.511(f) apply to the timeline in this section.
(b) *Information for parents.* The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if—
(1) The parent requests the information; or
(2) The parent or the agency requests a hearing under this section.

(Authority: 20 U.S.C. 1415(b)(6))

**§ 300.508 Due process complaint.**

(a) *General.* (1) The public agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).
(2) The party filing a due process complaint must forward a copy of the due process complaint to the SEA.
(b) *Content of complaint.* The due process complaint required in paragraph (a)(1) of this section must include—
(1) The name of the child;
(2) The address of the residence of the child;

(3) The name of the school the child is attending;

(4) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;

(5) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and

(6) A proposed resolution of the problem to the extent known and available to the party at the time.

(c) *Notice required before a hearing on a due process complaint.* A party may not have a hearing on a due process complaint or engage in a resolution session until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section.

(d) *Sufficiency of complaint.* (1) The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (b) of this section.

(2) Within five days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of paragraph (b) of this section, and must immediately notify the parties in writing of that determination.

(3) A party may amend its due process complaint only if—

(i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to § 300.510; or

(ii) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

(4) If a party files an amended due process complaint, the timelines for the resolution meeting in § 300.510(a) and the time period to resolve in § 300.510(b) begin again with the filing of the amended due process complaint.

(e) *LEA response to a due process complaint.* (1) If the LEA has not sent a prior written notice under § 300.503 to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within 10 days of receiving the due process complaint, send to the parent a response that includes—

(i) An explanation of why the agency proposed or refused to take the action raised in the due process complaint;

(ii) A description of other options that the IEP Team considered and the reasons why those options were rejected;

(iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

(iv) A description of the other factors that are relevant to the agency's proposed or refused action.

(2) A response by an LEA under paragraph (1) of this section shall not be construed to preclude the LEA from asserting that the parent's due process complaint was insufficient, where appropriate.

(f) *Other party response to a due process complaint.* Except as provided in paragraph (e) of this section, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

(Authority: 20 U.S.C. 1415(b)(7), 1415(c)(2))

**§ 300.509 Model forms.**

Each SEA must develop model forms to assist parents in filing a due process complaint in accordance with §§ 300.507(a) and 300.508(a) through (c) and in filing a State complaint under §§ 300.151 through 300.153.

(Authority: 20 U.S.C. 1415(b)(8))

**§ 300.510 Resolution process.**

(a) *Resolution meeting.* (1) Within 15 days of receiving notice of the parents' due process complaint, and prior to the initiation of a due process hearing under § 300.511, the LEA must convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that—

(i) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and

(ii) May not include an attorney of the LEA unless the parent is accompanied by an attorney.

(2) The purpose of the meeting is for the parents of the child to discuss their due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.

(3) The meeting described in paragraph (a)(1) and (2) of this section need not be held if—

(i) The parents and the LEA agree in writing to waive the meeting; or

(ii) The parents and the LEA agree to use the mediation process described in § 300.506.

(4) The parents and the LEA determine the relevant members of the IEP Team to attend the meeting.

(b) *Resolution period.* (1) If the LEA has not resolved the due process complaint to the satisfaction of the parents within 30 days of the receipt of the due process complaint, the due process hearing must occur.

(2) The timeline for issuing a final decision under § 300.515 begins at the expiration of this 30-day period.

(3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of a parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

(c) *Written settlement agreement.* If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is—

(1) Signed by both the parent and a representative of the agency who has the authority to bind the agency; and

(2) Enforceable in any State court of competent jurisdiction or in a district court of the United States.

(d) *Agreement review period.* If the parties execute an agreement pursuant to paragraph (c) of this section, a party may void the agreement within 3 business days of the agreement's execution.

(Authority: 20 U.S.C. 1415(f)(1)(B))

**§ 300.511 Impartial due process hearing.**

(a) *General.* Whenever a due process complaint is filed under § 300.507, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§ 300.507 through 300.508, and § 300.510.

(b) *Agency responsible for conducting the due process hearing.* The hearing described in paragraph (a) of this section must be conducted by the SEA or the public agency directly responsible for the education of the

child, as determined under State statute, State regulation, or a written policy of the SEA.

(c) *Impartial hearing officer.* (1) At a minimum, a hearing officer—

(i) Must not be—

(A) An employee of the SEA or the LEA that is involved in the education or care of the child; or

(B) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

(ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;

(iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(2) A person who otherwise qualifies to conduct a hearing under paragraph (c)(1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(3) Each public agency must keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

(d) *Subject matter of due process hearings.* The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under § 300.508(b), unless the other party agrees otherwise.

(e) *Timeline for requesting a hearing.* A parent or agency must request an impartial hearing on their due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that State law.

(f) *Exceptions to the timeline.* The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to—

(1) Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or

(2) The LEA's withholding of information from the parent that was required under this part to be provided to the parent.

(Authority: 20 U.S.C. 1415(f)(1)(A), 1415(f)(3)(A)–(D))

**§ 300.512 Hearing rights.**

(a) *General.* Any party to a hearing conducted pursuant to §§ 300.507 through 300.513 or §§ 300.530 through 300.534, or an appeal conducted pursuant to § 300.514, has the right to—

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;

(4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and

(5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(b) *Additional disclosure of information.* (1) At least five business days prior to a hearing conducted pursuant to § 300.511(a), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

(2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(c) Parental rights at hearings. Parents involved in hearings must be given the right to—

(1) Have the child who is the subject of the hearing present;

(2) Open the hearing to the public; and

(3) Have the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section provided at no cost to parents.

(Authority: 20 U.S.C. 1415(f)(2), 1415(h))

**§ 300.513 Hearing decisions.**

(a) *Decision of hearing officer.* (1) Subject to paragraph (a)(2) of this section, a hearing officer must make a decision on substantive grounds based on a determination of whether the child received a FAPE.

(2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies—

(i) Impeded the child's right to a FAPE;

(ii) Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child; or

(iii) Caused a deprivation of educational benefit.

(3) Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under §§ 300.500 through 300.536.

(b) *Construction clause.* Nothing in §§ 300.507 through 300.513 shall be construed to affect the right of a parent to file an appeal of the due process hearing decision with the SEA under § 300.514(b), if a State level appeal is available.

(c) *Separate request for a due process hearing.* Nothing in §§ 300.500 through 300.536 shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

(d) *Findings and decision to advisory panel and general public.* The public agency, after deleting any personally identifiable information, must—

(1) Transmit the findings and decisions referred to in § 300.512(a)(5) to the State advisory panel established under § 300.167; and

(2) Make those findings and decisions available to the public.

(Authority: 20 U.S.C. 1415(f)(3)(E) and (F), 1415(h)(4), 1415(o))

**§ 300.514 Finality of decision; appeal; impartial review.**

(a) *Finality of hearing decision.* A decision made in a hearing conducted pursuant to §§ 300.507 through 300.513 or §§ 300.530 through 300.534 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and § 300.516.

(b) *Appeal of decisions; impartial review.* (1) If the hearing required by § 300.511 is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA.

(2) If there is an appeal, the SEA must conduct an impartial review of the findings and decision appealed. The official conducting the review must—

(i) Examine the entire hearing record;

(ii) Ensure that the procedures at the hearing were consistent with the requirements of due process;

(iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in § 300.512 apply;

(iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;

(v) Make an independent decision on completion of the review; and

(vi) Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties.

(c) *Findings and decision to advisory panel and general public.* The SEA, after deleting any personally identifiable information, must—

(1) Transmit the findings and decisions referred to in paragraph (b)(2)(vi) of this section to the State advisory panel established under § 300.167; and

(2) Make those findings and decisions available to the public.

(d) *Finality of review decision.* The decision made by the reviewing official is final unless a party brings a civil action under § 300.516.

(Authority: 20 U.S.C. 1415(g) and (h)(4), 1415(i)(1)(A), 1415(i)(2))

**§ 300.515 Timelines and convenience of hearings and reviews.**

(a) The public agency must ensure that not later than 45 days after the expiration of the 30 day period under § 300.510(b)—

(1) A final decision is reached in the hearing; and

(2) A copy of the decision is mailed to each of the parties.

(b) The SEA must ensure that not later than 30 days after the receipt of a request for a review—

(1) A final decision is reached in the review; and

(2) A copy of the decision is mailed to each of the parties.

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

(Authority: 20 U.S.C. 1415(f)(1)(B)(ii), 1415(g), 1415(i)(1))

**§ 300.516 Civil action.**

(a) *General.* Any party aggrieved by the findings and decision made under §§ 300.507 through 300.513 or §§ 300.530 through 300.534 who does not have the right to an appeal under § 300.514(b), and any party aggrieved by the findings and decision under § 300.514(b), has the right to bring a civil action with respect to the request for a due process hearing under § 300.507 or §§ 300.530 through 300.532. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(b) *Time limitation.* The party bringing the action shall have 90 days from the date of the decision of the hearing officer to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under Part B of the Act, in the time allowed by that State law.

(c) *Additional requirements.* In any action brought under paragraph (a) of this section, the court—

(1) Receives the records of the administrative proceedings;

(2) Hears additional evidence at the request of a party; and

(3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(d) *Jurisdiction of district courts.* The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy.

(e) *Rule of construction.* Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act, the procedures under §§ 300.507 and 300.514 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.

(Authority: 20 U.S.C. 1415(i)(2) and (3)(A), 1415(l))

**§ 300.517 Attorneys' fees.**

(a) *In general.* (1) In any action or proceeding brought under section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to—

(i) The prevailing party who is the parent of a child with a disability;

(ii) To a prevailing party who is an SEA or LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(iii) To a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(2) Nothing in this subsection shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.

(b) *Prohibition on use of funds.* (1) Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under section 615 of the Act and subpart E of this part.

(2) Paragraph (b)(1) of this section does not preclude a public agency from using funds under Part B of the Act for conducting an action or proceeding under section 615 of the Act.

(c) *Award of fees.* A court awards reasonable attorneys' fees under section 615(i)(3) of the Act consistent with the following:

(1) Fees awarded under section 615(i)(3) of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph.

(2)(i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent if—

(A) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

(B) The offer is not accepted within 10 days; and

(C) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(ii) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation described in § 300.506 that is conducted prior to the filing of a request for due process under §§ 300.507 through 300.513 or §§ 300.530 through 300.534.

(iii) A meeting conducted pursuant to § 300.510 shall not be considered—

(A) A meeting convened as a result of an administrative hearing or judicial action; or

(B) An administrative hearing or judicial action for purposes of this section.

(3) Notwithstanding paragraph (c)(2) of this section, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(4) Except as provided in paragraph (c)(5) of this section, the court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the Act, if the court finds that—

(i) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(ii) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(iii) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(iv) The attorney representing the parent did not provide to the LEA the appropriate information in the due process request notice in accordance with § 300.508.

(5) The provisions of paragraph (c)(4) of this section do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the Act.

(Authority: 20 U.S.C. 1415(i)(3)(B)–(G))

**§ 300.518 Child's status during proceedings.**

(a) Except as provided in § 300.533, during the pendency of any administrative or judicial proceeding regarding a request for a due process hearing under § 300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

(c) If the decision of a hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State or local agency and the parents for purposes of paragraph (a) of this section.

(Authority: 20 U.S.C. 1415(j))

**§ 300.519 Surrogate parents.**

(a) *General.* Each public agency must ensure that the rights of a child are protected when—

(1) No parent (as defined in § 300.30) can be identified;

(2) The public agency, after reasonable efforts, cannot locate a parent;

(3) The child is a ward of the State under the laws of that State; or

(4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).

(b) *Duties of public agency.* The duties of a public agency under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method—

(1) For determining whether a child needs a surrogate parent; and

(2) For assigning a surrogate parent to the child.

(c) *Wards of the State.* In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.

(d) *Criteria for selection of surrogate parents.* (1) The public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies must ensure that a person selected as a surrogate parent—

(i) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;

(ii) Has no personal or professional interest that conflicts with the interest of the child he or she represents; and

(iii) Has knowledge and skills that ensure adequate representation of the child.

(e) *Non-employee requirement; compensation.* A person otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

(f) *Unaccompanied homeless youth.* In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogates without regard to paragraph (d)(2)(i) of this section, until a surrogate can be appointed that meets all of the requirements of paragraph (d) of this section.

(g) *Surrogate parent responsibilities.* The surrogate parent may represent the child in all matters relating to—

(1) The identification, evaluation, and educational placement of the child; and

(2) The provision of FAPE to the child.

(h) *SEA responsibility.* The SEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate.

(Authority: 20 U.S.C. 1415(b)(2))

**§ 300.520 Transfer of parental rights at age of majority.**

(a) *General.* A State may provide that, when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be incompetent under State law)—

(1)(i) The public agency must provide any notice required by this part to both the individual and the parents; and

(ii) All other rights accorded to parents under Part B of the Act transfer to the child;

(2) All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and

(3) Whenever a State transfers rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the agency must notify the individual and the parents of the transfer of rights.

(b) *Special rule.* If, under State law, a State has a mechanism to determine that a child with a disability who has reached the age of majority under State law that applies to all children and has not been determined incompetent under State law, does not have the ability to provide informed consent with respect to his or her educational program, the State must establish procedures for appointing the parent, or, if the parent is not available another appropriate individual, to represent the educational interests of the student throughout the student's eligibility under Part B of the Act.

(Authority: 20 U.S.C. 1415(m))

**§§ 300.521–300.529 [Reserved]**

**Discipline Procedures**

**§ 300.530 Authority of school personnel.**

(a) *Case-by-case determination.* School personnel may consider any unique circumstances on a case-by-case

basis when determining whether a change in placement, consistent with the requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

(b) *General.* (1) School personnel under this section may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under § 300.536).

(2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.

(c) *Additional authority.* For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.

(d) *Services.* (1) Except as provided in paragraphs (d)(3) and (d)(4) of this section, a child with a disability who is removed from the child's current placement pursuant to paragraphs (b), (c), or (g) of this section must—

(i) Continue to receive educational services, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(2) The services required by paragraph (d)(1) of this section may be provided in an interim alternative educational setting.

(3) A public agency need not provide services during periods of removal under paragraph (b) of this section to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if services are not provided to a child without disabilities who has been similarly removed.

(4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under § 300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed under paragraph (d)(1) of this section, if any, and the location in which services, if any, will be provided.

(5) If the removal is for more than 10 consecutive school days or is a change of placement under § 300.536, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section and the location in which services will be provided.

(e) *Manifestation determination.* (1) Except for removals that will be for not more than 10 consecutive school days and will not constitute a change of placement under § 300.536, within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—

(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.

(2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.

(f) *Determination that behavior was a manifestation.* If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must—

(1) Either—

(i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

(ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

(g) *Special circumstances.* School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child—

(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;

(2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or

(3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

(h) *Notification.* Not later than the date on which the decision to take disciplinary action is made, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in § 300.504.

(i) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Controlled substance* means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(2) *Illegal drug* means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(3) *Serious bodily injury* has the meaning given the term ''serious bodily injury'' under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

(4) *Weapon* has the meaning given the term ''dangerous weapon'' under paragraph (2) of the first subsection (g)

of section 930 of title 18, United States Code.

(Authority: 20 U.S.C. 1415(k)(1) and (7))

**§ 300.531 Determination of setting.**

The interim alternative educational setting referred to in § 300.530(c) and (g) is determined by the IEP Team.

(Authority: 20 U.S.C. 1415(k)(2))

**§ 300.532 Appeal.**

(a) *General.* The parent of a child with a disability who disagrees with any decision regarding placement under §§ 300.530 and 300.531, or the manifestation determination under § 300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may request a hearing.

(b) *Authority of hearing officer.* (1) A hearing officer under § 300.511 hears, and makes a determination regarding, an appeal requested under paragraph (a) of this section.

(2) In making the determination under paragraph (b)(1) of this section, the hearing officer may—

(i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of § 300.530 or that the child's behavior was a manifestation of the child's disability; or

(ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

(3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes the child would be dangerous if returned to the original placement.

(c) *Expedited hearing.* (1) Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of §§ 300.510 through 300.514, except as provided in paragraph (c)(2) through (5) of this section.

(2) The SEA or LEA must arrange for an expedited hearing, which must occur within 20 school days of the date the hearing is requested and must result in a determination within 10 school days after the hearing.

(3) Except as provided in § 300.510(a)(3)—

(i) A resolution session meeting must occur within seven days of the date the hearing is requested, and

(ii) The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of receipt of the hearing request.

(4) For an expedited hearing, a State may provide that the time periods identified in § 300.512(a)(3) and (b) are not less than two business days.

(5) A State may establish different procedural rules for expedited hearings under this section than it has established for due process hearings under §§ 300.511 through 300.513.

(6) The decisions on expedited due process hearings are appealable consistent with § 300.514.

(Authority: 20 U.S.C. 1415(k)(3) and (4)(B), 1415(f)(1)(A))

**§ 300.533 Placement during appeals.**

When an appeal under § 300.532 has been requested by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in § 300.530(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

(Authority: 20 U.S.C. 1415(k)(4)(A))

**§ 300.534 Protections for children not yet eligible for special education and related services.**

(a) *General.* A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the LEA had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) *Basis of knowledge.* An LEA must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred—

(1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

(2) The parent of the child requested an evaluation of the child pursuant to §§ 300.300 through 300.311; or

(3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency in accordance with the agency's established child find or special education referral system.

(c) *Exception.* A public agency would not be deemed to have knowledge under paragraph (b) of this section if—

(1) The parent of the child—

(i) Has not allowed an evaluation of the child pursuant to §§ 300.300 through 300.311; or

(ii) Has refused services under this part; or

(2) The child has been evaluated and determined to not be a child with a disability under this part.

(d) *Conditions that apply if no basis of knowledge.* (1) If an LEA does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with paragraph (d)(2) of this section.

(2)(i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under § 300.530, the evaluation must be conducted in an expedited manner.

(ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

(iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with this part, including the requirements of §§ 300.530 through 300.536 and section 612(a)(1)(A) of the Act.

(Authority: 20 U.S.C. 1415(k)(5))

**§ 300.535 Referral to and action by law enforcement and judicial authorities.**

(a) *Rule of construction.* Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(b) *Transmittal of records.* (1) An agency reporting a crime committed by a child with a disability must ensure

that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

(2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

(Authority: 20 U.S.C. 1415(k)(6))

**§ 300.536 Change of placement because of disciplinary removals.**

For purposes of removals of a child with a disability from the child's current educational placement under §§ 300.530 through 300.535, a change of placement occurs if—

(a) The removal is for more than 10 consecutive school days; or

(b) The child has been subjected to a series of removals that constitute a pattern—

(1) Because the series of removals total more than 10 school days in a school year;

(2) Because the child's behavior is substantially similar to the child's behavior in the incidents that resulted in the series of removals, taken cumulatively, is determined, under § 300.530(f), to have been a manifestation of the child's disability; and

(3) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

(Authority: 20 U.S.C. 1415(k))

**§§ 300.537–300.599 [Reserved]**

## Subpart F—Monitoring-Enforcement, Confidentiality, and Program Information

### Monitoring, Technical Assistance, and Enforcement

**§ 300.600 State monitoring and enforcement.**

(a) The State must monitor the implementation of this part, enforce this part in accordance with section 616(e) of the Act, and annually report on performance under this part.

(b) The primary focus of the State's monitoring activities must be on—

(1) Improving educational results and functional outcomes for all children with disabilities; and

(2) Ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

(c) As a part of its responsibilities under paragraph (a) of this section, the State must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in section 616(a)(3) of the Act, and the indicators established by the Secretary pursuant to State performance plans.

(Authority: 20 U.S.C. 1416(a))

**§ 300.601 State performance plans and data collection.**

(a) *General.* Not later than December 3, 2005, each State must have in place a performance plan that evaluates the State's efforts to implement the requirements and purposes of Part B of the Act, and describes how the State will improve such implementation.

(1) Each State must submit the State's performance plan to the Secretary for approval in accordance with the approval process described in section 616(c) of the Act.

(2) Each State must review its State performance plan at least once every six years, and submit any amendments to the Secretary.

(3) As part of the State performance plan, each State must establish measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in section 616(a)(3) of the Act.

(b) *Data collection.* (1) Each State must collect valid and reliable information as needed to report annually to the Secretary on the indicators established by the Secretary for the State performance plans.

(2) Nothing in Part B of the Act shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part B of the Act.

(Authority: 20 U.S.C. 1416(b))

**§ 300.602 State use of targets and reporting.**

(a) *General.* Each State must use the targets established in the State's performance plan under § 300.601 and the priority areas described in section 616(a)(3) of the Act to analyze the performance of each LEA.

(b) *Public reporting and privacy.*

(1) *Public report.* (i) Subject to paragraph (b)(1)(ii) of this section, the State must—

(A) Report annually to the public on the performance of each LEA located in the State on the targets in the State's performance plan; and

(B) Make the State's performance plan available through public means, including by posting on the Web site of the SEA, distribution to the media, and distribution through public agencies.

(ii) If the State, in meeting the requirements of paragraph (b)(1)(i) of this section, collects performance data through State monitoring or sampling, the State must include in its report the most recently available performance data on each LEA, and the date the data were obtained.

(2) *State performance report.* The State must report annually to the Secretary on the performance of the State under the State's performance plan.

(3) *Privacy.* The State must not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children, or where the available data are insufficient to yield statistically reliable information.

(Authority: 20 U.S.C. 1416(b)(2)(C))

**§ 300.603 Secretary's review and determination regarding State performance.**

(a) *Review.* The Secretary annually reviews the State's performance report submitted pursuant to § 300.602(b)(2).

(b) *Determination.* (1) *General.* Based on the information provided by the State in the State's annual performance report, information obtained through monitoring visits, and any other public information made available, the Secretary determines if the State—

(i) Meets the requirements and purposes of Part B of the Act;

(ii) Needs assistance in implementing the requirements of Part B of the Act;

(iii) Needs intervention in implementing the requirements of Part B of the Act; or

(iv) Needs substantial intervention in implementing the requirements of Part B of the Act.

(2) *Notice and opportunity for a hearing.* (i) For determinations made under paragraphs (b)(1)(iii) and (b)(1)(iv) of this section, the Secretary provides reasonable notice and an opportunity for a hearing on those determinations.

(ii) The hearing described in paragraph (b)(2) of this section consists of an opportunity to meet with the Assistant Secretary for the Office of Special Education and Rehabilitative Services to demonstrate why the Department should not make the determination described in paragraph (b)(1) of this section.

(Authority: 20 U.S.C. 1416(d))

**§ 300.604 Enforcement.**

(a) *Needs assistance.* If the Secretary determines, for two consecutive years, that a State needs assistance under § 300.603(b)(1)(ii) in implementing the requirements of Part B of the Act, the Secretary takes one or more of the following actions:

(1) Advise the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and require the State to work with appropriate entities. Such technical assistance may include—

(i) The provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the area for concern within a specified period of time;

(ii) Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;

(iii) Designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and

(iv) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under part D of the Act, and private providers of scientifically based technical assistance.

(2) Direct the use of State-level funds under section 611(e) of the Act on the area or areas in which the State needs assistance.

(3) Identify the State as a high-risk grantee and impose special conditions on the State's grant under Part B of the Act.

(b) *Needs intervention.* If the Secretary determines, for three or more consecutive years, that a State needs intervention under § 300.603(b)(1)(iii) in implementing the requirements of Part B of the Act, the following shall apply:

(1) The Secretary may take any of the actions described in paragraph (a) of this section.

(2) The Secretary takes one or more of the following actions:

(i) Requires the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within one year.

(ii) Requires the State to enter into a compliance agreement under section 457 of the General Education Provisions Act as amended, 20 U.S.C. 1221 *et seq.* (GEPA), if the Secretary has reason to believe that the State cannot correct the problem within one year.

(iii) For each year of the determination, withhold not less than 20 percent and not more than 50 percent of the State's funds under section 611(e) of the Act, until the Secretary determines the State has sufficiently addressed the areas in which the State needs intervention.

(iv) Seeks to recover funds under section 452 of GEPA.

(v) Withholds, in whole or in part, any further payments to the State under Part B of the Act pursuant to paragraph (d) of this section.

(vi) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(c) *Needs substantial intervention.* Notwithstanding paragraph (a) or (b) of this section, at any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of Part B of the Act or that there is a substantial failure to comply with any condition of an SEA's or LEA's eligibility under Part B of the Act, the Secretary shall take one or more of the following actions:

(1) Recover funds under section 452 of GEPA.

(2) Withhold, in whole or in part, any further payments to the State under Part B of the Act.

(3) Refer the case to the Office of the Inspector General at the Department of Education.

(4) Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(d) *Report to Congress.* The Secretary reports to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 30 days of taking enforcement action pursuant to paragraph (a), (b), or (c) of this section, on the specific action taken and the reasons why enforcement action was taken.

(Authority: 20 U.S.C. 1416(e)(1)–(e)(3), (e)(5))

**§ 300.605 Withholding funds.**

(a) *Opportunity for hearing.* Prior to withholding any funds under Part B of the Act, the Secretary provides reasonable notice and an opportunity for a hearing to the SEA involved, pursuant to the procedures in §§ 300.180 through 300.183.

(b) *Suspension.* Pending the outcome of any hearing to withhold payments under paragraph (a) of this section, the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under Part B of the Act, or both, after the recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under Part B of the Act should not be suspended.

(c) *Nature of withholding.* (1) If the Secretary determines that it is appropriate to withhold further payments under section 616(e)(2) or (e)(3) of the Act, the Secretary may determine—

(i) That the withholding will be limited to programs or projects, or portions of programs or projects that affected the Secretary's determination under § 300.603(b)(1); or

(ii) That the SEA must not make further payments under Part B of the Act to specified State agencies or LEAs that caused or were involved in the Secretary's determination under § 300.603(b)(1).

(2) *Withholding until rectified.* Until the Secretary is satisfied that the condition that caused the initial withholding has been substantially rectified—

(i) Payments to the State under Part B of the Act must be withheld in whole or in part; and

(ii) Payments by the SEA under Part B of the Act must be limited to State agencies and LEAs whose actions did not cause or were not involved in the Secretary's determination under § 300.603(b)(1), as the case may be.

(Authority: 20 U.S.C. 1416(e)(4), (e)(6))

**§ 300.606 Public attention.**

Any State that has received notice under §§ 300.603(b)(1)(ii) through (iv) must, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to section 616(e) of the Act to the attention of the public within the State.

(Authority: 20 U.S.C. 1416(e)(7))

**§ 300.607 Divided State agency responsibility.**

For purposes of this subpart, if responsibility for ensuring that the requirements of Part B of the Act are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the SEA pursuant to section 612(a)(11)(C) of the Act, and if the Secretary finds that the failure to comply substantially with the

provisions of Part B of the Act are related to a failure by the public agency, the Secretary takes appropriate corrective action to ensure compliance with Part B of the Act, except that—

(a) Any reduction or withholding of payments to the State under § 300.604 must be proportionate to the total funds allotted under section 611 of the Act to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the SEA; and

(b) Any withholding of funds under § 300.604 must be limited to the specific agency responsible for the failure to comply with Part B of the Act.

(Authority: 20 U.S.C. 1416(h))

**§ 300.608 State enforcement.**

If an SEA determines that an LEA is not meeting the requirements of Part B of the Act, including the targets in the State's performance plan, the SEA must prohibit the LEA from reducing the LEA's maintenance of effort under section 613(a)(2)(C) of the Act for any fiscal year.

(Authority: 20 U.S.C. 1416(f))

**§ 300.609 Rule of construction.**

Nothing in this subpart shall be construed to restrict the Secretary from utilizing any authority under GEPA to monitor and enforce the requirements of the Act.

(Authority: 20 U.S.C. 1416(g))

**Confidentiality of Information**

**§ 300.610 Confidentiality.**

The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by SEAs and LEAs pursuant to Part B of the Act, and consistent with §§ 300.611 through 300.628.

(Authority: 20 U.S.C. 1417(c))

**§ 300.611 Definitions.**

As used in §§ 300.610 through 300.628—

(a) *Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

(b) *Education* records means the type of records covered under the definition of ''education records'' in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).

(c) *Participating agency* means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act.

(Authority: 20 U.S.C. 1221e–3, 1412(a)(8), 1417(c))

**§ 300.612 Notice to parents.**

(a) The SEA must give notice that is adequate to fully inform parents about the requirements of § 300.121, including—

(1) A description of the extent that the notice is given in the native languages of the various population groups in the State;

(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

(3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(4) A description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR part 99.

(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

**§ 300.613 Access rights.**

(a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to § 300.507 or §§ 300.530 through 300.532, or resolution session pursuant to § 300.510, and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under this section includes—

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

**§ 300.614 Record of access.**

Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

**§ 300.615 Records on more than one child.**

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

**§ 300.616 List of types and locations of information.**

Each participating agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

**§ 300.617 Fees.**

(a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

**§ 300.618 Amendment of records at parent's request.**

(a) A parent who believes that information in the education records collected, maintained, or used under

this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

(b) The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under § 300.619.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

**§ 300.619 Opportunity for a hearing.**

The agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

**§ 300.620 Result of hearing.**

(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing.

(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the records of the child under this section must—

(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

**§ 300.621 Hearing procedures.**

A hearing held under § 300.619 must be conducted according to the procedures under 34 CFR 99.22.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

**§ 300.622 Consent.**

(a) Except as to disclosures addressed in § 300.535(b) for which parental consent is not required by 34 CFR part 99, parental consent must be obtained before personally identifiable information is—

(1) Disclosed to anyone other than officials of participating agencies collecting or using the information under this part, subject to paragraph (b) of this section; or

(2) Used for any purpose other than meeting a requirement of this part.

(b) An educational agency or institution subject to 34 CFR part 99 may not release information from education records to participating agencies without parental consent unless authorized to do so under 34 CFR part 99.

(c) The SEA must provide policies and procedures that are used in the event that a parent refuses to provide consent under this section.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

**§ 300.623 Safeguards.**

(a) Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under § 300.121 and 34 CFR part 99.

(d) Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

**§ 300.624 Destruction of information.**

(a) The public agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

**§ 300.625 Children's rights.**

(a) The SEA must have in effect policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.

(b) Under the regulations for FERPA at 34 CFR 99.5(a), the rights of parents regarding education records are transferred to the student at age 18.

(c) If the rights accorded to parents under Part B of the Act are transferred to a student who reaches the age of majority, consistent with § 300.520, the rights regarding educational records in §§ 300.613 through 300.624 must also be transferred to the student. However, the public agency must provide any notice required under section 615 of the Act to the student and the parents.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

**§ 300.626 Enforcement.**

The SEA must have in effect the policies and procedures, including sanctions that the State uses to ensure that its policies and procedures are followed and that the requirements of the Act and the regulations in this part are met.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

**§ 300.627 Department use of personally identifiable information.**

If the Department or its authorized representatives collect any personally identifiable information regarding children with disabilities that is not subject to the Privacy Act of 1974, 5 U.S.C. 552a, the Secretary applies the requirements of 5 U.S.C. 552a(b)(1) and (b)(2), 552a(b)(4) through (b)(11); 552a(c) through 552a(e)(3)(B); 552a(e)(3)(D); 552a(e)(5) through (e)(10); 552a(h); 552a(m); and 552a(n); and the regulations implementing those provisions in 34 CFR part 5b.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

**Reports—Program Information**

**§ 300.640 Annual report of children served—report requirement.**

(a) The SEA must annually report to the Secretary on the information required by section 618 of the Act at the times specified by the Secretary.

(b) The SEA must submit the report on forms provided by the Secretary.

(Authority: 20 U.S.C. 1418(a))

**§ 300.641 Annual report of children served—information required in the report.**

(a) For purposes of the annual report required by section 618 of the Act, the State and the Secretary of the Interior must count and report the number of children with disabilities receiving special education and related services on any date between October 1 and December 1 of each year.

(b) For the purpose of this reporting provision, a child's age is the child's actual age on the date of the child count.

(c) The SEA may not report a child under more than one disability category.

(d) If a child with a disability has more than one disability, the SEA must report that child in accordance with the following procedure:

(1) If a child has only two disabilities and those disabilities are deafness and blindness, and the child is not reported as having a developmental delay, that child must be reported under the category ''deaf-blindness.''

(2) A child who has more than one disability and is not reported as having deaf-blindness or as having a developmental delay must be reported under the category ''multiple disabilities.''

(Authority: 20 U.S.C. 1418(a), (b))

**§ 300.642 Data reporting.**

(a) *Protection of identifiable data.* The data described in section 618(a) of the Act and in § 300.641 must be publicly reported by each State in a manner that does not result in disclosure of data identifiable to individual children.

(b) *Sampling.* The Secretary may permit States and the Secretary of the Interior to obtain data in section 618(a) of the Act through sampling.

(Authority: 20 U.S.C. 1418(b))

**§ 300.643 Annual report of children served—certification.**

The SEA must include in its report a certification signed by an authorized official of the agency that the information provided under § 300.640 is an accurate and unduplicated count of children with disabilities receiving special education and related services on the dates in question.

(Authority: 20 U.S.C. 1418(a)(3))

**§ 300.644 Annual report of children served—criteria for counting children.**

The SEA may include in its report children with disabilities who are enrolled in a school or program that is operated or supported by a public agency, and that—

(a) Provides them with both special education and related services that meet State standards;

(b) Provides them only with special education, if a related service is not required, that meets State standards; or

(c) In the case of children with disabilities enrolled by their parents in private schools, counts those children who are eligible under the Act and receive special education or related services that meet State standards under §§ 300.132 through 300.144.

(Authority: 20 U.S.C. 1418(a))

**§ 300.645 Annual report of children served—other responsibilities of the SEA.**

In addition to meeting the other requirements of §§ 300.640 through 300.644, the SEA must—

(a) Establish procedures to be used by LEAs and other educational institutions in counting the number of children with disabilities receiving special education and related services;

(b) Set dates by which those agencies and institutions must report to the SEA to ensure that the State complies with § 300.640(a);

(c) Obtain certification from each agency and institution that an unduplicated and accurate count has been made;

(d) Aggregate the data from the count obtained from each agency and institution, and prepare the reports required under §§ 300.640 through 300.644; and

(e) Ensure that documentation is maintained that enables the State and the Secretary to audit the accuracy of the count.

(Authority: 20 U.S.C. 1418(a))

**§ 300.646 Disproportionality.**

(a) *General.* Each State that receives assistance under Part B of the Act, and the Secretary of the Interior, must provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State with respect to—

(1) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) of the Act;

(2) The placement in particular educational settings of these children; and

(3) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

(b) *Review and revision of policies, practices, and procedures.* In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with paragraph (a) of this section, the State or the Secretary of the Interior must—

(1) Provide for the review and, if appropriate revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of the Act.

(2) Require any LEA identified under paragraph (a) of this section to reserve the maximum amount of funds under section 613(f) of the Act to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified under paragraph (a) of this section; and

(3) Require the LEA to publicly report on the revision of policies, practices, and procedures described under paragraph (b)(1) of this section.

(Authority: 20 U.S.C. 1418(d))

## Subpart G—Authorization; Allotment; Use of Funds; and Authorization of Appropriations

**§ 300.700 Grants to States.**

(a) *Purpose of grants.* The Secretary makes grants to States, outlying areas, and freely associated States (as defined in § 300.717), and provides funds to the Secretary of the Interior, to assist them to provide special education and related services to children with disabilities in accordance with Part B of the Act.

(b) *Maximum amount.* The maximum amount of the grant a State may receive under section 611 of the Act is—

(1) For fiscal years 2005 and 2006—

(i) The number of children with disabilities in the State who are receiving special education and related services—

(A) Aged three through five, if the State is eligible for a grant under section 619 of the Act; and

(B) Aged 6 through 21; multiplied by—

(ii) Forty (40) percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States (as defined in § 300.717); and

(2) For fiscal year 2007 and subsequent fiscal years—(i) The number of children with disabilities in the 2004–2005 school year in the State who received special education and related services—

(A) Aged three through five if the State is eligible for a grant under section 619 of the Act; and

(B) Aged 6 through 21; multiplied by

(ii) Forty (40) percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States (as defined in § 300.717);

(iii) Adjusted by the rate of annual change in the sum of—

(A) Eighty-five (85) percent of the State's population of children aged 3 through 21 who are of the same age as children with disabilities for whom the

State ensures the availability of FAPE under Part B of the Act; and

(B) Fifteen (15) percent of the State's population of children described in paragraph (b)(2)(iii)(A) of this section who are living in poverty.

(Authority: 20 U.S.C. 1411(a) and (d))

**§ 300.701 Outlying areas and freely associated States and the Secretary of the Interior.**

(a) *Outlying areas and freely associated States.* (1) *Funds reserved.* From the amount appropriated for any fiscal year under section 611(i) of the Act, the Secretary reserves not more than one percent, which must be used—

(i) To provide assistance to the outlying areas in accordance with their respective populations of individuals aged 3 through 21; and

(ii) To provide each freely associated State a grant in the amount that the freely associated State received for fiscal year 2003 under Part B of the Act, but only if the freely associated State—

(A) Meets the applicable requirements of Part B of the Act, including—

(*1*) The requirements in section 612(a)(1), (3) through (9), (10)(B) through (C), (11) through (12), (14) through (16), (19), and (21) through (25) of the Act (including monitoring and evaluation activities);

(*2*) The requirements in section 612(b) and (e) of the Act;

(*3*) The requirements in section 613(a)(1), (2)(A)(i), (7) through (9), and section 613(i) of the Act;

(*4*) The requirements in section 616 of the Act that apply to States; and

(*5*) The requirements of this part that implement the sections of the Act listed in paragraphs (a)(1)(ii)(A)(*1*) through (A)(*4*) of this section; and

(B) Meets the requirements in paragraph (a)(1)(iii) of this section.

(iii) Any freely associated State that wishes to receive funds under Part B of the Act must include, in its application for assistance—

(A) Information demonstrating that it will meet all conditions that apply to States under Part B of the Act, including the requirements described in paragraph (a)(1)(ii)(A) of this section;

(B) An assurance that, notwithstanding any other provision of Part B of the Act, it will use those funds only for the direct provision of special education and related services to children with disabilities and to enhance its capacity to make FAPE available to all children with disabilities;

(C) The identity of the source and amount of funds, in addition to funds under Part B of the Act, that it will make available to ensure that FAPE is available to all children with disabilities within its jurisdiction; and

(D) Such other information and assurances as the Secretary may require.

(2) *Special rule.* The provisions of Public Law 95–134, permitting the consolidation of grants by the outlying areas, do not apply to funds provided to the outlying areas or to the freely associated States under Part B of the Act.

(b) *Secretary of the Interior.* From the amount appropriated for any fiscal year under section 611(i) of the Act, the Secretary reserves 1.226 percent to provide assistance to the Secretary of the Interior in accordance with §§ 300.707 through 300.716.

(Authority: 20 U.S.C. 1411(b))

**§ 300.702 Technical assistance.**

(a) *In general.* The Secretary may reserve not more than one-half of one percent of the amounts appropriated under Part B of the Act for each fiscal year to support technical assistance activities authorized under section 616(i) of the Act.

(b) *Maximum amount.* The maximum amount the Secretary may reserve under paragraph (a) of this section for any fiscal year is $25,000,000, cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(Authority: 20 U.S.C. 1411(c))

**§ 300.703 Allocations to States.**

(a) *General.* After reserving funds for technical assistance under § 300.702, and for payments to the outlying areas, the freely associated States, and the Secretary of the Interior under § 300.701 (a) and (b) for a fiscal year, the Secretary allocates the remaining amount among the States in accordance with paragraphs (b), (c), and (d) of this section.

(b) *Special rule for use of fiscal year 1999 amount.* If a State received any funds under section 611 of the Act for fiscal year 1999 on the basis of children aged three through five, but does not make FAPE available to all children with disabilities aged three through five in the State in any subsequent fiscal year, the Secretary computes the State's amount for fiscal year 1999, solely for the purpose of calculating the State's allocation in that subsequent year under paragraph (c) or (d) of this section, by subtracting the amount allocated to the State for fiscal year 1999 on the basis of those children.

(c) *Increase in funds.* If the amount available for allocations to States under paragraph (a) of this section for a fiscal year is equal to or greater than the amount allocated to the States under section 611 of the Act for the preceding fiscal year, those allocations are calculated as follows:

(1) *Allocation of increase.* (i) *General.* Except as provided in paragraph (c)(2) of this section, the Secretary allocates for the fiscal year—

(A) To each State the amount the State received under this section for fiscal year 1999;

(B) Eighty-five (85) percent of any remaining funds to States on the basis of the States' relative populations of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of FAPE under Part B of the Act; and

(C) Fifteen (15) percent of those remaining funds to States on the basis of the States' relative populations of children described in paragraph (c)(1)(i)(B) of this section who are living in poverty.

(ii) *Data.* For the purpose of making grants under this section, the Secretary uses the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

(2) *Limitations.* Notwithstanding paragraph (c)(1) of this section, allocations under this section are subject to the following:

(i) *Preceding year allocation.* No State's allocation may be less than its allocation under section 611 of the Act for the preceding fiscal year.

(ii) *Minimum.* No State's allocation may be less than the greatest of—

(A) The sum of—

(*1*) The amount the State received under section 611 of the Act for fiscal year 1999; and

(*2*) One third of one percent of the amount by which the amount appropriated under section 611(i) of the Act for the fiscal year exceeds the amount appropriated for section 611 of the Act for fiscal year 1999;

(B) The sum of—

(*1*) The amount the State received under section 611 of the Act for the preceding fiscal year; and

(*2*) That amount multiplied by the percentage by which the increase in the funds appropriated for section 611 of the Act from the preceding fiscal year exceeds 1.5 percent; or

(C) The sum of—

(*1*) The amount the State received under section 611 of the Act for the preceding fiscal year; and

(*2*) That amount multiplied by 90 percent of the percentage increase in the

amount appropriated for section 611 of the Act from the preceding fiscal year.

(iii) *Maximum.* Notwithstanding paragraph (c)(2)(ii) of this section, no State's allocation under paragraph (a) of this section may exceed the sum of—

(A) The amount the State received under section 611 of the Act for the preceding fiscal year; and

(B) That amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under section 611 of the Act from the preceding fiscal year.

(3) *Ratable reduction.* If the amount available for allocations to States under paragraph (c) of this section is insufficient to pay those allocations in full, those allocations are ratably reduced, subject to paragraph (c)(2)(i) of this section.

(d) *Decrease in funds.* If the amount available for allocations to States under paragraph (a) of this section for a fiscal year is less than the amount allocated to the States under section 611 of the Act for the preceding fiscal year, those allocations are calculated as follows:

(1) *Amounts greater than fiscal year 1999 allocations.* If the amount available for allocations under paragraph (a) of this section is greater than the amount allocated to the States for fiscal year 1999, each State is allocated the sum of—

(i) The amount the State received under section 611 of the Act for fiscal year 1999; and

(ii) An amount that bears the same relation to any remaining funds as the increase the State received under section 611 of the Act for the preceding fiscal year over fiscal year 1999 bears to the total of all such increases for all States.

(2) *Amounts equal to or less than fiscal year 1999 allocations.* (i) *General.* If the amount available for allocations under paragraph (a) of this section is equal to or less than the amount allocated to the States for fiscal year 1999, each State is allocated the amount it received for fiscal year 1999.

(ii) *Ratable reduction.* If the amount available for allocations under paragraph (d) of this section is insufficient to make the allocations described in paragraph (d)(2)(i) of this section, those allocations are ratably reduced.

(Authority: 20 U.S.C. 1411(d))

**§ 300.704 State-level activities.**

(a) *State administration.* (1) For the purpose of administering Part B of the Act, including paragraph (c) of this section, section 619 of the Act, and the coordination of activities under Part B of the Act with, and providing technical assistance to, other programs that provide services to children with disabilities—

(i) Each State may reserve for each fiscal year not more than the maximum amount the State was eligible to reserve for State administration under section 611 of the Act for fiscal year 2004 or $800,000 (adjusted in accordance with paragraph (a)(2) of this section), whichever is greater; and

(ii) Each outlying area may reserve for each fiscal year not more than five percent of the amount the outlying area receives under § 300.701(a) for the fiscal year or $35,000, whichever is greater.

(2) For each fiscal year, beginning with fiscal year 2005, the Secretary cumulatively adjusts—

(i) The maximum amount the State was eligible to reserve for State administration under section 611 of the Act for fiscal year 2004; and

(ii) $800,000, by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(3) Prior to expenditure of funds under paragraph (a) of this section, the State must certify to the Secretary that the arrangements to establish responsibility for services pursuant to section 612(a)(12)(A) of the Act are current.

(4) Funds reserved under paragraph (a)(1) of this section may be used for the administration of Part C of the Act, if the SEA is the lead agency for the State under that Part.

(b) *Other State-level activities.* (1) States may reserve a portion of their allocations for other State-level activities. The maximum amount that a State may reserve for other State-level activities is as follows:

(i) If the amount that the State sets aside for State administration under paragraph (a) of this section is greater than $850,000 and the State opts to finance a high cost fund under paragraph (c) of this section:

(A) For fiscal years 2005 and 2006, 10 percent of the State's allocation under § 300.703.

(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to 10 percent of the State's allocation for fiscal year 2006 under § 300.703 adjusted cumulatively for inflation.

(ii) If the amount that the State sets aside for State administration under paragraph (a) of this section is greater than $850,000 and the State opts not to finance a high cost fund under paragraph (c) of this section—

(A) For fiscal years 2005 and 2006, nine percent of the State's allocation under § 300.703.

(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to nine percent of the State's allocation for fiscal year 2006 adjusted cumulatively for inflation.

(iii) If the amount that the State sets aside for State administration under paragraph (a) of this section is less than or equal to $850,000 and the State opts to finance a high cost fund under paragraph (c) of this section:

(A) For fiscal years 2005 and 2006, 10.5 percent of the State's allocation under § 300.703.

(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to 10.5 percent of the State's allocation for fiscal year 2006 under § 300.703 adjusted cumulatively for inflation.

(iv) If the amount that the State sets aside for State administration under paragraph (a) of this section is equal to or less than $850,000 and the State opts not to finance a high cost fund under paragraph (c) of this section:

(A) For fiscal years 2005 and 2006, nine and one-half percent of the State's allocation under § 300.703.

(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to nine and one-half percent of the State's allocation for fiscal year 2006 under § 300.703 adjusted cumulatively for inflation.

(2) The adjustment for inflation is the rate of inflation as measured by the percentage of increase, if any, from the preceding fiscal year in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(3) Some portion of the funds reserved under paragraph (b)(1) of this section must be used to carry out the following activities:

(i) For monitoring, enforcement, and complaint investigation; and

(ii) To establish and implement the mediation process required by section 615(e) of the Act, including providing for the costs of mediators and support personnel;

(4) Funds reserved under paragraph (b)(1) of this section may be used to carry out the following activities:

(i) For support and direct services, including technical assistance, personnel preparation, and professional development and training;

(ii) To support paperwork reduction activities, including expanding the use of technology in the IEP process;

(iii) To assist LEAs in providing positive behavioral interventions and

supports and mental health services for children with disabilities;

(iv) To improve the use of technology in the classroom by children with disabilities to enhance learning;

(v) To support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities;

(vi) Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to postsecondary activities;

(vii) To assist LEAs in meeting personnel shortages;

(viii) To support capacity building activities and improve the delivery of services by LEAs to improve results for children with disabilities;

(ix) Alternative programming for children with disabilities who have been expelled from school, and services for children with disabilities in correctional facilities, children enrolled in State-operated or State-supported schools, and children with disabilities in charter schools;

(x) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with sections 1111(b) and 6111 of the ESEA; and

(xi) To provide technical assistance to schools and LEAs, and direct services, including supplemental educational services as defined in section 1116(e) of the ESEA to children with disabilities, in schools or LEAs identified for improvement under section 1116 of the ESEA on the sole basis of the assessment results of the disaggregated subgroup of children with disabilities, including providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet or exceed the objectives established by the State under section 1111(b)(2)(G) of the ESEA.

(c) *Local educational agency high cost fund.* (1) In general—

(i) For the purpose of assisting LEAs (including a charter school that is an LEA or a consortium of LEAs) in addressing the needs of high need children with disabilities, each State has the option to reserve for each fiscal year 10 percent of the amount of funds the State reserves for other State-level activities under paragraph (b)(1) of this section—

(A) To finance and make disbursements from the high cost fund to LEAs in accordance with paragraph (c) of this section during the first and succeeding fiscal years of the high cost fund; and

(B) To support innovative and effective ways of cost sharing by the State, by an LEA, or among a consortium of LEAs, as determined by the State in coordination with representatives from LEAs, subject to paragraph (c)(2)(ii) of this section.

(ii) For purposes of paragraph (c) of this section, *local educational agency* includes a charter school that is an LEA, or a consortium of LEAs.

(2) (i) A State must not use any of the funds the State reserves pursuant to paragraph (c)(1)(i) of this section, which are solely for disbursement to LEAs, for costs associated with establishing, supporting, and otherwise administering the fund. The State may use funds the State reserves under paragraph (a) of this section for those administrative costs.

(ii) A State must not use more than 5 percent of the funds the State reserves pursuant to paragraph (c)(1)(i) of this section for each fiscal year to support innovative and effective ways of cost sharing among consortia of LEAs.

(3) (i) The SEA must develop, not later than 90 days after the State reserves funds under paragraph (c)(1)(i) of this section, annually review, and amend as necessary, a State plan for the high cost fund. Such State plan must—

(A) Establish, in consultation and coordination with representatives from LEAs, a definition of a high need child with a disability that, at a minimum—

(*1*) Addresses the financial impact a high need child with a disability has on the budget of the child's LEA; and

(*2*) Ensures that the cost of the high need child with a disability is greater than 3 times the average per pupil expenditure (as defined in section 9101 of the ESEA) in that State;

(B) Establish eligibility criteria for the participation of an LEA that, at a minimum, take into account the number and percentage of high need children with disabilities served by an LEA;

(C) Establish criteria to ensure that placements supported by the fund are consistent with the requirements of §§ 300.114 through 300.118;

(D) Develop a funding mechanism that provides distributions each fiscal year to LEAs that meet the criteria developed by the State under paragraph (c)(3)(i)(B) of this section; and

(E) Establish an annual schedule by which the SEA must make its distributions from the high cost fund each fiscal year.

(ii) The State must make its final State plan available to the public not less than 30 days before the beginning of the school year, including dissemination of such information on the State Web site.

(4)(i) Each SEA must make all annual disbursements from the high cost fund established under paragraph (c)(1)(i) of this section in accordance with the State plan published pursuant to paragraph (c)(3) of this section.

(ii) The costs associated with educating a high need child with a disability, as defined under paragraph (c)(3)(i)(A) of this section, are only those costs associated with providing direct special education and related services to the child that are identified in that child's IEP, including the cost of room and board for a residential placement determined necessary, consistent with § 300.114, to implement a child's IEP.

(iii) The funds in the high cost fund remain under the control of the State until disbursed to an LEA to support a specific child who qualifies under the State plan for the high cost funds or distributed to LEAs, consistent with paragraph (c)(9) of this section.

(5) The disbursements under paragraph (c)(4) of this section must not be used to support legal fees, court costs, or other costs associated with a cause of action brought on behalf of a child with a disability to ensure FAPE for such child.

(6) Nothing in paragraph (c) of this section —

(i) Limits or conditions the right of a child with a disability who is assisted under Part B of the Act to receive FAPE pursuant to section 612(a)(1) of the Act in the least restrictive environment pursuant to section 612(a)(5) of the Act; or

(ii) Authorizes an SEA or LEA to establish a limit on what may be spent on the education of a child with a disability.

(7) Notwithstanding the provisions of paragraphs (c)(1) through (6) of this section, a State may use funds reserved pursuant to paragraph (c)(1)(i) of this section for implementing a placement neutral cost sharing and reimbursement program of high need, low incidence, catastrophic, or extraordinary aid to LEAs that provides services to high need students based on eligibility criteria for such programs that were created not later than January 1, 2004, and are currently in operation, if such program serves children that meet the requirement of the definition of a high

need child with a disability as described in paragraph (c)(3)(i)(A) of this section.

(8) Disbursements provided under paragraph (c) of this section must not be used to pay costs that otherwise would be reimbursed as medical assistance for a child with a disability under the State Medicaid program under Title XIX of the Social Security Act.

(9) Funds reserved under paragraph (c)(1)(i) of this section from the appropriation for any fiscal year, but not expended pursuant to paragraph (c)(4) of this section before the beginning of their last year of availability for obligation, must be allocated to LEAs in the same manner as other funds from the appropriation for that fiscal year are allocated to LEAs under § 300.705 during their final year of availability.

(d) *Inapplicability of certain prohibitions.* A State may use funds the State reserves under paragraphs (a) and (b) of this section without regard to—

(1) The prohibition on commingling of funds in § 300.162(b).

(2) The prohibition on supplanting other funds in § 300.162(c).

(e) *Special rule for increasing funds.* A State may use funds the State reserves under paragraph (a)(1) of this section as a result of inflationary increases under paragraph (a)(2) of this section to carry out activities authorized under paragraph (b)(4)(i), (iii), (vii), or (viii) of this section.

(f) *Flexibility in using funds for Part C.* Any State eligible to receive a grant under section 619 of the Act may use funds made available under paragraph (a)(1) of this section, § 300.705(c), or § 300.814(e) to develop and implement a State policy jointly with the lead agency under Part C of the Act and the SEA to provide early intervention services (which must include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with Part C of the Act to children with disabilities who are eligible for services under section 619 of the Act and who previously received services under Part C of the Act until the children enter, or are eligible under State law to enter, kindergarten, or elementary school as appropriate.

(Authority: 20 U.S.C. 1411(e))

**§ 300.705 Subgrants to local educational agencies.**

(a) *Subgrants required.* Each State that receives a grant under section 611 of the Act for any fiscal year must distribute any funds the State does not reserve under § 300.704 to LEAs (including public charter schools that operate as LEAs) in the State that have established their eligibility under section 613 of the Act for use in accordance with Part B of the Act.

(b) *Allocations to LEAs.* For each fiscal year for which funds are allocated to States under § 300.703, each State shall allocate funds as follows:

(1) *Base payments.* The State first must award each LEA described in paragraph (a) of this section the amount the LEA would have received under section 611 of the Act for fiscal year 1999, if the State had distributed 75 percent of its grant for that year under section 611(d) of the Act, as that section was then in effect.

(2) *Base payment adjustments.* For any fiscal year after 1999—

(i) If a new LEA is created, the State must divide the base allocation determined under paragraph (b)(1) of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if a State has had its payment reduced under § 300.703(b), currently provided special education by each of the LEAs;

(ii) If one or more LEAs are combined into a single new LEA, the State must combine the base allocations of the merged LEAs; and

(iii) If, for two or more LEAs, geographic boundaries or administrative responsibility for providing services to children with disabilities ages 3 through 21 change, the base allocations of affected LEAs must be redistributed among affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if a State has had its payment reduced under § 300.703(b), currently provided special education by each affected LEA.

(3) *Allocation of remaining funds.* After making allocations under paragraph (b)(1) of this section, as adjusted by paragraph (b)(2) of this section, the State must—

(i) Allocate 85 percent of any remaining funds to those LEAs on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the LEA's jurisdiction; and

(ii) Allocate 15 percent of those remaining funds to those LEAs in accordance with their relative numbers of children living in poverty, as determined by the SEA.

(c) *Reallocation of funds.* If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities residing in the area served by that agency with State and local funds, the SEA may reallocate any portion of the funds under this part that are not needed by that LEA to provide FAPE to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other LEAs.

(Authority: 20 U.S.C. 1411(f))

**§ 300.706 Allocation for State in which by-pass is implemented for parentally-placed private school children with disabilities.**

In determining the allocation under §§ 300.700 through 300.703 for a State, outlying area, or freely associated State in which the Secretary will implement a by-pass for parentally-placed private school children with disabilities under §§ 300.190 through 300.198, the Secretary includes in the State's child count—

(a) For the first year of a by-pass, the actual or estimated number of private school children with disabilities (as defined in §§ 300.8(a) and 300.130) in the State, as of the preceding December 1; and

(b) For succeeding years of a by-pass, the number of private school children with disabilities who received special education and related services under the by-pass in the preceding year.

(Authority: 20 U.S.C. 1412(f)(2))

**§ 300.707 Use of Amounts by Secretary of the Interior.**

*(a) Definitions.* For purposes of §§ 300.707 through 300.716, the following definitions apply:

(1) *Reservation* means Indian Country as defined in 18 U.S.C. 1151.

(2) *Tribal governing body of a school* means the body or bodies that are recognized governing bodies of the Indian tribe involved and that represent at least 90 percent of the students served by the school. 25 U.S.C. 2021(19) and 25 U.S.C. 2511(7).

*(b) Provision of amounts for assistance.* The Secretary provides amounts to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged 5 to 21, inclusive, enrolled in elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior. The amount of the payment for any fiscal year is equal to 80 percent of the amount allotted under section 611(b)(2) of the Act for that fiscal year. Of the amount described in the preceding sentence, after the Secretary of the Interior reserves funds for administration under § 300.710, 80 percent must be allocated to such schools by July 1 of that fiscal year and

20 percent must be allocated to such schools by September 30 of that fiscal year.

(c) *Additional requirement.* With respect to all other children aged 3 to 21, inclusive, on reservations, the SEA must ensure that all of the requirements of Part B of the Act are implemented.

(Authority: 20 U.S.C. 1411(h)(1))

**§ 300.708 Submission of information.**

The Secretary may provide the Secretary of the Interior amounts under § 300.707 for a fiscal year only if the Secretary of the Interior submits to the Secretary information that—

(a) Meets the requirements of section 612(a)(1), (3) through (9), (10)(B) through (C), (11) through (12), (14) through (16), (19), and (21) through (25) of the Act (including monitoring and evaluation activities);

(b) Meets the requirements of section 612(b) and (e) of the Act;

(c) Meets the requirements of section 613(a)(1), (2)(A)(i), (7) through (9) and section 613(i) of the Act (references to LEAs in these sections must be read as references to elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior);

(d) Meets the requirements of section 616 of the Act that apply to States (references to LEAs in section 616 of the Act must be read as references to elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior).

(e) Meets the requirements of this part that implement the sections of the Act listed in paragraphs (a) through (d) of this section;

(f) Includes a description of how the Secretary of the Interior will coordinate the provision of services under Part B of the Act with LEAs, tribes and tribal organizations, and other private and Federal service providers;

(g) Includes an assurance that there are public hearings, adequate notice of the hearings, and an opportunity for comment afforded to members of tribes, tribal governing bodies, and affected local school boards before the adoption of the policies, programs, and procedures related to the requirements described in paragraphs (a) through (d) of this section;

(h) Includes an assurance that the Secretary of the Interior provides the information that the Secretary may require to comply with section 618 of the Act;

(i)(1) Includes an assurance that the Secretary of the Interior and the Secretary of Health and Human Services have entered into a memorandum of agreement, to be provided to the Secretary, for the coordination of services, resources, and personnel between their respective Federal, State, and local offices and with the SEAs and LEAs and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations.

(2) The agreement must provide for the apportionment of responsibilities and costs, including child find, evaluation, diagnosis, remediation or therapeutic measures, and (where appropriate) equipment and medical or personal supplies, as needed for a child with a disability to remain in a school or program; and

(j) Includes an assurance that the Department of the Interior will cooperate with the Department in its exercise of monitoring and oversight of the requirements in this section and §§ 300.709 through 300.711 and §§ 300.713 through 300.716, and any agreements entered into between the Secretary of the Interior and other entities under Part B of the Act, and will fulfill its duties under Part B of the Act. The Secretary withholds payments under § 300.707 with respect to the requirements described in this section in the same manner as the Secretary withholds payments under section 616(e)(6) of the Act.

(Authority: 20 U.S.C. 1411(h)(2) and (3))

**§ 300.709 Public participation.**

In fulfilling the requirements of § 300.708 the Secretary of the Interior must provide for public participation consistent with § 300.165.

(Authority: 20 U.S.C. 1411(h))

**§ 300.710 Use of funds under Part B of the Act.**

(a) The Secretary of the Interior may reserve five percent of its payment under § 300.707(a) in any fiscal year, or $500,000, whichever is greater, for administrative costs in carrying out the provisions of §§ 300.707 through 300.709, 300.711, and 300.713 through 300.716.

(b) Payments to the Secretary of the Interior under § 300.712 must be used in accordance with that section.

(Authority: 20 U.S.C. 1411((h)(1)(A))

**§ 300.711 Early intervening services.**

(a) The Secretary of the Interior may allow each elementary school and secondary school for Indian children operated or funded by the Secretary of the Interior to use not more than 15 percent of the amount the school receives under 34 CFR 300.707(a) for any fiscal year, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment, in accordance with section 613(f) of the Act.

(b) Each elementary school and secondary school for Indian children operated or funded by the Secretary of the Interior that develops and maintains coordinated early intervening services in accordance with section 613(f) of the Act and § 300.226 must annually report to the Secretary of the Interior in accordance with section 613(f) of the Act.

(Authority: 20 U.S.C. 1411(h) and 1413(f))

**§ 300.712 Payments for education and services for Indian children with disabilities aged three through five.**

(a) *General.* With funds appropriated under section 611(i) of the Act, the Secretary makes payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortia of tribes or tribal organizations to provide for the coordination of assistance for special education and related services for children with disabilities aged three through five on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of the payments under paragraph (b) of this section for any fiscal year is equal to 20 percent of the amount allotted under § 300.701(b).

(b) *Distribution of funds.* The Secretary of the Interior must distribute the total amount of the payment under paragraph (a) of this section by allocating to each tribe, tribal organization, or consortium an amount based on the number of children with disabilities aged three through five residing on reservations as reported annually, divided by the total of those children served by all tribes or tribal organizations.

(c) *Submission of information.* To receive a payment under this section, the tribe or tribal organization must submit the figures to the Secretary of the Interior as required to determine the amounts to be allocated under paragraph (b) of this section. This

information must be compiled and submitted to the Secretary.

(d) *Use of funds.* (1) The funds received by a tribe or tribal organization must be used to assist in child find, screening, and other procedures for the early identification of children aged three through five, parent training, and the provision of direct services. These activities may be carried out directly or through contracts or cooperative agreements with the BIA, LEAs, and other public or private nonprofit organizations. The tribe or tribal organization is encouraged to involve Indian parents in the development and implementation of these activities.

(2) The tribe or tribal organization, as appropriate, must make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

(e) *Biennial report.* To be eligible to receive a grant pursuant to paragraph (a) of this section, the tribe or tribal organization must provide to the Secretary of the Interior a biennial report of activities undertaken under this section, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the two years following the year in which the report is made. The Secretary of the Interior must include a summary of this information on a biennial basis in the report to the Secretary required under section 611(h) of the Act. The Secretary may require any additional information from the Secretary of the Interior.

(f) *Prohibitions.* None of the funds allocated under this section may be used by the Secretary of the Interior for administrative purposes, including child count and the provision of technical assistance.

(Authority: 20 U.S.C. 1411(h)(4))

**§ 300.713 Plan for coordination of services.**

(a) The Secretary of the Interior must develop and implement a plan for the coordination of services for all Indian children with disabilities residing on reservations covered under Part B of the Act.

(b) The plan must provide for the coordination of services benefiting those children from whatever source, including tribes, the Indian Health Service, other BIA divisions, and other Federal agencies.

(c) In developing the plan, the Secretary of the Interior must consult with all interested and involved parties.

(d) The plan must be based on the needs of the children and the system best suited for meeting those needs, and may involve the establishment of cooperative agreements between the BIA, other Federal agencies, and other entities.

(e) The plan also must be distributed upon request to States; to SEAs, LEAs, and other agencies providing services to infants, toddlers, and children with disabilities; to tribes; and to other interested parties.

(Authority: 20 U.S.C. 1411(h)(5))

**§ 300.714 Establishment of advisory board.**

(a) To meet the requirements of section 612(a)(21) of the Act, the Secretary of the Interior must establish, under the BIA, an advisory board composed of individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities, including Indians with disabilities, Indian parents or guardians of such children, teachers, service providers, State and local educational officials, representatives of tribes or tribal organizations, representatives from State Interagency Coordinating Councils under section 641 of the Act in States having reservations, and other members representing the various divisions and entities of the BIA. The chairperson must be selected by the Secretary of the Interior.

(b) The advisory board must—

(1) Assist in the coordination of services within the BIA and with other local, State, and Federal agencies in the provision of education for infants, toddlers, and children with disabilities;

(2) Advise and assist the Secretary of the Interior in the performance of the Secretary of the Interior's responsibilities described in section 611(h) of the Act;

(3) Develop and recommend policies concerning effective inter- and intra-agency collaboration, including modifications to regulations, and the elimination of barriers to inter- and intra-agency programs and activities;

(4) Provide assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved early intervention services or educational programming for Indian infants, toddlers, and children with disabilities; and

(5) Provide assistance in the preparation of information required under § 300.708(h).

(Authority: 20 U.S.C. 1411(h)(6))

**§ 300.715 Annual reports.**

(a) *In general.* The advisory board established under § 300.714 must prepare and submit to the Secretary of the Interior and to Congress an annual report containing a description of the activities of the advisory board for the preceding year.

(b) *Availability.* The Secretary of the Interior must make available to the Secretary the report described in paragraph (a) of this section.

(Authority: 20 U.S.C. 1411(h)(7))

**§ 300.716 Applicable regulations.**

The Secretary of the Interior must comply with the requirements of §§ 300.103 through 300.108, 300.110 through 300.124, 300.145 through 300.154, 300.156 through 300.160, 300.165, 300.170 through 300.186, 300.226, 300.300 through 300.606, 300.610 through 300.646, and 300.707 through 300.716.

(Authority: 20 U.S.C. 1411(h)(2)(A))

**§ 300.717 Definitions.**

As used in this subpart:

(a) *Freely associated States* means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau;

(b) *Outlying areas* means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands;

(c) *State* means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(d) *Average per-pupil expenditure in public elementary schools and secondary schools in the United States* means—

(1) Without regard to the source of funds—

(i) The aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the determination is made (or, if satisfactory data for that year are not available, during the most recent preceding fiscal year for which satisfactory data are available) of all LEAs in the 50 States and the District of Columbia); plus

(ii) Any direct expenditures by the State for the operation of those agencies; divided by

(2) The aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year.

(Authority: 20 U.S.C. 1401(22), 1411(b)(1)(C) and (g))

**§ 300.718 Acquisition of equipment and construction or alteration of facilities.**

(a) *General.* If the Secretary determines that a program authorized

under Part B of the Act will be improved by permitting program funds to be used to acquire appropriate equipment, or to construct new facilities or alter existing facilities, the Secretary may allow the use of those funds for those purposes.

(b) *Compliance with certain regulations.* Any construction of new facilities or alteration of existing facilities under paragraph (a) of this section must comply with the requirements of—

(1) Appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the ''Americans with Disabilities Accessibility Standards for Buildings and Facilities''); or

(2) Appendix A of subpart 101–19.6 of title 41, Code of Federal Regulations (commonly known as the ''Uniform Federal Accessibility Standards'').

(Authority: 20 U.S.C. 1404)

## Subpart H—Preschool Grants for Children With Disabilities

### § 300.800 In general.

The Secretary provides grants under section 619 of the Act to assist States to provide special education and related services in accordance with Part B of the Act—

(a) To children with disabilities aged three through five years; and

(b) At a State's discretion, to two-year-old children with disabilities who will turn three during the school year.

(Authority: 20 U.S.C. 1419(a))

### §§ 300.801–300.802 [Reserved]

### § 300.803 Definition of State.

As used in this subpart, *State* means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 1419(i))

### § 300.804 Eligibility.

A State is eligible for a grant under section 619 of the Act if the State—

(a) Is eligible under section 612 of the Act to receive a grant under Part B of the Act; and

(b) Makes FAPE available to all children with disabilities, aged three through five, residing in the State.

(Approved by the Office of Management and Budget under control number 1820–0030)

(Authority: 20 U.S.C. 1419(b))

### § 300.805 [Reserved]

### § 300.806 Eligibility for financial assistance.

No State or LEA, or other public institution or agency, may receive a grant or enter into a contract or cooperative agreement under subpart 2 or 3 of Part D of the Act that relates exclusively to programs, projects, and activities pertaining to children aged three through five years, unless the State is eligible to receive a grant under section 619(b) of the Act.

(Authority: 20 U.S.C. 1481(e))

### § 300.807 Allocations to States.

The Secretary allocates the amount made available to carry out section 619 of the Act for a fiscal year among the States in accordance with §§ 300.808 through 300.810.

(Authority: 20 U.S.C. 1419(c)(1))

### § 300.808 Increase in funds.

If the amount available for allocation to States under § 300.807 for a fiscal year is equal to or greater than the amount allocated to the States under section 619 of the Act for the preceding fiscal year, those allocations are calculated as follows:

(a) Except as provided in § 300.809, the Secretary—

(1) Allocates to each State the amount the State received under section 619 of the Act for fiscal year 1997;

(2) Allocates 85 percent of any remaining funds to States on the basis of the States' relative populations of children aged three through five; and

(3) Allocates 15 percent of those remaining funds to States on the basis of the States' relative populations of all children aged three through five who are living in poverty.

(b) For the purpose of making grants under this section, the Secretary uses the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

(Authority: 20 U.S.C. 1419(c)(2)(A))

### § 300.809 Limitations.

(a) Notwithstanding § 300.808, allocations under that section are subject to the following:

(1) No State's allocation may be less than its allocation under section 619 of the Act for the preceding fiscal year.

(2) No State's allocation may be less than the greatest of—

(i) The sum of—

(A) The amount the State received under section 619 of the Act for fiscal year 1997; and

(B) One-third of one percent of the amount by which the amount appropriated under section 619(j) of the Act for the fiscal year exceeds the amount appropriated for section 619 of the Act for fiscal year 1997;

(ii) The sum of—

(A) The amount the State received under section 619 of the Act for the preceding fiscal year; and

(B) That amount multiplied by the percentage by which the increase in the funds appropriated under section 619 of the Act from the preceding fiscal year exceeds 1.5 percent; or

(iii) The sum of—

(A) The amount the State received under section 619 of the Act for the preceding fiscal year; and

(B) That amount multiplied by 90 percent of the percentage increase in the amount appropriated under section 619 of the Act from the preceding fiscal year.

(b) Notwithstanding paragraph (a)(2) of this section, no State's allocation under § 300.808 may exceed the sum of—

(1) The amount the State received under section 619 of the Act for the preceding fiscal year; and

(2) That amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under section 619 of the Act from the preceding fiscal year.

(c) If the amount available for allocation to States under § 300.808 and paragraphs (a) and (b) of this section is insufficient to pay those allocations in full, those allocations are ratably reduced, subject to paragraph (a)(1) of this section.

(Authority: 20 U.S.C. 1419(c)(2)(B) and (c)(2)(C))

### § 300.810 Decrease in funds.

If the amount available for allocations to States under § 300.807 for a fiscal year is less than the amount allocated to the States under section 619 of the Act for the preceding fiscal year, those allocations are calculated as follows:

(a) If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1997, each State is allocated the sum of—

(1) The amount the State received under section 619 of the Act for fiscal year 1997; and

(2) An amount that bears the same relation to any remaining funds as the increase the State received under section 619 of the Act for the preceding fiscal year over fiscal year 1997 bears to the total of all such increases for all States.

(b) If the amount available for allocations is equal to or less than the amount allocated to the States for fiscal year 1997, each State is allocated the amount the State received for fiscal year 1997, ratably reduced, if necessary.

(Authority: 20 U.S.C. 1419(c)(3))

**§ 300.811 Allocation for State in which by-pass is implemented for parentally-placed private school children with disabilities.**

In determining the allocation under §§ 300.808 through 300.810 for a State in which the Secretary will implement a by-pass for parentally-placed private school children with disabilities under §§ 300.190 through 300.198, the Secretary includes in the State's child count—

(a) For the first year of a by-pass, the actual or estimated number of private school children aged three through five years, with disabilities (as defined in §§ 300.8(a) and 300.130) in the State, as of the preceding December 1; and

(b) For succeeding years of a by-pass, the number of private school children with disabilities aged three through five years, who received special education and related services under the by-pass in the preceding year.

(Authority: 20 U.S.C. 1412(f)(2))

**§ 300.812 Reservation for State activities.**

(a) Each State may reserve not more than the amount described in paragraph (b) of this section for administration and other State-level activities in accordance with §§ 300.813 and 300.814.

(b) For each fiscal year, the Secretary determines and reports to the SEA an amount that is 25 percent of the amount the State received under section 619 of the Act for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of—

(1) The percentage increase, if any, from the preceding fiscal year in the State's allocation under section 619 of the Act; or

(2) The rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(Authority: 20 U.S.C. 1419(d))

**§ 300.813 State administration.**

(a) For the purpose of administering section 619 of the Act (including the coordination of activities under Part B of the Act with, and providing technical assistance to, other programs that provide services to children with disabilities), a State may use not more than 20 percent of the maximum amount the State may reserve under § 300.812 for any fiscal year.

(b) Funds described in paragraph (a) of this section may also be used for the administration of Part C of the Act.

(Authority: 20 U.S.C. 1419(e))

**§ 300.814 Other State-level activities.**

Each State must use any funds the State reserves under § 300.812 and does not use for administration under § 300.813:

(a) For support services (including establishing and implementing the mediation process required by section 615(e) of the Act), which may benefit children with disabilities younger than three or older than five as long as those services also benefit children with disabilities aged three through five.

(b) For direct services for children eligible for services under section 619 of the Act.

(c) For activities at the State and local levels to meet the performance goals established by the State under section 612(a)(15) of the Act.

(d) To supplement other funds used to develop and implement a statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not more than one percent of the amount received by the State under section 619 of the Act for a fiscal year.

(e) To provide early intervention services (which must include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with Part C of the Act to children with disabilities who are eligible for services under section 619 of the Act and who previously received services under Part C of the Act until such children enter, or are eligible under State law to enter, kindergarten; or

(f) At the State's discretion, to continue service coordination or case management for families who receive services under Part C of the Act, consistent with § 300.814(e).

(Authority: 20 U.S.C. 1419(f))

**§ 300.815 Subgrants to local educational agencies.**

Each State that receives a grant under section 619 of the Act for any fiscal year must distribute all of the grant funds that the State does not reserve under § 300.812 to LEAs in the State that have established their eligibility under section 613 of the Act.

(Authority: 20 U.S.C. 1419(g)(1))

**§ 300.816 Allocations to local educational agencies.**

(a) *Base payments.* The State must first award each LEA described in § 300.815 the amount that agency would have received under section 619 of the Act for fiscal year 1997 if the State had distributed 75 percent of its grant for that year under section 619(c)(3), as such section was then in effect.

(b) *Base payment adjustments.* For fiscal year 1998 and beyond—

(1) If a new LEA is created, the State must divide the base allocation determined under paragraph (a) of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of children with disabilities ages three through five currently provided special education by each of the LEAs;

(2) If one or more LEAs are combined into a single new LEA, the State must combine the base allocations of the merged LEAs; and

(3) If for two or more LEAs, geographic boundaries or administrative responsibility for providing services to children with disabilities ages three through five changes, the base allocations of affected LEAs must be redistributed among affected LEAs based on the relative numbers of children with disabilities ages three through five currently provided special education by each affected LEA.

(c) *Allocation of remaining funds.* After making allocations under paragraph (a) of this section, the State must—

(1) Allocate 85 percent of any remaining funds to those LEAs on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the LEA's jurisdiction; and

(2) Allocate 15 percent of those remaining funds to those LEAs in accordance with their relative numbers of children living in poverty, as determined by the SEA.

(3) For the purpose of making grants under this section, States must apply on a uniform basis across all LEAs the best data that are available to them on the numbers of children enrolled in public and private elementary and secondary schools and the numbers of children living in poverty.

(Authority: 20 U.S.C. 1419(g)(1))

**§ 300.817 Reallocation of local educational agency funds.**

If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities aged three through five residing in the area served by the LEA with State and local funds, the SEA may reallocate any portion of the funds under section 619 of the Act that are not needed by that LEA to provide FAPE to other LEAs in the State that are not adequately providing

special education and related services to all children with disabilities aged three through five residing in the areas the other LEAs serve.

(Authority: 20 U.S.C. 1419(g)(2))

**§ 300.818 Part C of the Act inapplicable.**

Part C of the Act does not apply to any child with a disability receiving FAPE, in accordance with Part B of the Act, with funds received under section 619 of the Act.

(Authority: 20 U.S.C. 1419(h))

## PART 301 [REMOVED]

2. Remove part 301.

3. Revise part 304 to read as follows:

## PART 304–SERVICE OBLIGATIONS UNDER SPECIAL EDUCATION-PERSONNEL DEVELOPMENT TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES

**Subpart A—General**

Sec.
304.1 Purpose.
304.3 Definitions.

**Subpart B—Conditions That Must Be Met by Grantee**

304.21 Allowable costs.
304.22 Requirements for grantees in disbursing scholarships.
304.23 Assurances that must be provided by grantee.

**Subpart C—Conditions That Must Be Met by Scholar**

304.30 Requirements for scholar.
304.31 Requirements for obtaining an exception or deferral to performance or repayment under an agreement.

**Authority:** 20 U.S.C. 1462(h), unless otherwise noted.

### Subpart A—General

**§ 304.1 Purpose.**

Individuals who receive scholarship assistance from projects funded under the Special Education—Personnel Development to Improve Services and Results for Children with Disabilities program are required to complete a service obligation, or repay all or part of the costs of such assistance, in accordance with section 662(h) of the Act and the regulations of this part.

(Authority: 20 U.S.C. 1462(h))

**§ 304.3 Definitions.**

The following definitions apply to this program:

(a) *Academic year* means—

(1) A full-time course of study—

(i) Taken for a period totaling at least nine months; or

(ii) Taken for the equivalent of at least two semesters, two trimesters, or three quarters; or

(2) For a part-time student, the accumulation of periods of part-time courses of study that is equivalent to an ''academic year'' under paragraph (a)(1) of this definition.

(b) *Act* means the Individuals with Disabilities Education Act, as amended, 20 U.S.C. 1400 *et seq.*

(c) *Early intervention services* means early intervention services as defined in section 632(4) of the Act and includes early intervention services to infants and toddlers with disabilities, and as applicable, to infants and toddlers at risk for disabilities under sections 632(1) and 632(5)(b) of the Act.

(d) *Full-time*, for purposes of determining whether an individual is employed full-time in accordance with § 304.30 means a full-time position as defined by the individual's employer or by the agencies served by the individual.

(e) *Related services* means related services as defined in section 602(26) of the Act.

(f) *Repayment* means monetary reimbursement of scholarship assistance in lieu of completion of a service obligation.

(g) *Scholar* means an individual who is pursuing a degree, license, endorsement, or certification related to special education, related services, or early intervention services and who receives scholarship assistance under section 662 of the Act.

(h) *Scholarship* means financial assistance to a scholar for training under the program and includes all disbursements or credits for tuition, fees, student stipends, books, and travel in conjunction with training assignments.

(i) *Service obligation* means a scholar's employment obligation, as described in section 662(h) of the Act and § 304.30.

(j) *Special education* means special education as defined in section 602(29) of the Act.

(Authority: 20 U.S.C. 1462(h))

### Subpart B—Conditions That Must be Met by Grantee

**§ 304.21 Allowable costs.**

In addition to the allowable costs established in the Education Department General Administrative Regulations in 34 CFR 75.530 through 75.562, the following items are allowable expenditures by projects funded under the program:

(a) Cost of attendance, as defined in Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. 108711 (HEA), including the following:

(1) Tuition and fees.

(2) An allowance for books, supplies, transportation, and miscellaneous personal expenses.

(3) An allowance for room and board.

(b) Student stipends.

(c) Travel in conjunction with training assignments.

(Authority: 20 U.S.C. 1462(h))

**§ 304.22 Requirements for grantees in disbursing scholarships.**

Before disbursement of scholarship assistance to an individual, a grantee must—

(a) Ensure that the scholar—

(1) Is a citizen or national of the United States;

(2) Is a permanent resident of—

(i) Puerto Rico, the United States Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands; or

(ii) The Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau (during the period in which these entities are eligible to receive an award under the program); or

(3) Provides evidence from the U.S. Department of Homeland Security that the individual is—

(i) A lawful permanent resident of the United States; or

(ii) In the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident;

(b) Limit the cost of attendance portion of the scholarship assistance (as discussed in § 304.21(a)) to the amount by which the individual's cost of attendance at the institution exceeds the amount of grant assistance the scholar is to receive for the same academic year under title IV of the HEA; and

(c) Obtain a Certification of Eligibility for Federal Assistance from each scholar, as prescribed in 34 CFR 75.60, 75.61, and 75.62.

(Authority: 20 U.S.C. 1462(h))

**§ 304.23 Assurances that must be provided by grantee.**

Before receiving an award, a grantee that intends to grant scholarships under the program must include in its application an assurance that the following requirements will be satisfied:

(a) *Requirement for agreement.* Prior to granting a scholarship, the grantee will require each scholar to enter into a written agreement in which the scholar agrees to the terms and conditions set forth in § 304.30. This agreement must explain the Secretary's authority to grant deferrals and exceptions to the service obligation pursuant to § 304.31 and include the current Department address for purposes of the scholar's compliance with § 304.30(i).

(b) *Standards for satisfactory progress.* The grantee must establish, notify students of, and apply reasonable standards for measuring whether a scholar is maintaining satisfactory progress in the scholar's course of study.

(c) *Exit certification.* The grantee must establish policies and procedures for receiving and maintaining records of written certification from scholars at the time of exit from the program that identifies—

(1) The number of years the scholar needs to work to satisfy the work requirements in § 304.30(d);

(2) The total amount of scholarship assistance received subject to § 304.30;

(3) The time period, consistent with § 304.30(f)(1), during which the scholar must satisfy the work requirements; and

(4) As applicable, all other obligations of the scholar under § 304.30.

(d) *Information.* The grantee must provide the Secretary information, including records maintained under paragraph (c) of this section, that is necessary to carry out the Secretary's functions under section 662 of the Act and this part.

(e) *Notification to the Secretary.* If the grantee is aware that the scholar has chosen not to fulfill or will be unable to fulfill the obligation under § 304.30(d), the grantee must notify the Secretary when the scholar exits the program.

(Authority: 20 U.S.C. 1462(h))

## Subpart C—Conditions That Must Be Met by Scholar

### § 304.30 Requirements for scholar.

Individuals who receive scholarship assistance from grantees funded under section 662 of the Act must—

(a) *Training.* Receive the training at the educational institution or agency designated in the scholarship;

(b) *Educational allowances.* Not accept payment of educational allowances from any other entity if that allowance conflicts with the scholar's obligation under section 662 of the Act and this part;

(c) *Satisfactory progress.* Maintain satisfactory progress toward the degree, certificate, endorsement, or license as determined by the grantee;

(d) *Service obligation.* Upon exiting the training program under paragraph (a) of this section, subsequently maintain employment—

(1) On a full-time or full-time equivalent basis; and

(2) For a period of at least two years for every academic year for which assistance was received;

(e) *Eligible employment.* In order to meet the requirements of paragraph (d) of this section for any project funded under section 662 of the Act, be employed in a position in which—

(1) A majority of the children to whom the individual provides services are receiving special education, related services, or early intervention services from the individual;

(2) The individual spends a majority of his or her time providing special education, related services, or early intervention services;

(3) If the position is supervisory, including in the capacity of a principal, the individual spends a majority of his or her time performing work related to the individual's preparation under section 662 of the Act by providing one or both of the following:

(i) Special education, related services, or early intervention services.

(ii) Supervision to others on issues directly related to special education, related services, or early intervention services.

(4) If the position is postsecondary faculty, the individual spends a majority of his or her time performing work related to the individual's preparation under section 662 of the Act by preparing special education teachers, related services personnel, or early intervention services personnel to provide services; or

(5) If the position is in research, the individual spends a majority of his or her time performing research related to the individual's preparation under section 662 of the Act that focuses on special education, related services, or early intervention services;

(f) *Time period.* Meet the service obligation under paragraph (d) of this section as follows:

(1) A scholar must complete the service obligation within the period ending not more than the sum of the number of years required in paragraph (d)(2) of this section, as appropriate, plus three additional years, from the date the scholar completes the training for which the scholarship assistance was awarded.

(2) A scholar may begin eligible employment subsequent to the completion of one academic year of the training for which the scholarship assistance was received that otherwise meets the requirements of paragraph (1);

(g) *Part-time scholars.* If the scholar is a part-time student, meet the service obligation in this section based on the accumulated academic years of training for which the scholarship is received;

(h) *Information upon exit.* Provide the grantee all requested information necessary for the grantee to meet the exit certification requirements under § 304.23(c);

(i) *Information after exit.* Within 60 days after exiting the program, and as necessary thereafter for any changes, provide the Department, via U.S. mail, all information that the Secretary needs to monitor the scholar's service obligation under this section, including social security number, address, employment setting, and employment status;

(j) *Repayment.* If not fulfilling the requirements in this section, subject to the provisions in § 304.31 regarding an exception or deferral, repay any scholarship received, plus interest, in an amount proportional to the service obligation not completed as follows:

(1) The Secretary charges the scholar interest on the unpaid balance owed in accordance with the Debt Collection Act of 1982, as amended, 31 U.S.C. 3717.

(2)(i) Interest on the unpaid balance accrues from the date the scholar is determined to have entered repayment status under paragraph (4) of this section.

(ii) Any accrued interest is capitalized at the time the scholar's repayment schedule is established.

(iii) No interest is charged for the period of time during which repayment has been deferred under § 304.31.

(3) Under the authority of the Debt Collection Act of 1982, as amended, the Secretary may impose reasonable collection costs.

(4) A scholar enters repayment status on the first day of the first calendar month after the earliest of the following dates, as applicable:

(i) The date the scholar informs the grantee or the Secretary that the scholar does not plan to fulfill the service obligation under the agreement.

(ii) Any date when the scholar's failure to begin or maintain employment makes it impossible for that individual to complete the service obligation within the number of years required in § 304.30(f).

(iii) Any date on which the scholar discontinues enrollment in the course of study under § 304.30(a).

(5) The scholar must make payments to the Secretary that cover principal, interest, and collection costs according to a schedule established by the Secretary.

(6) Any amount of the scholarship that has not been repaid pursuant to paragraphs (j)(1) through (j)(5) of this section will constitute a debt owed to the United States that may be collected by the Secretary in accordance with 34 CFR part 30.

(Authority: 20 U.S.C. 1462(h))

**§ 304.31 Requirements for obtaining an exception or deferral to performance or repayment under an agreement.**

(a) Based upon sufficient evidence to substantiate the grounds, the Secretary may grant an exception to the repayment requirement in § 304.30(j), in whole or part, if the scholar—

(1) Is unable to continue the course of study in § 304.30(j) or perform the service obligation because of a permanent disability; or

(2) Has died.

(b) Based upon sufficient evidence to substantiate the grounds, the Secretary may grant a deferral of the repayment requirement in § 304.30(j) during the time the scholar—

(1) Is engaging in a full-time course of study at an institution of higher education;

(2) Is serving on active duty as a member of the armed services of the United States;

(3) Is serving as a volunteer under the Peace Corps Act; or

(4) Is serving as a full-time volunteer under title I of the Domestic Volunteer Service Act of 1973.

(Authority: 20 U.S.C. 1462(h))

[FR Doc. 05–11804 Filed 6–14–05; 8:45 am]

BILLING CODE 4001–01–P

Federal Register

**Tuesday,**

**June 21, 2005**

## Part III

# Department of Commerce

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 229, 635, and 648**

**Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations; Proposed Rule**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 229, 635, and 648**

**[Docket No. 050127019–5019–01; I.D. 120304D]**

**RIN 0648–AS01**

## Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** The National Marine Fisheries Service (NMFS) proposes to amend the regulations implementing the Atlantic Large Whale Take Reduction Plan (ALWTRP), to revise the management measures for reducing the incidental mortality and serious injury to the North Atlantic right whale (*Eubalaena glacialis*), humpback whale (*Megaptera novaeangliae*), and fin whale (*Balaenoptera physalus*) in commercial fisheries to meet the goals of the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA). NMFS proposes additional regulations for the fisheries currently covered by the ALWTRP, which include the Northeast sink gillnet, Northeast/Mid-Atlantic American lobster trap/pot, U.S. Mid-Atlantic coastal gillnet, Southeast Atlantic gillnet, and Southeastern U.S. Atlantic shark gillnet fisheries. NMFS also proposes to regulate the following fisheries from the MMPA's List of Fisheries for the first time under the ALWTRP: Northeast anchored float gillnet, Northeast drift gillnet, Atlantic blue crab, and Atlantic mixed species trap/pot fisheries targeting crab (red, Jonah, and rock), hagfish, finfish (black sea bass, scup, tautog, cod, haddock, pollock, redfish (ocean perch), and white hake), conch/whelk, and shrimp.

**DATES:** Comments on the proposed rule must be received by 5 p.m. EST on July 21, 2005.

**ADDRESSES:** Comments may be submitted on this proposed rule, identified by RIN 0648–AS01, by any one of the following methods:

(1) NMFS/Northeast Region Web site: *http://www.nero.noaa.gov/nero/regs/com.* Follow the instructions on the Web site for submitting comments.

(2) Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instruction on the Web site for submitting comments.

(3) E-mail: *whalerule.comments@noaa.gov.* Please include the RIN 0648–AS01 in the subject line of the message.

(4) Mail: Mary Colligan, Assistant Regional Administrator for Protected Resources, NMFS, Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930, ATTN: ALWTRP Proposed Rule.

(5) Facsimile (fax) to: 978–281–9394, ATTN: ALWTRP Proposed Rule.

Copies of the Draft Environmental Impact Statement/Regulatory Impact Review for this action can be obtained from the ALWTRP Web site listed under the Electronic Access portion of this document. Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may be obtained by writing Diane Borggaard, NMFS, Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930 or Juan Levesque, NMFS, Southeast Region, 9721 Executive Center Dr., St. Petersburg, FL 33702–2432. For additional addresses and Web sites for document availability see **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Diane Borggaard, NMFS, Northeast Region, 978–281–9300 Ext. 6503, *diane.borggaard@noaa.gov;* Kristy Long, NMFS, Office of Protected Resources, 301–713–2322, *kristy.long@noaa.gov;* or Barb Zoodsma, NMFS, Southeast Region, 904–321–2806, *barb.zoodsma@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP Web site at *http://www.nero.noaa.gov/whaletrp/.* Copies of the most recent marine mammal stock assessment reports may be obtained by writing to Richard Merrick, NMFS, 166 Water St., Woods Hole, MA 02543 or can be downloaded from the Internet at *http://www.nefsc.noaa.gov/psb/assesspdfs.htm.* In addition, copies of the documents entitled ''Defining Triggers for Temporary Area Closures to Protect Right Whales from Entanglements: Issues and Options'' and ''Identification of Seasonal Area Management Zones for North Atlantic Right Whale Conservation'' are available by writing to Diane Borggaard, NMFS, Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930 or can be downloaded from the ALWTRP Web site at *http://www.nero.noaa.gov/whaletrp/.* The complete text of the regulations implementing the ALWTRP can be found either in the Code of Federal Regulations (CFR) at 50 CFR 229.32 or downloaded from the Web site, along with a guide to the regulations.

### Background

The ALWTRP was originally developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the level of serious injury and mortality of three strategic stocks of large whales (fin, humpback, and North Atlantic right) interacting with Category I and II fisheries (i.e., those with frequent or occasional serious injury or mortality of marine mammals). The MMPA defines a strategic stock of marine mammals as a stock: (1) For which the level of direct human-caused mortality exceeds the Potential Biological Removal (PBR) level; (2) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the ESA within the foreseeable future; or (3) which is listed as a threatened or endangered species under the ESA, or as depleted under the MMPA (16 U.S.C. 1362(19)). Specific Category I and II fisheries under the original ALWTRP included the New England Multispecies sink gillnet (now called Northeast sink gillnet), Gulf of Maine/U.S. Mid-Atlantic lobster trap/pot (now called Northeast/Mid-Atlantic American lobster trap/pot), U.S. Mid-Atlantic coastal gillnet, and Southeastern U.S. Atlantic shark gillnet fisheries. The measures identified in the ALWTRP were also intended to benefit minke whales (*Balaenoptera acutorostrata*), which are not strategic, but are known to be taken incidentally in gillnet and American lobster trap/pot fisheries.

In general, the ALWTRP has consisted of a combination of regulatory and non-regulatory measures, including broad gear modifications, time-area closures, expanded disentanglement efforts, extensive outreach efforts in key areas, gear research, and an expanded right whale surveillance program to supplement the Mandatory Ship Reporting System. The background for the take reduction planning process and initial development of the ALWTRP is provided in the preambles to the proposed (62 FR 16519, April 7, 1997), interim final (62 FR 39157, July 22, 1997), and final (64 FR 7529, February 16, 1999) rules that implemented the original plan.

Since its implementation in 1997, the ALWTRP has been modified several

times to reduce the serious injury and mortality of large whales in gillnet and American lobster trap/pot gear. An interim final rule published in December 2000 (65 FR 80368, December 21, 2000) and a final rule in January 2002 (67 FR 1300, January 10, 2002; 67 FR 15493, April 2, 2002), contain background information on changes to the ALWTRP that implemented additional gear modifications. In 2002, a final rule added the Southeast Atlantic gillnet fishery to those fisheries regulated by the ALWTRP, restricting the use of straight set gillnets at night in the Southeast U.S. Restricted Area (67 FR 59471, September 23, 2002; 68 FR 19464, April 21, 2003). An interim final rule implemented a Seasonal Area Management (SAM) program (67 FR 1142, January 9, 2002; 67 FR 65722, October 28, 2002), which identified two management areas based on the annual predictable presence of right whales and required gear modifications for lobster trap/pot and anchored gillnet gear in these areas on a seasonal basis. Additionally, in 2002, a final rule implemented a Dynamic Area Management (DAM) program (67 FR 1133, January 9, 2002; 67 FR 65722, October 28, 2002) to protect unexpected aggregations of right whales that met appropriate criteria by temporarily restricting lobster trap/pot and anchored gillnet fishing in a designated area. A final rule published in August 2003 (68 FR 10195, March 4, 2003; 68 FR 51195, August 26, 2003) identified gear modifications determined to sufficiently reduce the risk of entanglement to right whales, and, therefore, deemed acceptable for fishing in DAM zones. Copies of the above documents and their supporting Environmental Assessments are available from the NMFS, Northeast Region (see **ADDRESSES**).

**ESA Section 7 Consultation and the ALWTRP**

As described above, the ALWTRP was developed under section 118 of the MMPA and subsequently modified to comply with the purposes and policies of the MMPA. However, the three whale species directly protected by the ALWTRP (fin, humpback, and North Atlantic right) are also listed under the Endangered Species Act (ESA)(16 U.S.C. 1531 *et seq.*). In addition, many of the fisheries affected by the ALWTRP are subject to interagency consultation under section 7 of the ESA since the fisheries occur (at least in part) in Federal waters and are federally managed. These include the American lobster, black sea bass, and deep-sea red crab trap/pot fisheries; and the Northeast multispecies, monkfish, spiny dogfish, bluefish, southeastern U.S. Atlantic shark, and southeast Atlantic coastal pelagic gillnet fisheries.

Section 7 of the ESA requires Federal agencies to ensure that their actions (*e.g.*, implementation of fishery management measures) do not jeopardize the continued existence of ESA-listed species. The process for determining whether a Federal agency action will jeopardize any ESA-listed species is referred to as ''section 7 consultation.'' In 1996, NMFS completed section 7 consultations for the American lobster trap/pot fishery and the Northeast multispecies gillnet fishery and concluded that the operation of these fisheries would jeopardize the continued existence of North Atlantic right whales as a result of serious injuries and mortalities occurring within lobster trap/pot and multispecies sink gillnet gear. NMFS also concluded that the new ALWTRP measures would modify these fisheries in such a way that jeopardy would be avoided. NMFS, therefore, accepted the ALWTRP measures as a reasonable and prudent alternative (RPA) to avoid jeopardy to right whales from these two fisheries.

Similarly, following section 7 consultation on the Monkfish Fishery Management Plan (FMP) and Spiny Dogfish FMP in 1998 and 1999, respectively, NMFS concluded that the existing ALWTRP measures would avoid the likelihood that the gillnet component of these fisheries would jeopardize the continued existence of North Atlantic right whales.

In 2000, NMFS reinitiated section 7 consultation for the Federal lobster, Northeast multispecies, monkfish, and spiny dogfish fisheries after receiving new information that indicated right whale population status was declining (Caswell *et al.*, 1999), whale entanglements resulting in serious injuries were still occurring, and a recent right whale death resulted from entanglement in gillnet gear. Section 7 consultation for each of the four fisheries was completed on June 14, 2001, and concluded that the existing ALWTRP measures were not sufficient to remove the likelihood of jeopardy for North Atlantic right whales. A new RPA was developed for the four fisheries and included SAM, DAM, and additional gear modifications. These measures were implemented through rulemaking as part of the ALWTRP. The RPA also included monitoring criteria (a non-regulatory measure) to help assess the effectiveness of the RPA.

In 2002, eight right whales were observed entangled after implementation of the RPA measures. One of the eight, a female right whale born in 2000 (RW #3107), had line with an attached buoy wrapped around and cutting into her tail stock. Several disentanglement attempts were made and she was subsequently freed of the gear. The recovered gear was examined to obtain further information on the entanglement event. NMFS could not positively identify the fishery or owner of the gear. However, based on the examination, NMFS concluded that the gear was consistent with that used in the inshore lobster trap fishery (Whittingham *et al.*, 2003). [On July 30, 2003, NOAA Fisheries gear specialist clarified that the term ''inshore lobster trap fishery'' as used in the draft 2002 Large Whale Entanglement Report refers to U.S. waters that include northern inshore (certain state waters), northern nearshore, and southern nearshore waters as they are defined under the ALWTRP.] This conclusion was based on the configuration of the recovered gear, including the presence of a weak link with a breaking strength of no more than 600 lb (272.4 kg). Six weeks after the disentanglement, her carcass washed ashore on Nantucket, MA.

Although the exact cause of death could not be determined, the necropsy of RW #3107 did reveal substantial tissue damage to the tail stock in the area where the entangling gear had been present. A draft necropsy report describes the most likely cause of death (based on the available evidence) as an infection or other debilitating condition caused by the injuries to the tail stock.

NMFS reviewed the necropsy report and considered whether it provided sufficient information to show, based on RPA monitoring criteria, that the RPA was not effective at avoiding the likelihood of jeopardy to right whales. On June 13, 2003, NMFS received confirmation from the Northeast Fisheries Science Center (NEFSC) that the Atlantic Scientific Review Group (ASRG) concurred with the NEFSC finding that the death of RW #3107 was an entanglement related mortality. [The ASRG is 1 of 3 independent regional scientific review groups composed of individuals, in part, with expertise in marine mammal biology and ecology, population dynamics and modeling, and commercial fishing technology and practices. The review groups were established as required by section 117 of the MMPA, and serve as advisors to NOAA Fisheries and the FWS with respect to marine mammal issues.]

There is no way to determine exactly when and where RW #3107 became entangled. She was last seen prior to the entanglement in December 2001 off of

South Carolina. She was next seen (entangled) in July 2002 in Canadian waters off of Nova Scotia. Although RW #3107 could have become entangled in Canadian waters, NMFS considers this unlikely since Canadian trap fishers (whether for lobster, crab, or fish) are not required to use a 600-lb (272.4-kg) weak link. The more likely scenario is that RW #3107 became entangled in U.S. waters. While it is possible that she became entangled prior to when the RPA measures went into effect, this is somewhat irrelevant since the weak link on the entangling gear was the same breaking strength as is currently required by the RPA for certain lobster fishing areas.

In summary, while the gear recovered from RW #3107 cannot be identified as originating from the U.S. lobster fishery, NMFS has determined that the gear is consistent with gear approved for use in the lobster fishery that is conducted in portions of the U.S. Exclusive Economic Zone (EEZ). In addition, NMFS has been advised that RW #3107 died as a result of injuries caused by the entanglement. Therefore, based on the RPA monitoring criteria from the June 14, 2001, biological opinion, NMFS concluded that the entanglement event for RW #3107 provides evidence that the RPA described in the June 14, 2001, Opinion is not effective at avoiding the likelihood of jeopardizing the continued existence of right whales by the lobster trap fishery. As required, NMFS has reinitiated consultation to reexamine the effects of the fishery, as modified by the existing ALWTRP and RPA measures, on right whales. This consultation is in progress.

NMFS reinitiated section 7 consultation on the Summer Flounder, Scup, Black Sea Bass FMP following new information on the applicability of the ALWTRP measures for federally-permitted black sea bass fishermen using pot/trap gear. This consultation is also in progress.

In the Southeast Region, NMFS has conducted section 7 consultations on the following fishery management plans: Coastal Migratory Pelagics; Swordfish, Tuna, Shark, and Billfish; and Snapper-Grouper. In 1992, the section 7 consultation for Amendment 6 to the Coastal Migratory Pelagics FMP concluded that the proposed actions to regulate pelagic hook-and-line and gillnet fishing gear were not likely to adversely affect ESA-listed species, but that the fishing activities conducted under the authority of the FMP may affect, but were not likely to jeopardize, the continued existence of listed sea turtles. Subsequent consultations conducted on additional amendments to the Coastal Migratory Pelagics FMP and emergency actions have been informal. These informal consultations concluded that the regulatory changes resulting from these additional amendments would not alter the findings presented in the 1992 biological opinion prepared for Amendment 6 to the FMP. In addition, NMFS does not have data indicating that the level of take for sea turtles, as specified in the 1992 incidental take statement, has been exceeded, which would require reinitiating formal consultation. However, due to the listing of new species (*e.g.*, smalltooth sawfish) on the ESA and designation of critical habitat for right whales in the southeast U.S. since 1992, NMFS believes reinitiating formal consultation is warranted and has begun this process.

In 2003, NMFS conducted a section 7 consultation for the Draft Amendment 1 to the Highly Migratory Species FMP. The section 7 consultation concluded that, based on the lack of reported interactions between large whales and the Southeast U.S. Atlantic shark gillnet fishery since the implementation of the ALWTRP and the RPA identified in the May 1997 biological opinion, the proposed action may affect, but is not likely to jeopardize the continued existence of right, humpback, and fin whales.

Since 1989, NMFS has conducted numerous section 7 consultations on the Snapper-Grouper FMP and its subsequent amendments. These consultations have all concluded that the trap/pot gear used by the fisheries managed under the FMP, such as black sea bass pots, were not likely to jeopardize the continued existence of endangered large whales or result in the destruction or adverse modification of critical habitat. In 2000, a section 7 consultation for Amendment 12 to the FMP came to the same conclusion as all the prior consultations, however, NMFS expressed that interactions between hook-and-line and pot gear used by this fishery and endangered marine mammals and sea turtles may warrant further consideration in future amendments. Therefore, NMFS is presently in the process of re-initiating formal consultation on the Snapper-Grouper FMP.

**Take Reduction Team Activities During 2003 and 2004**

Under the 1994 Amendments to the MMPA, the immediate goal of a take reduction plan (TRP) is to reduce the incidental take of strategic stocks of marine mammals in commercial fishing operations to below PBR within 6 months of implementing a TRP. The long-term goal is to reduce incidental takes to insignificant levels approaching a zero mortality and serious injury rate (69 FR 43338, July 20, 2004) within 5 years of implementing a TRP. For right whales, these two goals are essentially the same since the PBR level is zero. Under the ESA, NMFS is obligated to use its authorities to conserve endangered and threatened species and ensure that actions authorized by the agency, such as fishing in Federal waters, are not likely to jeopardize the continued existence of any endangered or threatened species, including right whales.

NMFS determined that additional modifications to the ALWTRP were warranted based on the continued entanglement of large whales in commercial fishing gear since the 2002 ALWTRP regulations became effective. Therefore, NMFS reconvened the ALWTRT from April 28–30, 2003, to help evaluate the ALWTRP and discuss additional modifications necessary to meet the goals of the MMPA and ESA. NMFS asked the ALWTRT to consider some preliminary options provided in advance of the meeting, as well as develop additional options for addressing incidental interactions between commercial fisheries and large whales. Particular emphasis was placed on those options designed to reduce the potential for entanglements and minimize adverse impacts if entanglements occur.

Following the April 2003 meeting, the ALWTRT met in separate subgroups over the next 2 months to further discuss and refine the proposals developed at the April meeting. These ALWTRT meetings included a ''Northeast Inshore Lobster Trap/Pot'' subgroup that met on May 19, 2003; an ''Offshore Trap/Pot'' subgroup that met on June 17, 2003; a ''Southeast/Mid-Atlantic'' subgroup that met on June 23, 2003; and a ''Northeast Gillnet'' subgroup met on June 24, 2003. All ALWTRT meetings, including subgroup meetings, were open to the public.

Subsequently, on June 30, 2003, NMFS published a Notice of Intent (NOI) in the **Federal Register** to announce the agency's intent to prepare an Environmental Impact Statement (EIS) that would analyze the impacts of alternatives for amending the ALWTRP (68 FR 38676). The 2003 NOI expanded the scope of analysis from an NOI previously published in 2001 (66 FR 50390, October 3, 2001), which was issued when NMFS was planning to prepare an EIS to analyze the impacts of alternatives under consideration to finalize the SAM program. In the 2003 NOI, NMFS announced several public

scoping meetings along the east coast to solicit comments on the range of issues to be considered during the preparation of the EIS. Proposals from the April 2003 ALWTRT meeting and subsequent subgroup meetings were used to develop an issues and options document, which NMFS made available to the public during the scoping process. The ALWTRT had agreed on two overriding principles for reducing the risk of interactions between large whales and commercial fisheries; these principles were included in the scoping document. These include the following: (1) Reducing profiles of all groundlines to minimize risk of entanglement and (2) reducing the risk of entanglement associated with vertical lines.

The document also described the major issues, current management and legal requirements, and potential management measures (including measures already in effect) to address fisheries that may frequently or occasionally interact with large whales. During the summer of 2003, NMFS conducted six public scoping meetings along the east coast.

The full ALWTRT met again February 3–4, 2004. NMFS updated team members and interested parties on recent whale conservation activities and research, revisited the ALWTRP principles, and discussed the upcoming rulemaking process, among other issues. At this meeting, similar to the 2003 ALWTRT meeting, much of the discussions focused on ways to reduce the entanglement risk associated with groundlines. To date, the ALWTRT meetings and the scoping meetings associated with the draft EIS (DEIS) process have yielded little from which NMFS could propose effective and comprehensive management measures designed to address the vertical line issue. In fact, at the 2004 ALWTRT meeting, team members highlighted the need for further biological and gear research to develop appropriate management measures for reducing the risk associated with vertical lines. As a result, NMFS is outlining a strategy to reduce interactions with groundlines in this proposed rule, along with some measures to address vertical lines, and plans to further address the risk associated with vertical lines through future rulemaking.

**Reducing the Risk of Entanglement Associated With Groundlines**

Floating groundline is a source of entanglement for large whales. Underwater video recording of typical trap/pot gear with floating groundline between traps revealed that the line often forms large loops in the water column (an average of 8–18 feet (2.44–5.49 meters) above the bottom) between traps (McKiernan *et al.*, 2002). This slack in the floating line presents an entanglement risk to large whales because they often use the entire water column when foraging. For example, during feeding activities in Cape Cod Bay, three right whales tagged by multi-sensor telemetry units spent up to 31 percent of their time in the bottom third of the water column. During non-feeding activities, whale use in this portion of the water column increased up to 40 percent (Wiley & Goodyear, 1998).

One method proposed at the April 2003 ALWTRT meeting for reducing the groundline entanglement risk centered on lowering the profile of the line to a pre-determined level, which would remove it from the mid- and upper portions of the water column. However, at the February 2004 ALWTRT meeting, a group of large whale researchers proposed that lowering the profile of groundlines to within a few feet of the bottom may not be effective at reducing the risk of large whale entanglements in some areas, particularly areas known to support foraging aggregations of highly endangered right whales. They explained that many of the most serious right whales entanglements involve the head and mouth. These head and mouth entanglements presumably occur during open-mouth feeding activities that may be correlated to a dense layer of zooplankton near the bottom of the seafloor. Therefore, the ALWTRT recommended using sinking or neutrally buoyant groundline in these areas, which would bring groundlines down to the seafloor.

In light of this information, NMFS is unable to support using ''low-profile'' groundline at this time. Further research and analysis is needed on whether lowering the profile of groundline to depths other than the ocean bottom reduces the potential for large whale entanglement in certain areas. Additionally, NMFS must determine the appropriate depth to which the groundline profile could be reduced. Specifically, further information and analysis are needed on prey distribution, large whale distribution and behavior, and methods for reducing the profile of groundline. NMFS would need to define ''Low-profile'' line in such a way that it is enforceable, is operationally feasible for fishermen, and reduces the risk of entanglement. Presently, NMFS and others are researching all of these issues. NMFS may consider ''low-profile'' groundline in the future. Through this proposed rule, NMFS is soliciting comments and information on any of the issues noted above that are related to ''low profile'' groundline.

**Reducing the Risk of Entanglement Associated With Vertical Lines**

Although this proposed rule contains alternatives that would require fishermen to convert groundlines from floating line to sinking line and provides a plan for addressing vertical lines in the future, NMFS is proposing a staged approach to the implementation of gear modifications. Through this proposed rule, groundline modifications would be implemented and vertical line modifications would follow once sufficient gear research is conducted. NMFS developed this approach jointly with the ALWTRT. The ALWTRT agreed at the April 2003 meeting that NMFS should reduce the risk of entanglement associated with vertical lines as well as reduce the profile of groundline. This is supported by Johnson *et al.* (2005), which concluded that any line rising into the water column presents an entanglement risk to large whales; although it is difficult to compare the relative risks associated with different gear parts (*e.g.*, vertical lines versus groundlines). As mentioned previously, most ALWTRT members proposed that, at this time, NMFS should only consider management options to address groundlines and should address vertical lines in future rulemaking actions. Currently, neither the ALWTRT nor NMFS is able to identify a viable option for further reducing the risk associated with vertical lines. Therefore, NMFS believes that additional research and discussions with the ALWTRT are needed to address this issue.

A better scientific understanding about the nature of entanglements, specifically the gear part involved (*e.g.*, vertical line), would help NMFS develop better management programs and reduce the serious injury and mortality of large whales due to incidental interactions with commercial fisheries. Therefore, NMFS is also proposing in this rule to expand the gear marking requirements for vertical lines, which would help provide information about the nature of the gear involved in large whale entanglements. This information would also provide valuable insight concerning where, when, and how the entangling gear was set.

Research into reducing the risk associated with vertical line is currently focusing on the profiles of vertical line with different buoy line configurations (*e.g.*, sinking/neutrally buoyant vs. polypropylene), as well as other

modifications (*e.g.*, requiring a minimum number of traps per trawl in certain areas). NMFS and others are also investigating how whales utilize the water column, including foraging ecology and diving behavior, which will help determine the appropriate mitigation strategies for reducing entanglement risk from vertical lines.

As noted above, the alternatives considered in this proposed rule focus primarily on reducing risks associated with groundlines. However, until new vertical line gear modifications are developed, NMFS is responding to the vertical line issue through such measures as proposing expanded gear marking, reducing the breaking strength of weak links, regulating additional fisheries under the ALWTRP, and considering two buoy lines allowed per trawl or string. In the latter case, NMFS found that requiring the use of one buoy line may encourage fishermen to split trawls or strings, thus increasing the number of vertical lines in the water column. In addition, requiring one buoy line may increase the risk of gear loss, thereby increasing the entanglement risks associated with ''ghost gear'' or fishing gear left untended or lost that continues to fish. Therefore, this would not be an effective broad-based measure to implement.

In light of the ongoing research on the risk of entanglement in vertical lines and the lack of a viable management option for addressing the issue at this time, NMFS is proposing the use of sinking and/or neutrally buoyant groundline to reduce the serious injury and mortality from incidental interactions between large whales and commercial fishing gear. However, through this action, NMFS is soliciting comments and information on any of these issues discussed above that are also related to vertical lines.

**Preferred Alternatives**

As a result of public input provided through the DEIS scoping process, NMFS developed six alternatives, including a ''No Action'' or status quo alternative, to modify the ALWTRP. All six of these alternatives are described and analyzed in detail in the DEIS prepared to accompany this proposed rule (NMFS, 2004). Of the six alternatives considered, NMFS has identified two Preferred Alternatives (Alternatives 3 and 6 in the DEIS) for amending the ALWTRP, which are described below. Although NMFS has identified six alternatives, two of which are preferred, NMFS is seeking comment on all the alternatives. Based on comments received, NMFS proposes to implement one alternative in the final rule.

The two Preferred Alternatives include the following: Expanding the geographic and temporal requirements of the ALWTRP; broad-based gear modifications such as reducing the profile of groundline and marking vertical lines; applying ALWTRP regulations to similar gillnet and trap/pot gear not currently regulated; and clarifying existing regulations so the intended effect is more understandable. Although NMFS did not receive consensus (*i.e.*, unanimity) from the ALWTRT on the specific amendments to the ALWTRP, the preferred alternatives analyzed in the DEIS and proposed in this document are based on proposals presented by the ALWTRT and the general public during both ALWTRT and DEIS scoping meetings.

*Alternative Three (Preferred)*

Changes Proposed for the Atlantic Large Whale Take Reduction Plan for Boundaries and Seasons

The dataset used in the analyses to determine the proposed boundaries and seasons for ALWTRP gear modifications was drawn from the December 2003 version of the North Atlantic Right Whale (NARW) Sighting Database curated by the University of Rhode Island (URI). This dataset includes all large whale sightings collected during all right whale surveys, totaling 21,977 right, 4,414 humpback, and 8,098 fin whale sighting records from the 18th century through 2003.

These sighting records have documented the presence of all three species as far offshore as the eastern edge of the EEZ. In addition, given the limited amount of offshore survey effort, it is almost certain that there are more large whales in this area than are recorded in the database. Therefore, this preferred alternative would extend the ALWTRP gear modifications for regulated areas of the east coast out to the eastern edge of the EEZ. NMFS believes that expanding the waters regulated under the ALWTRP would protect large whales where they have been historically sighted and are expected to occur. Moreover, this proposed expansion would make the ALWTRP more consistent with the waters regulated under Fishery Management Plans (FMPs), which manage fisheries out to the eastern edge of the EEZ.

As indicated by the dataset, right, humpback, and fin whale distributions have a strong spatial and temporal aspect; therefore, this preferred alternative identifies these spatial and temporal changes. NMFS has determined that the boundaries proposed for requiring gear modifications year-round in the northeast are supported by the sightings data obtained from the NARW Sightings Database, which indicates that right, humpback, and fin whales are commonly observed in all seasons. Therefore, this preferred alternative would require broad-based gear modifications on a year-round basis from Maine to the Rhode Island/Connecticut border (41°18.2′ N. and 71°51.5′ W.; Watch Hill, RI), south to 40°00′ N., and east to the eastern edge of the EEZ.

In the Mid-Atlantic, right and humpback whales can be found year-round, but according to the NARW Sightings Database, sightings primarily occur between September and May. Fin whales are only present in the Mid-Atlantic north of Cape Hatteras in the summer. Therefore, in this preferred alternative, NMFS proposes to require gear modifications in these waters on a seasonal basis, from September to May, when more sightings are reported and the risk of entanglement with commercial fishing gear is greater. Under this preferred alternative, a line drawn from the Rhode Island/Connecticut border, south to 40°00′ N., and east to the eastern edge of the EEZ, would serve as the northern boundary for seasonal gear modifications in the Mid-Atlantic and the South Carolina/Georgia border east to the eastern edge of the EEZ would serve as the southern boundary. In addition, the southern boundary would separate Mid-Atlantic waters from the right whale calving grounds and critical habitat area in the southeast.

During the winter months (November to April), right whales are most often sighted south of the South Carolina/Georgia border. Humpback whales are also reported in southeast coastal waters during this time of year. Stranding data suggest that fin whale calving may occur along the latitudes of the Mid-Atlantic; however, it is unknown where calving, mating, and wintering for most of the population takes place (Hain *et al.*, 1993). In this preferred alternative, NMFS is proposing seasonal gear modifications from November 15 to April 15 for all ALWTRP regulated fisheries between the South Carolina/Georgia border and 29°00′ N. based on this information in the Southeast Region. From December 1 to March 31, gear modifications would be required for trap/pot and Southeast Atlantic gillnet fisheries between 29°00′ N. and 27°51′ N., and for the Southeastern U.S. Atlantic shark gillnet fishery between

29°00′ N. and 26°46.5′ N. NMFS considers the proposed southern boundaries appropriate based on the NARW Sighting Database, which indicates that right whales are rarely sighted south of 29°00′ N. from November 1 to November 15 (n=1) or from April 1 to 15 (n=3). NMFS will continue to monitor from 27°51′ N. to 26°46.5′ N. and south of this area in the event that sightings data warrant the expansion of management areas.

Changes Proposed for the Atlantic Large Whale Take Reduction Plan for Lobster Trap/Pot Gear

*Northern Inshore State and Nearshore Trap/Pot Waters, Cape Cod Bay Restricted Area (May 16–December 31), Stellwagen Bank/Jeffreys Ledge Restricted Area, and Great South Channel Restricted Area (Nearshore Portion)*—The current regulations for Northern Nearshore Trap/Pot Waters, Stellwagen Bank/Jeffreys Ledge Restricted Area, and the Federal portion of the Cape Cod Bay Restricted Area (May 16–December 31) require one buoy line on trawls of 5 or fewer traps. However, NMFS has received reports that the current requirement sometimes results in fishermen splitting their trawls and fishing a greater number of smaller trawls, which increases the number of buoy lines in the water if the majority of fishermen are engaging in this practice. Therefore, for these ALWTRP areas only, this preferred alternative would allow five-trap trawls to have two buoy lines. Under this preferred alternative, NMFS would require the use of only one buoy line for trawls of 4 or fewer traps, and to allow trawls with 5 or more traps to have two buoy lines (effective six months after publication of a final rule). As noted previously, NMFS intends to discuss vertical line issues, including the complex ones such as the number of traps per trawl, with the ALWTRT after ongoing research is completed in order to develop a comprehensive approach to reducing entanglement risk associated with vertical lines.

For Northern Inshore State Trap/Pot Waters and the state portion of the Cape Cod Bay Restricted Area (May 16–December 31) only, this preferred alternative would eliminate the Lobster Take Reduction Technology List (*i.e.*, a list of gear modification options) and require a 600-lb (272.2-kg) weak link on all flotation devices and/or weighted devices attached to the buoy line (effective 6 months after publication of a final rule). Weak links are already a requirement in other areas, such as the Cape Cod Bay Restricted Area from January 1 to May 15. Therefore, this would enable NMFS to utilize weak links as a broad-based management measure. It is important to note that, while the strain recorded on buoy systems during load cell testing can indicate whether a particular weak link breaking strength is appropriate, the recorded strains alone cannot establish weak link breaking strengths because breaking strengths must factor in a reasonable measure of safety to prevent losing gear at sea during the worst conditions. Gear research has indicated that a 600-lb (272.4-kg) breaking strength weak link will provide a measure of protection for whales, as well as maintain gear operations and prevent the loss of gear in this area (*i.e.*, ghost gear).

This preferred alternative would also lower the weak link breaking strength on all flotation devices and/or weighted devices attached to the buoy line in the nearshore portion of the Great South Channel Restricted Area that overlaps with LMA 2 and the Outer Cape (July 1–March 31) from 1,500-lb (680.4-kg) to 600-lb (272.2-kg) (effective 6 months after publication of a final rule). All fishermen in the nearshore portion of the Great South Channel Restricted Area would then be required to have a 600–lb weak link on all flotation devices and/or weighted devices attached to the buoy line. This would ensure that fishermen in nearshore areas (*i.e.*, LMA 2 and the Outer Cape) have the same weak link requirements.

*Offshore Trap/Pot Waters Area and Great South Channel Restricted Area (Offshore Portion)*—This preferred alternative would extend the southern boundary of the Offshore Trap/Pot Waters Area by following the 100-fathom (600-ft or 182.9-m) line from 35°30′ N. to 27°51′ N. and then extending out to the eastern edge of the EEZ (effective 6 months after publication of a final rule). In addition to the current requirements, this preferred alternative would lower the maximum breaking strength of weak links on all flotation devices and/or weighted devices attached to the buoy line in Offshore Trap/Pot Waters and the offshore portion of the Great South Channel Restricted Area that overlaps with the LMA 2/3 overlap and LMA 3 Areas from 2,000 lb (907.2 kg) to 1,500 lb (680.4 kg) (effective 6 months after publication of a final rule). Lowering the weak link breaking strength is appropriate, as testing conducted by the NMFS Gear Research Team and the offshore lobster industry found that the breaking strength on the buoy line could be lowered while still allowing the gear to be used effectively.

*Southern Nearshore Trap/Pot Waters Area*—This preferred alternative would extend the southern boundary of the Southern Nearshore Trap/Pot Waters Area by following the 100-fathom (600–ft or 182.9-m) line from 35°30' N. to 27°51′ N. and then extending the boundary inshore to the coast or exempted areas. The Southern Nearshore Trap/Pot Waters would be defined by Lobster Management Areas 4, 5, and 6 (except for the exempted areas) north of 35°30′ N. and by the 100-fathom (600-ft or 182.9-m) line west to the coast or exempted areas south of 35°30' N. In addition to the current requirements, this preferred alternative would implement the regulations currently required in the Southern Nearshore Trap/Pot Waters in the portion of Lobster Management Area 6 that is neither exempted under the ALWTRP waters (*i.e.*, mouth of Long Island Sound) nor currently regulated by the ALWTRP (effective 6 months after publication of a final rule).

Changes Proposed for the Atlantic Large Whale Take Reduction Plan for Other Trap/Pot Gear

The following trap/pot fisheries (designated as ''Other Trap/Pot Fisheries'' from this point on) are currently not regulated under the ALWTRP, but have the potential to entangle large whales: crab (red, Jonah, rock, and blue), hagfish, finfish (black sea bass, scup, tautog, cod, haddock, pollock, redfish (ocean perch), and white hake), conch/whelk, and shrimp. In both preferred alternatives, NMFS proposes to regulate these trap/pot fisheries under the ALWTRP because they have the potential to entangle, seriously injure, and kill large whales. For some of these fisheries, entanglements have been documented. However, NMFS is soliciting comments to help determine if all appropriate directed fisheries have been included in the above list (other than lobster). A complete listing of the species landed using trap/pot gear is provided as Appendix 4A to Chapter 4 of the DEIS (see **ADDRESSES**).

Through this proposed rule, these Other Trap/Pot fisheries would be required to comply with current ALWTRP regulations, including the universal gear modifications, and would follow the same area designations and requirements (*e.g.*, weak links, SAM and DAM program requirements, and Critical Habitat restrictions) currently required and proposed for the lobster trap/pot fisheries already covered by the ALWTRP (effective 6 months after publication of a final rule). [The ALWTRP universal gear modifications

include: no buoy line floating at the surface, no wet storage of gear (all gear must be hauled out of the water at least once every 30 days), and fishermen are encouraged, but not required, to maintain knot-free buoy lines.] Where applicable, these fisheries would also be regulated under the ALWTRP within the portion of Lobster Management Area 6 that is not exempted by the ALWTRP (*i.e.*, mouth of Long Island Sound) (effective 6 months after publication of a final rule). In addition to complying with the current ALWTRP requirements, the Other Trap/Pot Fisheries would be required to comply with the proposed modifications for the lobster trap/pot fishery specified in this proposed rule (effective 6 months after publication of a final rule unless otherwise noted). NMFS proposes that these Other Trap/Pot fisheries are similar enough in configuration and operation that they should be regulated similarly, with the exception of the red crab fishery discussed below.

*Red crab Trap/Pot Gear:* Through this proposed rule, the maximum weak link breaking strength would be lowered from 3,780-lb (1,714.6-kg), as currently required in the Final Rule implementing the Red Crab Fishery Management Plan (67 FR 63221, October 19, 2002), to 2,000-lb (907.2-kg). Initially, the 3,780-lb (1,714.6-kg) weak link breaking strength was implemented to be consistent with the original ALWTRP weak link requirements for the offshore lobster fishery. However, at the February 2004 ALWTRT meeting, members discussed lowering the weak link breaking strength for the red crab fishery. Following the meeting, NMFS worked with red crab fishermen to understand the gear configurations and operations of this fishery. Based on this research, NMFS proposes that a 2,000-lb (907.2–kg) weak link be attached to all flotation and/or weighted devices attached to the buoy line in the red crab fishery (effective 6 months after publication of a final rule). Accordingly, the regulatory text found at 50 CFR 648.264(a)(6)(i) regarding weak link breaking strength for red crab fishing gear would be modified under this proposed rule to include a cross reference to the ALWTRP regulations found at § 229.32.

NMFS believes the proposed weak link configurations for the red crab fishery are appropriate due to the unique operational characteristics of and human safety concerns associated with the red crab fishery. The red crab fishery typically operates in offshore waters at depths in excess of 2,000-ft (609.6–m), thus the gear deployed to fish in these conditions must be adapted accordingly to endure the elements. The individual trawls consist of up to 200 traps. Buoy lines required to set and haul this gear must be able to withstand significant loads. As a result, the buoy lines use rope that is larger in both diameter and length, which requires the support of a more buoyant surface system. Therefore, to prevent buoys from being pulled underwater by the size and weight of the buoy lines, up to 2,400 lbs (1,088 kg) of positive buoyancy must be attached to the surface end of the buoy lines, often with individual buoys having 800-lbs (362.9-kg) of buoyancy. Moreover, the hydrodynamic force of currents and wave activity may affect the buoy and, coupled with the buoyancy component, could increase the load on each buoy significantly above 800-lb (362.9-kg).

Changes Proposed for the Atlantic Large Whale Take Reduction Plan for All Trap/Pot Gear

*Broad-based Gear Modifications*—As previously noted, most of the broad-based gear modifications identified in this proposed rule would become effective 6 months after publication of the final rule except for the groundline requirement discussed below, which would be phased-in. In 2008, when the sinking/neutrally buoyant groundline requirement becomes fully effective, this preferred alternative would eliminate the SAM and DAM programs. However, until 2008, the Other Trap/Pot Fisheries that would be added to the ALWTRP would be subject to SAM and DAM program requirements. NMFS would like public comment on the proposed gear modifications as well as any variations that would provide conservation benefits to large whales comparable to the measures described above. Specifically, NMFS is interested in comments on whether installing gear modifications are warranted for gear that is tended and/or actively fished (*i.e.*, gear that is in close proximity to the vessel and has a maximum soak time).

*ALWTRP Regulated Trap/Pot Waters:* Due to the proposed addition of new trap/pot fisheries, ALWTRP-regulated Lobster Waters would be re-designated as ALWTRP-regulated Trap/Pot Waters to reflect the broader application of ALWTRP requirements. Accordingly, under the proposed rule, the term ''lobster trap/pot'' would be replaced with ''trap/pot'' where it appears in the regulations implementing the ALWTRP.

*Seasons and Boundaries:* Under this proposed rule, an area would be created bounded on the west by a line running from the Rhode Island/Connecticut border (41°18.2′ N. and 71°51.5′ W.; Watch Hill, RI), south to 40°00′ N., and east to the eastern edge of the EEZ. The gear fished in the area north of this line would be required to incorporate current and proposed broad-based gear modifications year-round; the gear fished in the area south of this line to the South Carolina/Georgia border would require gear modifications from September to May (effective 6 months after publication of a final rule). Areas south of the South Carolina/Georgia border would require gear modifications in the following areas and during the following seasonal time periods: between the South Carolina/Georgia border and 29°00′ N. from November 15–April 15; between 29°00′ N. and 27°51′ N. from December 1–March 31 (effective 6 months after publication).

*Sinking/Neutrally Buoyant Groundlines:* Under this preferred alternative, the lobster trap/pot fishery currently regulated by the ALWTRP, as well as the other trap/pot fisheries to be added through this proposed rule, would be required to use groundline composed entirely of sinking and/or neutrally buoyant line in the applicable areas and time periods beginning in 2008.

Although the broad-based sinking/neutrally buoyant groundline requirement would not become effective until 2008, NMFS believes that, in the northeast, the changeover to sinking/neutrally buoyant groundline will begin prior to 2008 as fishermen replace their groundline as it naturally wears out. For example, according to a Massachusetts Division of Marine Fisheries (MADMF) gear buyback program survey of fishermen who are representative of the Massachusetts inshore lobster trawl fleet, this fishery has undergone an estimated 10-percent reduction in the amount of floating groundline used between 2002 and 2003. The data indicated that 46.7 percent of the fishermen who responded to the survey (515 out of 1196 surveys sent) do not currently use floating groundline in their trawls. Fifty-six percent of these fishermen indicated they have replaced floating groundline within the last three years.

Based on these results and communication with the inshore lobster trap/pot industry, MADMF reports the majority of the inshore lobstermen are switching to sinking/neutrally buoyant groundline (MADMF uses the term ''negatively buoyant''). Additionally, MADMF is partnering with other groups on a gear exchange program to provide Massachusetts commercial lobstermen with financial assistance (through federal grant monies) to purchase ''negatively buoyant'' groundline to

reduce the risks of right whales becoming entangled in state coastal waters. Eligible Massachusetts lobstermen would turn in their old polypropylene line, which would then be recycled. Lobstermen would then be issued a voucher that they may use to purchase new ''negatively buoyant'' line at a participating distributor (fishermen would be required to pay for a portion of the line).

MADMF expects the switch-over to ''negatively buoyant'' groundline through this program to occur by spring 2005. The early changeover is also likely to continue particularly in the northeast as fishermen respond to gear modifications required by the implementation of SAM and DAM programs, which require seasonal or temporary use of non-floating groundline. For example, some fishermen may choose to fish with SAM and/or DAM compliant gear year round, or at least during the months when SAM areas are in effect and DAM zones are most likely to be triggered, rather than having to change their gear over when a SAM area is effective or remove it when a DAM zone is established. NMFS believes this situation would occur in other areas too, especially as fishermen replace their old line with new line, which would begin to provide increased protection of large whales from entanglement earlier than 2008.

*Weak Links:* Through this proposed rule, weak links of the appropriate breaking strength would be required on all flotation devices and/or weighted devices attached to the buoy line such as buoys, toggles, and/or leaded lines (effective 6 months after publication of a final rule) for all current and proposed ALWTRP regulated areas and fisheries during the time periods when ALWTRP restrictions apply. The Other Trap/Pot Fisheries to be added to the ALWTRP under this proposed rule would also be subject to the weak link requirements. The weak link requirement is specifically designed to reduce entanglement and serious injury due to entanglements in and around the mouth and in buoy lines and surface systems. Thus, if a buoy, toggle, or weighted device is not attached to the buoy line with a weak link, a buoy line that becomes entangled through the mouth of a whale may be prevented from passing through the whale's baleen, and may result in a more complicated entanglement. Adding a weak link to all devices attached to the buoy line increases the likelihood that a line sliding through a whale's mouth will break away quickly at the buoy before the whale begins to thrash and become more entangled.

Changes Proposed for the Atlantic Large Whale Take Reduction Plan for Gillnet Gear

*Northeast Gillnet Waters—Anchored gillnets:* Under both preferred alternatives, NMFS would require an increase in the number of weak links per net panel from one 1,100 lb (498.9 kg) to five or more 1,100 lb (498.9 kg) weak links, depending on the length of the net panel, for anchored gillnets in Northeast Gillnet Waters (effective 6 months after publication of a final rule). Net panels are typically 50 fathoms (300 ft or 91.4 m) in length, but the weak link requirement would apply to all variations in panel size. For example, net panels of 50 fathoms (300 ft or 91.4 m) or less in length, would be required to have one weak link in the floatline at the center of the net panel. For net panels greater than 50 fathoms (300 ft or 91.4 m), weak links would be placed continuously along the floatline separated by a maximum distance of 25 fathoms (150 ft or 45.7 m). For all variations in panel size, the following weak link requirements would apply: (1) Weak links would be placed in the center of each of the up and down lines at each end of each net panel; and (2) one floatline weak link would be placed as close as possible to each end of the net panel just before the floatline meets the up and down line. According to Smolowitz & Wiley (Land Testing of Gillnet Modifications,1998), it is better to place the weak links within each gillnet section rather than outside the panel at the bridle. Links that part at the bridle would leave a long section of net and line, which could still entangle a whale; however, the gillnet panel webbing without the floatline and leadline is not a very strong component of the gear and is less likely to cause serious injury or mortality. NMFS would like public comment on the proposed weak link configuration as well as any variations that would provide conservation benefits to large whales comparable to the weak link configuration described above. Specifically, NMFS is interested in comments on variations to the location of weak links within each gillnet section.

In addition, all anchored gillnets, regardless of the number of net panels, would be required to be securely anchored with the holding power of at least a 22-lb (10.0-kg) Danforth-style anchor at each end of the net string (effective 6 months after publication of a final rule). Dead weights and heavy leadline would no longer be available as an optional anchoring system. Anchors with the holding power of a 22-lb (10.0-kg) Danforth-style anchor at each end of the net string would provide more resistance to allow a whale that becomes entangled to break the line at the weak links when enough force is exerted. NMFS believes that this weak link configuration would result in the whale either breaking entirely free of the gear or swimming away with only a portion of line or gear attached. When a portion of the gear remains attached to the whale in this manner, rather than being wrapped around the whale's body and exacerbating the initial entanglement, it could be shed more easily by the whale or may be removed through subsequent disentanglement efforts. NMFS would like public comment on the proposed configuration as well as any variations that would provide conservation benefits to large whales comparable to the weak link and anchoring configuration described above. Specifically, NMFS is interested in comments on variations to weak link and anchoring configurations for gillnets set within 300 yards (900 ft or 274.3 m) of the shore.

In the Northeast, since the summer of 2001, the NMFS Gear Research Team has collected information on gillnet gear fished with five weak links per net panel, anchored at both ends of the net string with the holding power of a 22-lb (10.0-kg) Danforth-style anchor, and no floating groundline. This gillnet gear configuration was fished in 15-net strings in the same manner as unmodified nets in both 12–25 nm (22.2–46.3 km) and 80–100 nm (148.2–185.2 km) offshore locations. Areas fished with this gear include the Great South Channel Sliver Area, Jeffreys Ledge, Cashes Ledge and Platts Bank, the Outer Falls, and the edge of the Davis Swell. Conditions included extremes in current, tides, and weather. The above configured nets displayed no problems other than those consistent with traditionally rigged gillnets in the Gulf of Maine.

*Mid/South Atlantic Gillnet Waters—* Currently, the ALWTRP regulates gillnets in the Mid-Atlantic in an area designated as the Mid-Atlantic Coastal Gillnet Waters Area, but does not regulate the waters between the Virginia/North Carolina border east of 72°30′ W., and off the coast of South Carolina to the eastern edge of the EEZ to protect large whales. Under both preferred alternatives, the Mid-Atlantic Coastal Gillnet Waters Area would be expanded and renamed to include these currently unregulated waters (which include a component of the U.S. Mid-Atlantic coastal gillnet fishery and Southeast Atlantic gillnet fishery). Specifically, gillnet fisheries in the

waters from 72°30′ W., south to the Virginia/North Carolina border, east to the eastern edge of the EEZ, and south to the South Carolina/Georgia border would be referred to as Mid/South Atlantic Gillnet Waters (effective 6 months after publication of a final rule).

*Anchored gillnet:* An anchored gillnet is defined at 50 CFR 229.2 as ''any gillnet gear, including a sink gillnet or stab net, that is set anywhere in the water column and which is anchored, secured, or weighted to the bottom of the sea. Also called a set gillnet.'' Thus, ALWTRP anchored gillnet regulations include those gillnets that are weighted to the ocean floor, but do not have an anchor attached on either end.

The current ALWTRP regulations require anchored gillnet gear to have all buoys attached to the main buoy line with a weak link having a maximum breaking strength no greater than 1,100 lb (498.9 kg), and all net panels must contain weak links with a maximum breaking strength no greater than 1,100 lb (498.9 kg) in the middle of each floatline of each 50 fathom (300 ft or 91.4 m) net panel or every 25 fathoms (150 ft or 45.7 m) for longer panels.

Under both preferred alternatives, all gillnets in the Mid/South Atlantic Gillnet Waters must return to port with the vessel or, if leaving the gear set overnight, contain five or more weak links depending on the length of the net panel, with a maximum breaking strength no greater than 1,100 lb (498.9 kg) for each net panel; have an 1,100-lb (498.9-kg) weak link on all flotation and/or weighted devices, including buoys, toggles, and leaded lines attached to the buoy line; and be anchored at each end with an anchor capable of the holding power of at least a 22-lb (10.0-kg) Danforth-style anchor (effective 6 months after publication of a final rule). NMFS is proposing this requirement to reduce entanglements of large whales at night when gillnet gear is not returned to port with the vessel. NMFS seeks public comment on the proposed weak link configuration as well as any variations that would provide conservation benefits to large whales comparable to the weak link configuration described above. Specifically, NMFS is interested in comments on variations to the location of weak links within each gillnet section. In addition, NMFS is interested in comments on variations to weak link and anchoring configurations for gillnets set within 300 yards (900 ft or 274.3 m) of the shore.

Since the spring of 2003, the NMFS Gear Research Team has been collecting information on gillnet gear being fished with the above configuration of net panel weak links in the Mid-Atlantic. Load cell data collected on vessels while hauling gear in the Mid-Atlantic indicate loads similar to those recorded in New England (approximately 250 to 500 lb (113.4 to 226.8 kg)). In the waters off Maryland and Virginia, these nets have been fished close to shore as well as between 12 to 15 nautical miles (22.2 to 27.8 km) offshore. The above configured nets displayed no problems other than those consistent with traditionally rigged gillnets in the Mid-Atlantic. It is important to note, while the strain recorded on buoy systems during load cell testing can indicate whether a particular weak link breaking strength is appropriate, the recorded strains alone cannot establish weak link breaking strengths because breaking strengths must factor in a reasonable measure of safety to prevent losing gear at sea during the worst conditions.

*Drift gillnet:* Under this preferred alternative, in Mid/South Atlantic Gillnet Waters, when drift gillnet gear is fished at night (*i.e.*, tended), all net panels would be required to contain weak links with a maximum breaking strength no greater than 1,100 lb (498.9 kg) in the middle of the floatline of each 50-fathom (300 ft or 91.4 m) net panel, or every 25 fathoms (150 ft or 45.7 m) for longer panels (effective 6 months after publication of a final rule). ''Tended'' is defined at 50 CFR 229.2 to mean ''fishing gear that is physically attached to a vessel in a way that is capable of harvesting fish, or to fish with gear attached to the vessel''. This fishery is not subject to the DAM program.

*Other Southeast Gillnet Waters*—Currently, the regulated waters for the Southeast Atlantic gillnet fishery extend from 32°00′ N. (near Savannah, GA) to 27°51′ N. (near Sebastian Inlet, FL) and east to 80°00′ W., and are referred to as the Southeast U.S. Restricted Area. Under this preferred alternative, the management area for gillnet fisheries (other than the Southeastern U.S. Atlantic shark gillnet fishery) off Georgia and Florida would be expanded and renamed (which includes a component of the U.S. Mid-Atlantic coastal gillnet fishery and Southeast Atlantic gillnet fishery). Specifically, this proposed rule would define the waters from the South Carolina/Georgia border south to 27°51′ N. and out to the eastern edge of the EEZ as one ALWTRP management area, renamed as the ''Other Southeast Gillnet Waters''. NMFS proposes to change 32°00′ N. to the South Carolina/Georgia border to improve and simplify reference to this management area. In addition, NMFS is proposing to expand this area to the eastern edge of the EEZ, which would be consistent with the ALWTRP area boundary proposed for use in the Northeast and Mid-Atlantic. Although the Southeast Atlantic gillnet fishery does not presently operate out to the eastern edge of the EEZ, the new boundary would ensure that any future expansion of current fisheries or the introduction of new fisheries would be covered by the ALWTRP. NMFS requests comments from the public on whether it is appropriate at this time to extend management measures in this area out to the EEZ.

Gillnetting in the Southeast U.S. Restricted Area is currently restricted from November 15 to March 15. However, a recent review of right whale sightings data indicates that some individual animals remain in this area beyond March 15. Therefore, NMFS is proposing to expand the restricted period from November 15 to April 15 from the South Carolina/Georgia border to 29°00′ N. (near New Smyrna Beach, FL). NMFS is proposing this measure to protect large whales, especially right whales, that remain in the Southeast Region longer than expected before beginning their migration north.

Members of the ALWTRT from the Southeast mackerel fisheries asked NMFS to consider removing the restrictions from November 15 to December 1 in the area south of 29°00′ N., and suggested regulating the Southeast Atlantic gillnet fishery through rolling restrictions. After reviewing the large whale sightings data for the Southeast Region, NMFS concluded that rolling restrictions in this area would be appropriate, and that the entanglement risk should not increase because the restricted areas would coincide with the occurrence and movements of right whales. Therefore, ALWTRP regulations for the gillnet fishery would be effective in the Other Southeast Gillnet Waters from the South Carolina/Georgia border to 29°00′ N. from November 15 to April 15, and between 29°00′ N. and 27°51′ N. from December 1 to March 31.

*Gillnets:* All gillnet gear (excluding shark gillnets using 5-inch or greater stretched mesh south of the South Carolina/Georgia border) would be regulated in the same manner as the Mid/South Atlantic anchored gillnet fishery. NMFS believes this proposal is appropriate based on similarities between the Southeast Atlantic and Mid-Atlantic gillnet fisheries. For example, the gear fished is constructed similarly, using approximately the same size floatline, leadline, mesh size, and twine diameter. In addition, both the Southeast Atlantic gillnet fishery and

the Mid-Atlantic croaker and mackerel fisheries deploy their gear without an anchoring system. Results of NMFS gear research support the measures identified in this preferred alternative. In February 2004, the NMFS Gear Research Team recorded a maximum strain of 320 lbs (145.1 kg) when hauling back an empty, typical sink gillnet set in 30 ft (9.14 m) of water off the coast of Florida, which is consistent with what has been recorded for similar gear types in the mid-Atlantic. It is important to note, while the strain recorded on buoy systems during load cell testing can indicate whether or not a particular weak link breaking strength is appropriate, the recorded strains alone cannot establish weak link breaking strengths because breaking strengths must factor in a reasonable measure of safety to prevent losing gear at sea during the worst conditions. NMFS requests comments from the public on the proposed gear modification as well as the issues identified in the ''Mid/South Atlantic Gillnet'' section of the proposed rule, such as the configuration of net panel weak link.

The regulated waters for the Southeast Atlantic gillnet fishery south of the South Carolina/Georgia border to 27°51′ N. and east to the eastern edge of the EEZ would be required to comply with the ALWTRP universal gear requirements (*e.g.*, no buoy line floating at the surface and no wet storage of gear), as well as the following: Gillnets must have all flotation and/or weighted devices, including buoys, toggles, and leaded lines, attached to the buoy line with a weak link having a maximum breaking strength no greater than 1,100 lb (498.9 kg); and have all net panels containing weak links with a maximum breaking strength no greater than 1,100 lb (498.9 kg) in the middle of each floatline of each 50-fathom (300-ft or 91.4-m) net panel or every 25 fathoms (150 ft or 45.7 m) for longer panels.

In addition, under this preferred alternative, all gillnets in the Other Southeast Gillnet Waters would be required to return to port with the vessel or, if leaving the gear set overnight, contain five or more weak links, depending on the length of the net panel, with a maximum breaking strength no greater than 1,100 lb (498.9 kg) for each net panel; have an 1,100-lb (498.9-kg) weak link on each flotation or weighted device attached to the buoy line, including toggles, buoys, and leaded lines; and be anchored at each end with an anchor capable of the holding power of at least a 22-lb (10.0-kg) Danforth-style anchor (effective six months after publication). NMFS is proposing this requirement to reduce entanglements of large whales at night when gillnet gear is not returned to port with the vessel. Currently, NMFS prohibits the straight set of gillnets at night under the ALWTRP. Currently, under 50 CFR 229.32, a ''straight set'' is defined as a set in which the gillnet is placed in a line in the water column, as opposed to a circular set in which the gillnet is placed to encircle an area in the water column. Thus, these proposed requirements would only affect Other Southeast gillnets that are not returned to port with the vessel and fished in a manner different from a straight set. (See ''Regulatory Language Changes'' for further discussion on the definition of ''straight set.'')

*Southeast U.S. Atlantic Shark Gillnet Fishery*

The coastal waters in the southeastern U.S. were designated as right whale critical habitat because they are the only known calving area for the species. Although shark gillnet gear poses an entanglement risk to right whales, especially calves and juveniles, weak links have not been considered for this gear type because, in the event of an entanglement, young right whales are not believed to be strong enough to break the weak links. However, due to the weight of the gear and the safety needs of the fishery, lowering the breaking strength of the weak links is not feasible. In addition, it is generally thought that gear modifications to reduce the risk of serious injury and mortality from entanglement to right whales and their calves is impractical for the shark drift gillnet fishery since ''targeting large sharks and trying to avoid small calves'' would be difficult (December 9–10, 1996 ALWTRT meeting notes). Based on these biological and operational considerations, ALWTRT members negotiated management measures that would minimize the temporal and spatial overlap between right whales and shark fishers early in the ALWTRP process. Therefore, serious injury and mortality from entanglement in the Southeast U.S. Atlantic shark gillnet fishery was addressed through time and area closures.

*Northern Monitoring and Restricted Area and Southern Monitoring Area*

Currently, the ALWTRP regulated waters for the Southeastern U.S. Atlantic shark gillnet fishery that extend from 32°00′ N. (near Savannah, GA) to 27°51′ N. (near Sebastian Inlet, FL) and out to 80°00′ W. are referred to as the Southeast U.S. Restricted Area. The ALWTRP regulated waters for the Southeastern U.S. Atlantic shark gillnet fishery that extend from 32°00′ N. (near Savannah, GA) to 26°46.5′ N. (near West Palm Beach, FL) and out to 80°00′ W. are referred to as the Southeast U.S. Observer Area. Under this preferred alternative, the Southeastern U.S. Atlantic shark gillnet fishery's management areas would be expanded and renamed. Specifically, the regulated waters would be extended north to the South Carolina/Georgia border and out to the eastern boundary of the EEZ, which would be consistent with the proposed eastern boundary for ALWTRP-regulated waters in the Northeast and Mid-Atlantic. Although the shark gillnet fishery does not presently operate out to the eastern boundary of the EEZ, the proposed boundary would ensure that any future expansion of current fisheries or the introduction of new fisheries operating in these waters would be covered by the ALWTRP. A change in the northern boundary—from 32°00′ N. to the South Carolina/Georgia border—is proposed to improve and simplify reference to this management area. Renaming the Southeast U.S. Restricted Area as the ''Northern Monitoring and Restricted Area,'' and the portion of the Southeast U.S. Observer Area, which does not include the Southeast U.S. Restricted Area, as the ''Southern Monitoring Area'' is intended to better distinguish the two separate areas that are being managed under the ALWTRP. NMFS believes that this proposed renaming would help facilitate the public's understanding of the regulations.

Under the current ALWTRP regulations, shark gillnetting is prohibited from November 15 through March 31 in the Southeast U.S. Restricted Area. However, a recent review of right whale sightings data indicates that some whales do remain in the Restricted Area past March 31. Therefore, under this preferred alternative, in order to protect large whales (especially right whales) that remain in this area, NMFS is proposing to extend the closed period for shark gillnetting to November 15 through April 15 from the South Carolina/Georgia border to 29°00′ N. (near New Smyrna Beach, FL).

Members of the ALWTRT from the Southeastern U.S. Atlantic shark gillnet fishery asked NMFS to consider removing the restrictions from November 15 through December 1 in the area south of 29°00′ N., and suggested regulating the shark gillnet fishery through rolling restrictions. After reviewing the large whale sightings data for the Southeast Region, NMFS agrees that rolling restrictions in this area are

acceptable because the entanglement risk should not increase since the restrictions would coincide with the occurrence and movements of right whales. Therefore, under this preferred alternative, the current ALWTRP regulations for the Southeastern U.S. Atlantic shark gillnet fishery would be effective in the Northern Monitoring and Restricted Area and Southern Monitoring Area from the South Carolina/Georgia border to 29°00′ N. from November 15 through April 15, and between 29°00′ N. and 26°46.5′ N. from December 1 through March 31.

*Vessel Monitoring System (VMS) in Lieu of 100-Percent Observer Coverage*

NMFS is proposing the use of VMS in lieu of the 100-percent observer coverage requirement for the shark gillnet fishery under the ALWTRP. VMS was originally considered by the full ALWTRT as an alternative to 100-percent observer coverage as early as January 1997, and again in June 1999. In July 2000, the ALWTRT's Southeast subgroup agreed to using VMS in lieu of 100-percent observer coverage. NMFS believes that replacing the 100-percent observer coverage requirement with VMS is appropriate because VMS would be a more effective tool for monitoring the implementation of ALWTRP regulations for time/area closures than observers. NMFS policy regarding the role of observers is not to enforce regulations, but rather to merely observe fishing operations. VMS would also be more cost effective for the agency to implement than an observer program, which would allow NMFS to redirect funds to observer programs in other high priority fisheries in the Southeast where observer coverage may be lacking. Although 100-percent observer coverage would no longer be required under this proposal, NMFS would retain observer coverage sufficient to produce statistically reliable results to evaluate the impact of the fishery on protected resources. In light of the proposed change from 100-percent observer coverage to VMS, NMFS is proposing to change the name of the ''Southeast U.S. Restricted Area'' to ''Northern Monitoring and Restricted Area'', and designate the portion of the Southeast U.S. ''Observer Area'' not included by the Restricted Area as the ''Southern Monitoring Area''. NMFS is soliciting public comments regarding utilizing VMS as a tool for enforcing the ALWTRP regulations for time/area closures.

This proposed change is also consistent with the measures provided by Amendment 1 to the Highly Migratory Species (HMS) FMP (68 FR 74746, 69 FR 19979, and 69 FR 28106), which requires shark gillnet vessels with gillnet gear on board, regardless of their location, to employ a NOAA approved Vessel Monitoring System during the right whale calving season specified in the ALWTRP regulations. Currently, as stated in the August 17, 2004, final rule (69 FR 51010) specifying November 15, 2004 as the effective date of this requirement, the applicable right whale calving season is identified as November 15 through March 31. This proposed rule would change the season specified in those regulations to November 15 through April 15, and amend the regulatory text in 50 CFR 635.69(a)(3) regarding the HMS VMS requirement for shark gillnet vessels.

**Changes Proposed for Other Gillnet Gear**

*Northeast Anchored Float Gillnet Fishery*

Anchored float gillnets are anchored to the ocean floor with lines running from the anchors to the nets at the surface, and have the potential to entangle, seriously injure, and kill large whales. This preferred alternative would regulate the Northeast anchored float gillnet fishery according to the requirements for the Northeast anchored gillnet fishery requirements. In addition, under this preferred alternative, this fishery would be subject to the SAM and DAM programs until 2008 and to seasonal closures in right whale critical habitat. Fishermen using Northeast anchored float gillnets would be prohibited from fishing inside the Cape Cod Bay Critical Habitat annually from January 1 through May 15, and inside the Great South Channel Critical Habitat from April 1 through June 30.

*Northeast Driftnet Fishery*

This preferred alternative would regulate the Northeast driftnet fishery (*i.e.*, nets that are present at the ocean surface and are not anchored to the ocean floor on either end) according to the requirements for the Mid-Atlantic drift gillnet fishery. The Northeast driftnet fishery would not be subject to the SAM and DAM programs, but driftnets would be prohibited from Cape Cod Bay from January 1 through May 15 and from the Great South Channel from April 1 through June 30 (similar to the requirements for anchored gillnet), except for the Sliver Area, where modified driftnets would be allowed.

**Changes Proposed for All Gillnet Gear**

*Broad-based Gear Modifications:* Most of the broad-based gear modifications identified in this preferred alternative would become effective 6 months after publication of a final rule, except for the groundline requirement discussed below, which would be phased in. In 2008, when the sinking/neutrally buoyant groundline requirement becomes fully effective, the proposed groundline requirement would replace the SAM and DAM programs. However, until this occurs in 2008, some of the other gillnet fisheries that would be added to the ALWTRP would be subject to the SAM and DAM programs. NMFS would like public comment on the proposed gear modifications as well as any variations that would provide conservation benefits to large whales comparable to the measures described above. Specifically, NMFS is interested in comments on whether installing gear modifications are warranted for gear that is tended and/or actively fished (*i.e.*, gear that is in close proximity to the vessel and has a maximum soak time).

*Seasons and Boundaries:* Under this preferred alternative, an area bounded on the west by a line running from the Rhode Island/Connecticut border (41°18.2′ N. and 71°51.5′ W.; Watch Hill, RI), south to 40°00′ N., and east to the eastern edge of the EEZ would be created. The gillnet gear fished in this area would be required to incorporate current and proposed broad-based gear modifications year-round. Gillnet gear fished in the area south of this area to the South Carolina/Georgia border would require the broad-based gear modifications detailed above from September to May. Gillnet fishing in the area south of the South Carolina/Georgia border would require the broad-based gear modifications in the following areas and seasonal time periods: All gillnet fisheries (Southeast Atlantic and Southeastern U.S. Atlantic shark) between the South Carolina/Georgia border and 29°00′ N. from November 15–April 15; Southeast Atlantic gillnet fishery between 29°00′ N. and 27°51′ N. from December 1–March 31; and Southeastern U.S. Atlantic shark gillnet fisheries between 29°00′ N. and 26°46.5′ N. from December 1–March 31.

*Sinking/Neutrally Buoyant Groundlines:* Under this preferred alternative, the Northeast anchored gillnet, Mid-Atlantic anchored gillnet, and Southeast Atlantic gillnet fisheries currently regulated by the ALWTRP, and the Northeast anchored float gillnet fishery, which would be added by this proposed rule, would be required to use groundline composed entirely of sinking and/or neutrally buoyant line in the areas and time periods covered under the ALWTRP in 2008. Though this requirement would not become fully

effective until 2008, NMFS believes that fishermen will begin to phase in this type of groundline prior to that date.

*Weak Links:* Under this preferred alternative, to further reduce the risk of serious injury and mortality from entanglement in gillnet gear, weak links of the appropriate breaking strength would be required on all flotation devices and/or weighted devices attached to the buoy line such as buoys, toggles, and/or leaded lines (effective 6 months after publication of a final rule). If a buoy, toggle, or weighted device is not attached to the buoy line with a weak link, a buoy line that becomes entangled through the mouth of a whale may be prevented from passing through the whale's baleen, and may result in a more complicated entanglement. Adding a weak link on all devices attached to the buoy line increases the likelihood that a line sliding through a whale's mouth will break away quickly at the buoy before the whale begins to thrash and become further entangled. This requirement would apply to all current and proposed ALWTRP regulated areas and gillnet fisheries. The weak link requirement is intended to reduce the risk of entanglement and serious injury or mortality due to entanglements in buoy lines and surface systems.

*Other Changes Proposed for All Trap/Pot and Gillnet Gear Gear Marking:* It is often difficult to identify the gear that a whale becomes entangled in, with respect to a particular fishery, because entangled whales often carry only a portion of the gear encountered and disentanglement efforts sometimes recover only a portion of the remaining gear. Therefore, improved gear marking requirements would assist NMFS in its efforts to develop better gear configurations by providing more information about the fisheries and specific parts of fishing gear that are incidentally entangling, seriously injuring, or killing whales. Information provided from improved gear marking could also be used to determine the type of gear involved and the location of the entanglement event, which would enable NMFS to focus future management measures on specific problem areas.

The current gear marking scheme requires one 4-inch (10.2 cm) colored mark midway along the buoy line. Under this proposed rule, NMFS would modify the gear marking scheme and expand requirements to fisheries and areas not previously regulated under the ALWTRP or required to mark gear, such as the Northern Inshore State Trap/Pot Waters, Mid/South Atlantic Gillnet Waters, and the Other Southeast Gillnet Waters. The proposed gear marking scheme would be required on all surface buoys to identify the vessel registration number, vessel documentation number, Federal permit number, or whatever positive identification marking is required by the vessel's home-port state. The method for marking buoy lines would be modified to require one 4-inch (10.2-cm) colored mark every 10 fathoms (60 ft or 18.3 m), or one 4-inch (10.2-cm) colored mark in the center of the buoy line for lines that are less than 10 fathoms (60 ft or 18.3 m). Under this proposed rule, the color and marking scheme for nets used in the Southeastern U.S. Atlantic shark gillnet fishery would remain status quo and only buoy lines greater than 4 ft (1.2 m) in length would need to be marked for this fishery.

*Trap/pot gear marking colors:* The ALWTRP currently requires fishermen to mark their trap/pot buoy lines with one red 4-inch (10.2 cm) mark while they fish in the following management areas: Cape Cod Bay Restricted Area (January 1 through May 15), Northern Nearshore Trap/Pot Waters, and Stellwagen Bank/Jeffreys Ledge. To remain consistent with the current gear marking color scheme in the North Atlantic, under this proposed rule, NMFS would require red marking on the buoy lines of trap/pot gear fished in Northern Inshore State Trap/Pot Waters. The current trap/pot gear marking color in the Great South Channel Critical Habitat is black. However, under this proposed rule, for consistency with nearby management areas, the Great South Channel Critical Habitat gear marking color would be either black or red, depending on the area of overlap with offshore (*i.e.*, LMA 2/3 Overlap and LMA3) and nearshore areas (*i.e.*, LMA 2 and the Outer Cape). The gear marking colors for trap/pot gear in the Southern Nearshore Trap/Pot Waters and Offshore Trap/Pot Waters would remain orange and black, respectively.

*Gillnet gear marking colors:* Currently, one green, 4-inch (10.2-cm) mark is required on each gillnet buoy line in the following areas: Cape Cod Bay Restricted Area, Great South Channel Critical Habitat, Stellwagen Bank/Jeffreys Ledge, and Other Northeast Gillnet Waters. Under this proposed rule, for consistency with the gillnet gear marking scheme in the Northeast Atlantic, NMFS would require one 4-inch (10.2-cm) green mark every 10 fathoms (60 ft or 18.3 m) or in the center of the buoy line for lines that are 10 fathoms (60 ft or 18.3 m) or less for the two new fisheries that would be added to the ALWTRP: Northeast driftnet and Northeast anchored float gillnet.

Currently, there is no gear marking requirement for the two gillnet fisheries operating in the Mid-Atlantic: the Mid-Atlantic anchored gillnet and Mid-Atlantic drift gillnet. Under this proposed rule, NMFS would require that these fisheries mark their buoy lines with one 4-inch (10.2-cm) blue mark every 10 fathoms (60 ft or 18.3 m) or in the center of the buoy line for lines that are 10 fathoms (60 ft or 18.3 m) or less.

Under this proposed rule, the Southeast Atlantic gillnet fishery would be required to mark their buoy lines with one 4-inch (10.2-cm) yellow mark every 10 fathoms in the same manner as the Mid-Atlantic gillnet fisheries. As mentioned above, the color and marking scheme for nets used in the Southeastern U.S. Atlantic shark gillnet fishery would remain status quo and only buoy lines greater than 4 ft (1.2 m) in length would need to be marked.

*Critical Habitat:* In 2003, NMFS published a final determination (68 FR 51758, August 28, 2003) on a petition to revise right whale critical habitat. NMFS determined that the requested revision to critical habitat, as suggested by the petitioner, was not warranted at that time. However, NMFS indicated that it would continue to analyze the physical and biological habitat features essential to the conservation of right whales. For example, in the Southeast U.S., NMFS and others are analyzing right whale distribution data in relation to bathymetry and sea surface temperature. In the Northeast U.S., NMFS and others are characterizing the spatial and temporal distribution of zooplankton in the Gulf of Maine. If a revision of critical habitat is warranted in the future, NMFS will provide notice to the public as required by the ESA. When this process is complete, NMFS will begin discussions with the ALWTRT and consider whether the current restrictions in critical habitat should be modified.

*Exempted Waters*

*Coastal exempted waters:* The ALWTRP currently exempts all waters landward of the first bridge over any embayment, harbor, or inlet and, from North Carolina to Florida, waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80. Some bays that do not have bridges over them are also exempted, including, but not limited to, Long Island Sound and Gardiners Bay. In response to requests

by ALWTRT members for NMFS to consider adding new exempted areas or modifying existing ones under the ALWTRP, NMFS has re-examined the current exemption lines and analyzed right, humpback, and fin whale sightings distribution data from 1960 to 2002 obtained from the NARW sightings database. NMFS also analyzed a right, humpback, and fin whale sightings database compiled by the Maine Department of Marine Resources, which includes sightings reported by the Maine Marine Patrol, whale watch vessels, etc. These data were plotted onto NOAA digital charts using MapTech Chart Navigator software.

The analysis of sightings data along the east coast indicated that endangered large whales rarely venture into bays, harbors, or inlets. To be consistent throughout the east coast, under this proposed rule, with the exceptions detailed below, NMFS would exempt all marine and tidal waters landward of the 72 COLREGS demarcation lines. The 72 COLREGS lines are well known and widely published lines of demarcation. NMFS believes that this change to the exempted waters is responsive and appropriate based on sightings data analysis. In areas where 72 COLREGS do not exist, or where NMFS does not consider the 72 COLREGS to be the most appropriate exemption line, other exemption lines are proposed.

Currently, the exempted waters in the Gulf of Maine (waters off Maine, New Hampshire, and Massachusetts) include those waters landward of the first bridge over any embayment, harbor, or inlet. In 2003, the State of Maine asked NMFS to re-examine the ALWTRP exempted state waters in Maine and submitted a proposed exemption line to NMFS. NMFS analyzed this line with respect to the URI's large whale sightings data and current exemption lines in other states. Although NMFS acknowledges that the jagged Maine coastline presents a difficult situation for exempting certain state waters, NMFS concluded that Maine's proposed exemption line did not provide an adequate level of protection; therefore, NMFS is proposing to use an alternate exemption strategy (Figure 1).

Under this proposed rule, NMFS would use the 72 COLREGS line to mark exempted waters for Casco Bay, as this is the only 72 COLREGS line for Maine. NMFS proposes to use the territorial sea baselines to exempt Little River, Pleasant Bay, Narraguagus Bay, Pigeon Hill Bay, Frenchman Bay, Johns Bay, Muscongus Bay, and Saco Bay. Note that the territorial sea baselines should not be confused with the 12-nautical mile (22.2-km) territorial sea and contiguous zone line. To exempt Penobscot and Blue Hill Bays, NMFS would adapt five of the coordinates from the exemption line proposed by Maine. Finally, NMFS would create exemption lines for the remaining inlets in Maine, consistent with the exemption lines along the coast, which are drawn across the entrances to harbors, bays, and inlets.

In Maine, NMFS was also able to consider satellite tracking data for right whales to analyze the occurrence of these animals inside current and proposed exemption lines. Specifically, NMFS reviewed a paper entitled ''Satellite-Monitored Movements of the Northern Right Whale'' (Mate *et al.*, 1997). According to the findings of Mate *et al.* (1997), right whales tagged in the Bay of Fundy (BOF) traversed different types of areas, including banks, basins, upwellings, thermal fronts, and edges of warm core rings, all of which typically exhibit high concentrations of zooplankton. The extensive movements of tagged whales most likely indicate that the whales are searching for food that is primarily found in high-use areas such as the BOF, rather than in the coastal waters of Maine.

In two areas, Boston Harbor and Gardiners Bay, NMFS would not propose using the 72 COLREGS lines and instead proposes to create a different exemption line (Figure 2). The 72 COLREGS line for Boston Harbor is unique in that it forms a triangle by extending from the easternmost tower at Nahant out to the Boston Lighted Horn Buoy ''B'' and back to the easternmost radio tower at Hull. NMFS'' analysis of the sightings data found that two right whales have been reported inside the 72 COLREGS line, one in 1996 and another in 2002. Therefore, rather than using the 72 COLREGS line to exempt Boston Harbor, NMFS would create an exemption line that would connect Deer Island to Lovell Island, and Lovell Island to the tip of Hull. Gardiners Bay is currently exempted according to a line that connects Montauk Point to the eastern tip of Plum Island. This line differs from the 72 COLREGS lines, which outline the inside of the Bay. Under this proposed rule, NMFS would continue to use the current exemption line as analysis of the sightings database held at URI has documented only one right whale near the mouth of Gardiners Bay in 1993.

At this time, NMFS does not believe that regulating the waters proposed for exemption from the ALWTRP, including Gardiners Bay, would benefit large whales. Based on analysis of sightings data, NMFS understands that large whales may occasionally be reported in exempted waters, but believes that these occurrences are rare. If, in the future, whales are more frequently reported in exempted waters, NMFS would reevaluate the exemption lines for those particular areas to evaluate whether changes are needed.

In New Hampshire, waters currently exempted from the ALWTRP regulations are those landward of the first bridge over any embayment, harbor, or inlet. Based on analysis of sightings data in New Hampshire waters, NMFS is proposing to exempt three harbors. Portsmouth Harbor would be exempted according to the 72 COLREGS demarcation line, which is the only 72 COLREGS line found in the state. In addition, NMFS would exempt Rye and Hampton Harbors according to the lines drawn across the headlands, which mark their entrances to the sea. NMFS believes the waters proposed for exemption are appropriate and do not compromise the overall entanglement risk reduction strategy provided by the ALWTRP as there have been no reported sightings of endangered whales in these areas.

In Massachusetts, NMFS also compared large whale sightings data to the current exempted waters. Based on the analysis, under this proposed rule, the following additional waters would be exempted according to the 72 COLREGS demarcation lines: Annisquam Harbor, Gloucester Harbor, Salem Sound (includes Manchester and Marblehead Harbors), Cape Cod Canal, and Buzzards Bay (see Figure 2 for clarification of the exemption lines for Boston Harbor and Buzzards Bay). Where 72 COLREGS lines do not exist in Massachusetts, NMFS would create exemption lines across most small bays, harbors, and inlets. According to the sightings data, except for the area designated as right whale critical habitat in Cape Cod Bay, large whales are seldom reported in the small bays and harbors along the inside edge of Cape Cod, with the exception of Provincetown Harbor, which would not be exempted. NMFS would also exempt small harbors and inlets along the inner and outer edge of Cape Cod that have sandy shoals at their entrances because analysis of the sightings database indicates that large whales have not been reported in these areas.

In Rhode Island, all embayments, harbors, and inlets are currently exempted under the ALWTRP. Under this proposed rule, NMFS would clarify that the current exemption line coordinates drawn for Narragansett Bay and the Sakonnet River match the 72 COLREGS lines for these waters (Figure 2). To date, two large whales, an

entangled humpback and a juvenile fin whale, were reported in Narragansett Bay inside exempted waters. However, no evidence exists to suggest that the humpback became entangled inside the Bay. Preliminary reports of the fin whale indicate that the animal was separated from its mother, entered the Bay, and subsequently stranded in shallow water. Therefore, this proposed rule would not modify the exemption lines for Rhode Island.

In New York, with the exception of New York Harbor, all embayments, harbors, and inlets are currently exempted under the ALWTRP. Under this proposed rule, these exempted waters would remain unchanged as, according to the sightings database held at URI, sightings of live right, fin, or humpback whales inside these waters are rare. However, NMFS would clarify that the current exemption lines for Long Island Sound, Shinnecock Bay Inlet, Moriches Bay Inlet, Fire Island Inlet, and Jones Inlet, and New York Harbor match the 72 COLREGS demarcation lines. In addition, NMFS would propose an exemption for New York Harbor based on the 72 COLREGS line as there have been no reported sightings of live right, fin, or humpback whales inside the harbor.

In New Jersey, the current exempted waters (Barnegat Inlet, Beach Haven to Brigantine Inlet, and Cape May Inlet) are nearly identical to the 72 COLREGS lines. Under this proposed rule, these exempted waters would remain largely unchanged because there have been no reported sightings of live right, fin, or humpback whales inside these waters. Therefore, under this proposed rule, NMFS would clarify that the entire coast of New Jersey would be exempted landward of the 72 COLREGS demarcation lines. However, the exemption line for Barnegat Inlet would be relocated slightly east of the current exemption line to make it consistent with the 72 COLREGS demarcation line.

In Delaware Bay, the current exemption line is located approximately halfway up the Bay, at 39°16.70′ N., 75°14.60′ W. to 39°11.25′ N., 75°23.90′ W. (*i.e.*, southern point of Nantuxent Cove, NJ to the southern end of Kelly Island, Port Mahon, DE). Delaware Bay is considered comparable to other large bays in the Mid-Atlantic, such as Long Island Sound and Chesapeake Bay, which are exempted landward of the 72 COLREGS line and landward of the first bridge at the mouth of the Bay, respectively. Large whale sightings inside Delaware Bay are thought to be rare and NMFS does not believe that including the Bay would provide a conservation benefit to the whales covered by the ALWTRP. Therefore, under this proposed rule, NMFS would redefine this line as the 72 COLREGS demarcation line, which is a line drawn from Cape May Light to Harbor of Refuge Light; thence to the northernmost extremity of Cape Henlopen (Figure 3).

In general, along the Maryland and Virginia coasts, the current exemption lines match the 72 COLREGS lines. However, the current exemption line from Chincoteague to Ship Shoal Inlet crosses the three nautical mile (5.6 km) state waters line, which is not consistent with the 72 COLREGS lines. Based on analysis of URI's large whale sightings database, NMFS believes that exempting all bays, harbors, and inlets that occur between Delaware and Chesapeake Bays according to the 72 COLREGS lines would not compromise the conservation of large whales protected by the ALWTRP. Under this proposed rule, this would include Chesapeake Bay, which is currently exempted landward of the Chesapeake Bay Bridge-Tunnel, located just west of the 72 COLREGS line. NMFS believes that, due to the lack of reported large whale sightings in Chesapeake Bay, the slight seaward movement of the current exemption line to the 72 COLREGS line would not compromise the goal of reducing serious injury and mortality of large whales from entanglement. In addition, the current exemption line for Smith Island Inlet would be removed from the exempted waters section of the regulations because the 72 COLREGS line for Chesapeake Bay includes the entrance to this inlet (see Figure 4 for exemption lines for Chesapeake Bay).

Under this proposed rule, the current exemption lines in the Southeast (North Carolina to Florida) would remain unchanged. However, Captain Sam's Inlet (South Carolina) would be added to the exempted waters section of the regulations because it does not have a 72 COLREGS line. Right whales occur very close to shore during the winter months when they are located in their winter calving grounds. Right whales have been reported inside some of the bays and rivers in the Southeast, particularly in Georgia and Florida. However, based on sightings data, NMFS believes these occurrences are rare, and that removing the exemption lines for those waters would not provide discernable additional conservation benefit to right whales.

*Offshore exempted areas:* Scientific research indicates that most large whales on the east coast typically do not dive to depths as great as 280 fathoms (1,680 ft or 512.1 m). For example, in a 3-year study by Mate *et al.* (1997) to determine summer and fall right whale habitat use patterns, nine right whales were tagged in the Bay of Fundy with satellite-monitored radiotags and their behaviors were monitored for an average of 21.7 days. According to this study, 80 percent of the recorded right whale locations occurred in waters less than 100 fathoms (600 ft or 182.9 m) in depth.

Based on a review of the best available scientific information, NMFS has determined that exempting waters at depths greater than 275 fathoms (502.9 m) would not increase the risk of large whale entanglement in groundlines, as most large whales are not known to dive to these depths. To account for variations in groundline profiles, NMFS added five fathoms (30 ft or 9.1 m) to achieve an offshore exemption depth of 280 fathoms (1,680 ft or 512.1 m). Therefore, this proposed rule would exempt fishermen from the requirement to use sinking and/or neutrally buoyant groundlines in waters deeper than 280 fathoms (1,680 ft or 512.1 m).

**Regulatory Language Changes**

*Weak links:* The ALWTRT recommended that, for consistency, NMFS should change all headings for weak links in the ALWTRP regulations from ''Weak Links on All Buoy Lines,'' ''Buoy Weak Links,'' and ''Buoy Line Weak Links'' to simply ''Weak Links.'' The ALWTRT also recommended that NMFS clarify that weak links should be placed as close to the buoy as operationally feasible. Therefore, under this proposed rule, when referring to the techniques for meeting the weak link requirements, the wording would be changed from, ''All buoy lines must be attached to the main buoy with a weak link that meets the following specifications,'' to read, ''All flotation devices or weights must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device, and/or weight as operationally feasible and that meets the following specifications''.

NMFS would also clarify that weak links must be placed on all buoys, toggles, high-flyers, and/or weighted devices, etc. that are attached to the buoy line, and not just the main buoy. The ALWTRP currently provides specifications for the weak links, and wherever weak links are mentioned, this proposed rule would add to the regulatory text that weak links must be designed such that the bitter end (the loose end of the line that has detached from the weak link) of the buoy line is clean and free of any knots when the link breaks, and that splices are not

considered to be knots for the purposes of this provision.

In a final rule published on January 10, 2002, the use of line 7/16 inch in diameter or less for all buoy lines was removed as an option from the ALWTRP's Take Reduction Technology Lists, as the breaking strength of 7/16 inch line can vary dramatically (67 FR 1300). Therefore, because the diameter of line is not appropriate to use for risk reduction, NMFS would also change the text that describes the list of approved weak links. Specifically, the regulatory text referring to ''rope of appropriate diameter'' would be changed to ''rope of appropriate breaking strength''.

Where the weak link requirements are referred to, this proposed rule would include references to a brochure entitled, ''Techniques for Making Weak Links and Marking Buoy Lines,'' and provide information about how to obtain a copy. This brochure outlines the weak link techniques currently approved by NMFS to assist in compliance with the regulations. NMFS would continue to encourage fishermen to develop additional techniques for complying with the weak link requirements and submit them for testing by the NMFS Gear Research Team.

This proposed rule would amend the current regulatory text describing the placement of weak links in the floatline of gillnet panels. Specifically, the text would be modified to change the requirements for the placement of weak links in net panels that are shorter than 50 fathoms (300 ft or 91.4 m). Currently in the Mid-Atlantic, the regulations require: ''Weak links must be inserted in the center of the floatline of each 50-fathom (300 ft or 91.4 m) net panel in a net string or every 25 fathoms (150 ft or 45.7 m) for longer panels.'' This proposed rule would modify the requirements in the Mid/South Atlantic Gillnet Waters and add requirements for the Other Southeast Gillnet Waters as follows: ''Weak links must be placed in the center of the floatline of each net panel up to and including 50 fathoms (300 ft or 91.4 m), or at least every 25 fathoms (150 ft or 45.7 m) along the floatline for longer panels.'' NMFS would like public comment on the proposed weak link configuration as well as any variations that would provide conservation benefits to large whales comparable to the weak link configuration described above. Specifically, NMFS is interested in comments on variations to the location of weak links within each gillnet section. In addition, NMFS would like public comment on the proposed modifications to the regulatory language the agency is considering as well as any variations that would provide a conservation benefit to large whale comparable to those discussed in this proposed rule. Specifically, NMFS is interested in comments on whether modifications to the regulations are needed to clarify that if the floatline and up and down lines of a net panel break at or below the required breaking strength, then inserting a weak link would not be required.

This proposed rule would also amend the requirements for the placement of weak links in the SAM areas and other applicable areas where more than one weak link is required for net panels of lengths up to and including 50 fathoms, (300 ft or 91.4 m) as well as those greater than 50 fathoms (300 ft or 91.4 m). Currently, the text reads, ''[e]ach net panel must have a total of five weak links * * * Three of the five weak links must be located on the floatline. One floatline weak link must be placed at the center of the net panel, and two weak links must be placed as close as possible to each of the bridle ends of the net panel. The remaining two of the five weak links must be placed in the center of each of the up and down lines at either end of each panel.'' This proposed rule would amend the text to require, ''For all variations in panel size, the following weak link requirements apply: (1) Weak links must be placed in the center of each of the up and down lines at both ends of the net panel; and (2) One floatline weak link must be placed as close as possible to each end of the net panel where the floatline meets the up and down line. For net panels of 50 fathoms (300 ft or 91.4 m) or less in length, one weak link must be placed in the center of the floatline. For net panels of 50 fathoms (300 ft or 91.4 m) or greater in length, weak links must be placed at least every 25 fathoms (150 ft or 45.7 m) along the floatline.''

*Groundlines:* This proposed rule would clarify that fishermen may use sinking and/or neutrally buoyant line for their groundlines and buoy lines. This language is used inconsistently in the current regulations. For example, from January 1 through May 15 in the Cape Cod Bay Restricted Area, the current regulations allow only sinking line. Under this proposed rule, from January 1 through May 15 fishermen would be allowed to use sinking and/or neutrally buoyant groundlines in the Cape Cod Bay Restricted Area. Similarly, for the SAM gear modifications, fishermen are currently required to use sinking or neutrally buoyant groundlines; this proposed rule would allow the use of sinking and/or neutrally buoyant groundlines.

Where sinking and/or neutrally buoyant line is required for groundlines, this proposed rule would prohibit the attachment of flotation devices, such as buoys and toggles. This would clarify the proposed prohibition on floating groundlines by expanding the prohibition to the attachment of any devices that cause groundlines to float into the water column, to reduce the risk of entangling large whales.

*Other Regulatory Language Changes*

The following changes to the current ALWTRP regulations are proposed to improve consistency and clarity:

*Gillnet Take Reduction Technology List:* In 2002, NMFS published a final rule (67 FR 1300, January 10, 2002) that replaced the Gillnet Take Reduction Technology List with specific requirements for gillnet gear in the Mid-Atlantic; however, the list was left in the regulations. This proposed rule would delete the Gillnet Take Reduction Technology List. The proposal to remove the Gillnet Take Reduction Technology List from the ALWTRP should not be construed to mean that NMFS would not consider a similar type of management approach in the future if appropriate.

*Anchoring clarification:* This proposed rule would add language clarifying how to comply with the holding power of a 22-lb (10.0-kg) Danforth-style anchoring requirement for anchored gillnet fishing gear in the Northeast, Mid-Atlantic, and Southeast. The text to be added would read as follows: ''All anchored gillnets, regardless of the number of net panels, must be secured at each end of the net string with a burying anchor (an anchor that holds through the use of a fluke, spade, plow, or pick) having the holding capacity equal to or greater than a 22-lb (10.0-kg) Danforth-style anchor. Dead weights do not meet this requirement.''

*SAM clarification:* This proposed rule would clarify that for gillnet and trap/pot fisheries, the Stellwagen Bank/Jeffreys Ledge Restricted Area overlaps with SAM West boundaries. Thus, the Stellwagen Bank/Jeffreys Ledge Restricted Area would be added to the list of ALWTRP management areas under the SAM section of the regulations.

*Terminology:* For consistency, in the ''Other Provisions'' section of the ALWTRP regulations, this proposed rule would change the term ''Cape Cod Bay Critical Habitat'' to ''Cape Cod Bay Restricted Area.'' In addition, this proposed rule would change the name of the ''Southeast U.S. Restricted Area'' to ''Northern Monitoring and Restricted Area'', and designate the portion of the

Southeast U.S. Observer Area not included by the Southeast U.S. Restricted Area as the ''Southern Monitoring Area''.

*Definitions:* The proposed rule would also add a definition in § 229.2 for ''Sunrise'' as follows: ''*Sunrise* means the time of sunrise as determined for the date and location in the Nautical Almanac, prepared by the U.S. Naval Observatory.'' The proposed rule would also add a definition in § 229.2 for ''Sunset'' as follows: ''*Sunset* means the time of sunset as determined for the date and location in the Nautical Almanac, prepared by the U.S. Naval Observatory.''

The proposed rule would move the definition of a ''Straight set or to fish with gillnet gear in a straight set'' from the section of the regulatory text containing the restrictions applicable to southeast Atlantic gillnet gear in § 229.32 and add it to the definitions section in § 229.2. The definition would be modified slightly to note the distinction between a straight set and a strikenet by adding ''(not Strikenet)'' to the end of the current definition to read as follows: ''*Straight set or to fish with gillnet gear in a straight set* means a set in which the gillnet gear is placed in a line in the water column, as opposed to a circular set in which the gillnet is placed to encircle an area in the water column (not Strikenet).'' In addition, the definition for ''Strikenet or to fish with strikenet gear'' found in § 229.2 would be modified to mean ''a method or technique of net deployment which is intended to encircle or enclose an area of water either with the net or by utilizing the shoreline to complete encirclement (not Straight set).''

The proposed rule would add the following definition to § 229.2 for ''Bottom portion of the line'': ''*Bottom portion of the line* means, for buoy lines, the portion of the line in the water column that is closest to the fishing gear.'' This definition is proposed to clarify the regulatory requirements for allowing, where applicable, floating line in a section of the buoy line not to exceed one-third the overall length of the buoy line.

The proposed rule would also revise the terms ''Lobster trap'' and ''Lobster trap trawl'' to ''Trap/pot'' and ''Trap/pot trawl'' to reflect the broader scope of the ALWTRP once the new trap/pot fisheries are included under the management regime. The term ''Trap/pot'' would be defined to mean ''any structure or other device, other than a net or longline, that is placed, or designed to be placed, on the ocean bottom and is designed for or is capable of, catching lobster, crab (red, Jonah, rock, and blue), hagfish, finfish (black sea bass, scup, tautog, cod, haddock, pollock, redfish (ocean perch), and white hake), conch/whelk, and shrimp.'' The term ''Trap/pot trawl'' would be defined to mean ''two or more traps/pots attached to a single groundline.'' These definitions would only apply to the trap/pot fisheries that would be regulated under the ALWTRP.

*Prohibitions:* The proposed rule would revise the language in § 229.3 and § 229.32 regarding the activities prohibited under the ALWTRP. Specifically, in paragraphs (h) through (k) of § 229.3, and where applicable in § 229.32, the phrase ''or have available for immediate use'' would be added after the phrase ''[i]t is prohibited to fish with''. This added language is intended to clarify the activities prohibited under the ALWTRP and improve enforcement. Also, the phrase ''lobster trap'' has been changed to ''trap/pot''.

*Criteria for Establishing a Density Standard for Neutrally Buoyant and Sinking Line and Procedure for Determining the Specific Gravity of Line*

In response to requests from the fishing industry and line manufacturers for a clearer definition of neutrally buoyant and sinking line, NMFS has developed criteria for establishing a density standard for neutrally buoyant and sinking line and used these criteria to develop proposed definitions. In addition, NMFS proposes a procedure for assessing the specific gravity of line, which NMFS would use in the future to determine whether a manufactured line meets the accepted density standard. NMFS'' criteria for establishing the density standard and procedure to determine specific gravity of line are included in the DEIS and available to the public upon request (see **ADDRESSES** for contact information).

This proposed rule would amend the definitions of ''Neutrally buoyant line'' and ''Sinking line'' and clarify each definition in relation to groundlines and buoy lines. Under this proposed rule, neutrally buoyant and sinking line would share the same definition, however, a distinction would be made to clarify that sinking and/or neutrally buoyant groundline could not float in the water column. Therefore, under the proposed rule, the current definition of ''neutrally buoyant line'' would be amended to mean, ''for both groundlines and buoy lines, line that has a specific gravity of 1.030 or greater, and, for groundlines only, does not float at any point in the water column (See also Sinking line)''. NMFS is proposing to keep the ''neutrally buoyant'' and ''sinking line'' terms based on industry's comment that these are familiar terms that have been used for a number of years.

Accordingly, the current definition of ''Sinking line'' would be amended to mean, ''for both groundlines and buoy lines, line that has a specific gravity of 1.030 or greater, and, for groundlines only, does not float at any point in the water column (See also Neutrally buoyant line)''.

*Alternative Six (Preferred)*

As discussed and analyzed in the DEIS, Alternative Six (Preferred) for amending the ALWTRP is similar to Alternative Three (Preferred), except as follows: (1) The SAM areas in the current regulations would be geographically expanded during the period from 2005 through 2007; (2) the gear modification requirements for the expanded SAM areas would be revised during the period from 2005 through 2007; (3) the DAM program would be replaced in 2005 with the expanded SAM areas; and (4) the expanded SAM areas would be replaced beginning in 2008 when the broad-based gear requirements described in Alternative Three (Preferred) would become effective.

**Description of Proposed Changes to the SAM Program**

*Current SAM Program:* In 2002, NMFS published an interim final rule (67 FR 1142, January 9, 2002) for SAM—a program established to protect predictable seasonal congregations of right whales in the waters off Cape Cod and out to the eastern boundary of the EEZ. The rule defined two areas, called SAM West and SAM East, and a specific time period for each (March 1 through April 30 and May 1 through July 31, respectively) during which gear modifications for lobster trap/pot and anchored gillnet gear would be more stringent than those otherwise required for the same gear under the ALWTRP regulations. The dividing line between SAM West and SAM East is currently at 69°24′ W. longitude. The SAM areas adjoin, but do not include, the Cape Cod Bay Critical Habitat and the Great South Channel Critical Habitat areas.

*Proposed SAM Program:* Under Alternative Six (Preferred), the proposed rule would amend the SAM program by establishing new boundaries for the SAM Areas and revising the gear modifications required for fishing within these areas. The changes to the SAM program described in this proposed rule would become effective on January 1, 2005, to protect right whales until 2008, when the broad-

based gear modifications would become effective.

The current boundaries for the SAM Areas are based on NMFS' analysis of aerial survey data collected during the period 1999–2001 (Merrick *et al.*, 2001) and using the methods of Clapham and Pace (2001). The changes proposed in this preferred alternative are supported by new data on right whale distribution obtained through the implementation of the DAM program. Since the DAM program became effective in 2002 (67 FR 1142, January 9, 2002 and 67 FR 65722, October 28, 2002), additional information on the distribution of right whales in the Gulf of Maine, including new aerial survey data, has been collected. Repeated DAM triggers in the same areas suggests that the current SAM areas do not encompass all known seasonal congregations of North Atlantic right whales in waters north of 40°00′ N.

Based on this information, NMFS conducted two different analyses to examine whether geographically expanding SAM (and to what coordinates) would provide additional protection to right whales. First, applying a methodology similar to those used to define the original SAM areas (Merrick *et al.*, 2001), NMFS looked at the spring (March–May) sightings data from 1999–2003 to assess whether the current SAM West and SAM East areas encompassed all areas where right whales regularly congregate at that time of year. The second analytical approach considered March–July sightings data collected from 1975–2003 in the area between 40°00′ N. and 45°00′ N. from the Hague Line westward to the New England coast or 73°00′ W. The defined area was subdivided into a grid, counts of individual right whales were summed by month for each grid cell and the sum divided by the cell's area. These normalized values were plotted and the monthly plots compared to help identify/verify areas where right whales seasonally congregate.

The results of the analyses reflected basic knowledge of right whale distribution in the Gulf of Maine: Whales occur at relatively high densities within Cape Cod Bay in March and April, and then move eastward as the spring and summer progress. When the latest survey data are included, the results show that: (1) Right whales regularly occur in March–April north of the Cape Cod Bay Critical Habitat and west of the existing SAM West; (2) right whales regularly occur south of SAM West and west of the Great South Channel Critical Habitat; (3) right whales are still present in SAM West in May (when the current SAM West-related gear modifications are no longer required); and (4) there are very few sightings in the southeast corner of the SAM East area.

Based on these results, under Alternative Six (Preferred), this proposed rule would modify the existing coordinates for the SAM areas. Specifically, the western boundary of SAM West would be extended westward to encompass seasonal congregations of right whales that occur north of the Cape Cod Bay Critical Habitat. Similarly, the southern boundary of SAM West would be extended further south, adjoining the Great South Channel Sliver area, to encompass seasonal congregations of right whales that occur south of the current SAM West and west of the Great South Channel Critical Habitat. Finally, the southern boundary of SAM East would be revised to include the Great South Channel Sliver area and the Great South Channel Critical Habitat, but would exclude the southeast corner of the existing SAM East area where there have been very few right whale sightings. The western boundary of SAM East would be extended west to 69°45′ W. longitude to encompass right whales that might remain in SAM West in May (after the SAM West area restrictions have expired). See Figure 5 for a graphic representation of the expanded SAM areas. See Table 1 for the specific coordinates bounding the expanded SAM areas.

*Revised SAM Gear Modifications*

In addition to the changes discussed above, under Alternative Six (Preferred), this proposed rule would revise the gear modifications required for fishing within the SAM Areas during the applicable time periods. Currently, the SAM program requires lobster trap/pot gear and anchored gillnet gear fished in the SAM areas to have only one buoy line per trawl or net string, and buoy lines and groundlines must be made entirely of sinking or neutrally buoyant line. Under this preferred alternative, NMFS would allow the use of two buoy lines per trap/pot trawl or per net string, and allow the use of floating line on the bottom one-third or less of the buoy line (effective 6 months after the publication of a final rule).

The proposed changes are based on the current DAM gear modification requirements, and the Cape Cod Bay Critical Habitat lobster trap/pot gear modifications. Background information on NMFS' decision to allow the use of two buoy lines per trap/pot trawl or net string, and the use of floating line on the bottom third of buoy lines is provided in the final rule identifying gear modifications for the DAM program (68 FR 51195, August 26, 2003).

*Proposed Changes to the SAM Program for All Trap/Pot Gear*

Under Alternative Six (Preferred), the provisions stated for Alternative Three (Preferred) for trap/pot fisheries would apply with the addition of the following requirements specific to the SAM and DAM programs. The SAM Areas would be expanded spatially and all lobster trap/pot fisheries operating within these areas during the restricted time periods would be subject to the current SAM restrictions, plus the following: A second buoy line would be allowed and the bottom one-third of the buoy line may consist of floating line. In addition, the trap/pot fisheries subject to the SAM program would be expanded to include: Hagfish, finfish (black sea bass, scup, tautog, cod, haddock, pollock redfish, and white hake), conch/whelk, shrimp, red, blue, rock, and Jonah crab. The expanded SAM area would include the Great South Channel Critical Habitat area; therefore, trap/pot gear would be subject to the SAM program inside critical habitat areas during time periods when the requirements for fishing inside these areas are no more conservative than the surrounding waters (*i.e.*, when the protections of critical habitat areas disappear). However, the more restrictive Great South Channel Restricted Trap/Pot Area closure (April 1 through June 30) would supercede the SAM program. As a result, gear modifications for fishing with trap/pot gear in the SAM area would apply in the Great South Channel Restricted Trap/Pot Area from July 1 through July 31. The DAM program would be eliminated, and replaced with the expanded SAM areas.

*Proposed Changes to the SAM Program for Gillnet Gear*

Under Alternative Six (Preferred), in addition to the measures proposed for gillnet fisheries under Alternative Three (Preferred), the following requirements specific to the SAM and DAM programs would apply. The SAM Areas would be expanded, and all gillnet fisheries operating within these areas during the restricted time periods would be subject to the current SAM restrictions, plus the following: A second buoy line would be allowed and the bottom one-third of the buoy line may be comprised of floating line. In addition, the gillnet fisheries regulated under the SAM program would be expanded to include Northeast anchored float gillnets. The expanded SAM area would include the Great South Channel Critical Habitat area; therefore, gillnet gear would be

subject to the SAM program inside critical habitat areas during time periods when the requirements for fishing inside these areas are no more conservative than the surrounding waters (*i.e.*, when the protections of critical habitat areas disappear). However, the more restrictive Great South Channel Restricted Gillnet Area closure (April 1 through June 30) would supercede the SAM program. As a result, gear modifications for fishing with gillnet gear in the SAM area would apply in the Great South Channel Restricted Gillnet Area from July 1 through July 31, and in the Great South Channel Sliver Restricted Area from May 1 through July 31. The DAM program will be eliminated, and replaced with the expanded SAM areas.

*Other Changes Proposed for All Trap/Pot and Gillnet Gear*

*DAM Program:* Most of the modifications proposed under this alternative would become effective 6 months after publication of a final rule, including the replacement of the DAM program. In other words, 6 months after the publication of a final rule, when the SAM areas are expanded, the expanded SAM program would eliminate and replace the DAM program. However, until the effective date, all trap/pot and gillnet fisheries, including those added to the ALWTRP, would be subject to both the SAM and DAM programs.

*Groundlines:* Under this alternative, for both trap/pot and gillnet fisheries, the SAM program would be eliminated and replaced with broad-based gear modifications, including a requirement that all groundlines must be composed of sinking and/or neutrally buoyant line, effective in 2008.

TABLE 1.—SEASONAL AREA MANAGEMENT

| Point | Latitude (north) | Longitude (west) |
|---|---|---|
| **Sam West Polygon—in effect from March 1–April 30** | | |
| 1W | 42°30′ | 70°30′ (NW Corner) |
| 2W | 42°30′ | 69°24′ |
| 3W | 41°48.9′ | 69°24′ |
| 4W | 41°40′ | 69°45′ |
| 5W | 41°40′ | 69°57′ along the Eastern Shore of Cape Cod to |
| 6W | 42°04.8′ | 70°10′ |
| 7W | 42°12′ | 70°15′ |
| 8W | 42°12′ | 70°30′ |
| **Sam East Polygon—in effect from May 1–July 31** | | |
| 1E | 42°30′ | 69°45′ (NW Corner) |
| 2E | 42°30′ | 67°27′ |
| 3E | 42°09′ | 67°08.4′ |
| 4E | 41°00′ | 69°05′ |
| 5E | 41°40′ | 69°45′ |

*Classification*

This proposed rule has been determined to be significant for the purposes of Executive Order 12866.

This proposed rule contains collection of information requirements subject to the Paperwork Reduction Act (PRA), specifically, the marking of fishing gear. The proposed collection of information requirement was submitted to the Office of Management and Budget (OMB) for approval. Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance and function of the agency, including: the practical utility of the information; the accuracy of the burden estimate; the opportunities to enhance the quality, utility, and clarity of the information to be collected; and the ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology. Any information collection requirements subject to PRA and related to VMS requirements in the U.S. Southeast Atlantic shark gillnet fishery were addressed in a previous rulemaking (69 FR 51010, August 17, 2004). This rule proposes to extend the VMS requirement for shark gillnet fishermen for an additional 15 days. There are no new costs associated with this extension. Fishermen would not incur any additional costs as they currently have all the equipment required to comply with the proposed reporting requirements.

The DEIS includes several alternatives that NMFS will solicit comment on during a 60-day public comment period. These alternatives are analyzed separately in order to provide an estimate of burden hours for each alternative (Table 2). The labor and materials burden associated with the proposed change in gear marking requirements is based on the number of new marks per vessel required under each of the proposed alternatives and the number of vessels that would be impacted by the requirement.[1] Although the gear marking requirement is the same for all vessels (except Southeastern U.S. Atlantic shark gillnet vessels), burden estimates vary by alternative for two reasons: (1) Differences in the number of affected vessels between alternatives and (2) differences in the number of buoy lines allowed per trawl for lobster and other trap/pot vessels.[2] The number of new marks per vessel is based on the number of existing marks and the following gear configuration values:

(1) Trawls or strings per vessel;

(2) Buoy lines per trawl or per string; and

(3) Length of buoy line (based on average fishing depth).

[1] A mark, in this instance, is a four inch blue mark once every 10 fathoms along the buoy line. The majority of fisherman already mark their buoys with the vessel registration numbwer, vessel documentation number, federal permit number, or whatever positive identification marking is required by the vessel's home-port state; therefore, we assume this provision places no additional costs on fisherman.

[2] We assume that there will be no costs to shark vessels because (1) all known shark vessels are already marking their gear in accordance with current requirements (*i.e.*, there are no currently unregulated shark vessels that would be regulated under the proposed alternatives) and (2) shark vessels do not typically use a buoy line greater than four feet. To the extent that shark vessels use longer buoy lines in cases of foul weather, those lines would have to be marked in accordance with the proposed alternatives. Such costs are not included in this cost model.

To demonstrate the methodology described above, we present the following analysis of a typical northern inshore lobster vessel fishing on Stellwagen Bank with pairs of traps, as regulated under proposed alternative 2. The burden hours and costs estimated in the following example are immediate; *i.e.*, incurred within 6 months of publication of a final rule.

Average number of trawls (with pair traps) per vessel = 300
Average number of buoy lines per trawl = 1
Average number of buoy lines per vessel = 300 * 1 = 300
Average fishing depth = 27.5 fathoms
Average length of buoy line = 27.5 fathoms * 1.5 = 41.25 fathoms, where 1.5 = buoy line slack factor.
Average number of marks per buoy line = 41.25
1 mark every 10 fathoms = (41.25 fathoms 10) -1 = approximately 3 marks
Average number of existing marks per buoy line = 1
Average number of marks per vessel = 3 marks * 300 buoy lines = 900 marks
Average number of existing marks per vessel = 1 mark * 300 buoy lines = 300 marks
Number of new buoy line marks required under the proposed alternatives: 900—300 = 600 marks
Time to install a single buoy line mark = 5 minutes
Material cost of a single buoy line mark = $0.05
Hours burden per vessel = 5 minutes * 600 marks = 3,000 minutes = 50 hours
Material cost per vessel = $0.05 * 600 marks = $30.00

The process described above is repeated for each model vessel (each model vessel represents a group of vessels that face similar regulatory requirements and operate with a similar quantity and configuration of gear). These estimates of hours burden and material costs are then multiplied by the estimated number of vessels represented by each model vessel. The resulting values for all vessel groups are then summed to estimate the total impact of each proposed alternative. Total estimated hours and material costs are then divided by total affected vessels to estimate the average hours burden and material cost per vessel.

TABLE 2.—ESTIMATED ANNUAL CHANGE IN BURDEN HOURS [1]

| Proposed Alternative | Time Period [2] (hours) | | | |
|---|---|---|---|---|
| | Immediate [3] | | Ongoing [4] | |
| | Total (all vessels) | Average (per vessel) | Total (all vessels) | Average (per vessel) |
| 2 | 148,185 | 26.3 | 38,638 | 6.9 |
| 3 | 147,837 | 26.4 | 38,538 | 6.9 |
| 4 | 148,182 | 26.4 | 38,637 | 6.9 |
| 5 | 148,118 | 26.4 | 38,508 | 6.9 |
| 6 | 148,118 | 26.4 | 38,508 | 6.9 |

**Notes:**
[1] The burden hours estimated in this table are incurred by fishermen in marking their buoy lines. The majority of fishermen already mark their buoys with the vessel registration number, vessel documentation number, federal permit number, or whatever positive identification marking is required by the vessel's home-port state; therefore, we assume this provision places no additional burden on fishermen.
[2] Under Alternatives 2 through 4, lobster and other trap/pot vessels fishing in SAM restricted waters are limited to one buoy line per trawl. In 2008, the SAM program is eliminated and these vessels are no longer restricted to one buoy line per trawl. We assume vessels will take advantage of this change by increasing to two the number of buoy lines on all trawls over five traps. This would impact the labor burden of complying with buoy line marking requirements in 2008 and beyond. For simplicity, we only present estimated burden hours for 2005 (''Immediate'') and post-2008 (''Ongoing'').
[3] This estimate reflects the hours fishermen would have to spend changing current gear marking schemes to meet provisions that would go into effect six months after publication of the rule. Assuming the final rule is published in 2005, these hours would be incurred in that year.
[4] This estimate reflects the number of hours fishermen will have to spend on an ongoing basis in order to maintain compliance with the rule. Additional time and costs are incurred on an ongoing basis because buoy lines and gear markings have useful lives, after which the gear must be replaced and/or re-marked. Assuming the final rule is published in 2005, these hours would be incurred in 2009 and every year thereafter.

TABLE 3.—ESTIMATED ANNUAL CHANGE IN COST[1]

| Proposed Alternative | Time Period [2] | | | |
|---|---|---|---|---|
| | Immediate [3] | | Ongoing [4] | |
| | Total (all vessels) (in thousands of dollars) | Average (per vessel) (in dollars) | Total (all vessels) (in thousands of dollars) | Average (per vessel) (in dollars) |
| 2 | 88.9 | 15.78 | 23.2 | 4.12 |
| 3 | 88.7 | 15.82 | 23.1 | 4.12 |
| 4 | 88.9 | 15.81 | 23.2 | 4.12 |
| 5 | 88.9 | 15.85 | 23.1 | 4.12 |
| 6 | 88.9 | 15.85 | 23.1 | 4.12 |

**Notes:**
[1] The costs estimated in this table are incurred by fishermen in marking their buoy lines. The majority of fishermen already mark their buoys with the vessel registration number, vessel documentation number, federal permit number, or whatever positive identification marking is required by the vessel's home-port state; therefore, we assume this provision places no additional costs on fishermen.
[2] Under Alternatives 2 through 4, lobster and other trap/pot vessels fishing in SAM restricted waters are limited to one buoy line per trawl. In 2008, the SAM program is eliminated and these vessels are no longer restricted to one buoy line per trawl. We assume vessels will take advantage of this change by increasing to two the number of buoy lines on all trawls over five traps. This would impact the cost of complying with buoy line marking requirements in 2008 and beyond. For simplicity, we only present costs for 2005 (''Immediate'') and post-2008 (''Ongoing'').

[3] This estimate reflects the cost to fishermen of changing current gear marking schemes to meet provisions that would go into effect six months after publication of the rule. Assuming the final rule is published in 2005, these costs would be incurred in that year.

[4] This estimate reflects cost to fishermen on an ongoing basis in order to maintain compliance with the rule. Additional time and costs are incurred on an ongoing basis because buoy lines and gear markings have useful lives, after which the gear must be replaced and/or re-marked. Assuming the final rule is published in 2005, these costs would be incurred in 2009 and every year thereafter.

Send comments on these or any other aspects of the collection of information to the **ADDRESSES** above, and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a valid OMB Control Number.

As required by the Regulatory Flexibility Act, NMFS prepared an initial regulatory flexibility analysis (IRFA) for this proposed rule. A summary of that IRFA follows.

This proposed rule would identify measures that reduce the risk of serious injury or mortality from entanglement of large whales under the ALWTRP. The objective of this proposed rule, issued pursuant to section 118 of the Marine Mammal Protection Act (MMPA), is to reduce the level of serious injury and mortality of right, humpback, and fin whales in commercial east coast trap/pot and gillnet fisheries. The small entities affected by this proposed rule are commercial gillnet and trap/pot fishermen.

The geographic range of the gear modifications would include Northeast Atlantic, Mid-Atlantic, and Southeast Atlantic waters. In the lobster trap/pot fishery, there are potentially 3,685 vessels that would be affected, of which 2,753 would be in northern inshore waters, 653 in northern nearshore waters, 168 in offshore waters, and 111 in southern nearshore waters (NMFS, 2004). In the other trap/pot fishery, there are potentially 418 vessels that would be affected, of which 231 would be in northern inshore waters, 20 in northern nearshore waters, 21 in offshore waters, and 146 in southern nearshore waters. In the gillnet fishery, there are approximately 1,044 vessels that would be affected, of which 336 would be Northeast anchored gillnet, 616 would be Mid-Atlantic anchored gillnet, 79 would be Mid-Atlantic driftnet, and 13 would be Southeast Atlantic gillnet (this number does not include Southeastern U.S. Atlantic shark gillnet vessels, as the analysis for this action concluded that these vessels would not incur significant compliance costs).

The majority of affected vessels in the lobster trap/pot (approximately 68 percent of total) and other trap/pot fisheries (approximately 52 percent of total) fall within Class II, 29 to 40 ft (12.2 m) in length. For the gillnet fishery, the majority of affected vessels fall within Class II (approximately 47 percent of total) and Class III, 41–50 ft (12.5–15.24 m) in length (approximately 43 percent of total). The most affected vessels, which are those for which annual compliance costs exceed 15 percent of average annual revenues, are based in the Northeast. Thus, the number of vessels considered most affected is essentially identical under all alternatives with the exception of the no action alternative (Alternative 1) and Alternative 5. All vessels are assumed to be small entities within the meaning of the Regulatory Flexibility Act.

Any information collection requirements subject to PRA and related to VMS requirements in the U.S. Southeast Atlantic shark gillnet fishery were addressed in a previous rulemaking (69 FR 51010, August 17, 2004). This proposed rule would extend the VMS requirement for shark gillnet fishermen for an additional 15 days. There are no new costs associated with this extension. Fishermen would not incur any additional costs as they currently have all the equipment required to comply with the proposed reporting requirements. There are no relevant Federal rules that duplicate, overlap, or conflict with the proposed rule.

Six alternatives, consisting of one status quo or no action alternative, two preferred alternatives, and three additional alternatives were evaluated using model vessels, each of which represents a group of vessels that share similar operating characteristics and would face similar requirements under a given regulatory alternative. A summary of the analysis follows:

1. NMFS considered a ''no action'' or status quo alternative (Alternative 1-Non-Preferred) that would result in no changes to the current measures under the ALWTRP and, as such, would result in no additional economic effects on the fishing industry.

2. NMFS considered an alternative (Alternative 2—Non-Preferred), which would implement broad-based, coast-wide gear modifications year-round for the east coast fisheries covered by the ALWTRP. These gear modifications would include: the use of weak links on all flotation devices; discontinuing the SAM and DAM programs and requiring the use of entirely sinking and/or neutrally buoyant groundline by 2008; the use of weak links and anchoring systems for gillnets; and implementing new gear marking requirements for buoy lines. This alternative would also cover several new fisheries under the ALWTRP regulations which use gear similar to gear used by those fisheries already covered by the regulations, redefine some of the regulated area boundaries, extend the scope of the ALWTRP regulations out to the eastern edge of the EEZ, and expand and clarify the areas exempted from the plan. Under this alternative, the average increase in annual vessel compliance costs would be $3,484 for lobster trap/pot vessels; $1,055 for other trap/pot vessels; and $917 for gillnet vessels. Under Alternative 2, the average increase in annual gear marking costs would be $164 for lobster trap/pot vessels; $110 for other trap/pot vessels; and $3 for gillnet vessels.

3. Alternative 3 (Preferred) would implement all of the requirements included in Alternative 2, except that the requirements for Mid and South Atlantic waters south of 40°00′ N. would be seasonal rather than year-round. Waters north of 40°00′ N. would be subject to ALWTRP gear modifications year-round. Under this Preferred Alternative, average increase in annual vessel compliance costs would be $3,483 for lobster trap/pot vessels; $1,060 for other trap/pot vessels; and $925 for gillnet vessels. Under Alternative 3, the average increase in annual gear marking costs would be $164 for lobster trap/pot vessels; $109 for other trap/pot vessels; and $3 for gillnet vessels.

4. NMFS considered another alternative (Alternative 4—Non-Preferred) which would consist of all of the gear modifications included in Alternative 2, except that the requirements for South Atlantic waters south of the South Carolina/Georgia border would be seasonal rather than year-round. Waters north of this border would be subject to ALWTRP gear modifications year-round. Under this alternative, average increase in annual vessel compliance costs would be $3,484 for lobster trap/pot vessels; $1,055 for other trap/pot vessels; and $923 for gillnet vessels. Under

Alternative 4, the average increase in annual gear marking costs would be $164 for lobster trap/pot vessels; $110 for other trap/pot vessels; and $3 for gillnet vessels.

5. NMFS considered an alternative (Alternative 5—Non-Preferred) which would implement the requirements included in Alternative 3 (Preferred), except for the broad-based, coast-wide gear modification requirements such as the use of entirely sinking/neutrally buoyant groundline, expanded weak link requirements for gillnet gear at night in the Mid-Atlantic, and weak link and anchoring requirements for gillnet gear in the Northeast. Additionally, in 2005, this alternative would expand the SAM areas, allow for a second buoy line, allow both buoy lines to have up to one-third of the bottom portion of the buoy line to be composed of floating line in the SAM areas, and discontinue the DAM program. Under this alternative, average increase in annual vessel compliance costs would be $210 for lobster trap/pot vessels; $184 for other trap/pot vessels; and $163 for gillnet vessels. Under Alternative 5, the average increase in annual gear marking costs would be $164 for lobster trap/pot vessels; $110 for other trap/pot vessels; and $3 for gillnet vessels.

6. Alternative Six (Preferred) would implement all of the requirements contained in Alternative 2, but would expand the SAM areas, allow for a second buoy line, allow both buoy lines to have up to one-third of the bottom portion of the buoy line to be composed of floating line in the SAM areas, and eliminate the DAM program in 2005. The SAM program would then be eliminated in 2008, at which time the broad-based, coast-wide gear modifications and seasonal restrictions as in Alternative 3 (Preferred) would be implemented. Under Alternative 6 (Preferred), average increase in annual vessel compliance costs would be $3,482 for lobster trap/pot vessels; $947 for other trap/pot vessels; and $925 for gillnet vessels. Under Alternative 6, the average increase in annual gear marking costs would be $164 for lobster trap/pot vessels; $110 for other trap/pot vessels; and $3 for gillnet vessels.

NMFS has determined that this action is consistent to the maximum extent practicable with the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. No state disagreed with our conclusion that this proposed rule is consistent with the enforceable policies of the approved coastal management program for that state.

This proposed rule contains policies with federalism implications as that term is defined in Executive Order 13132. Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs will provide notice of the proposed action to the appropriate official(s) of affected state, local, and/or tribal governments.

*References*

Caswell, H.; Fujiwara; M.; Brault, S. 1999. Declining survival threatens the North Atlantic right whale. Proc. Nat. Acad. Sci. 96: 3308–3313.

Clapham, P.J.; Pace, R.M., III. 2001. Defining triggers for temporary area closures to protect right whales from entanglements: issues and options. Northeast Fisheries Science Center Reference Document 01–06. April 2001.

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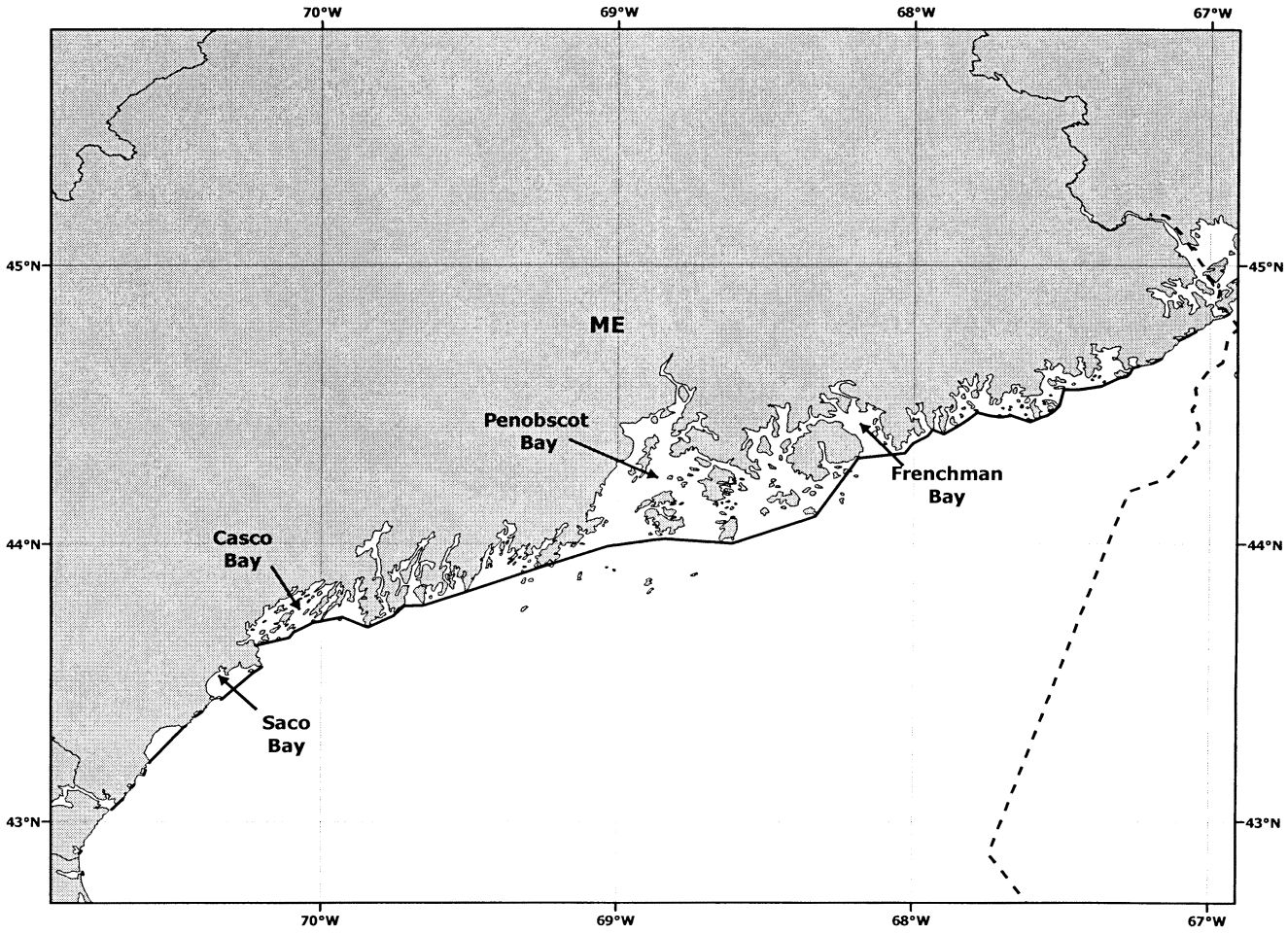
**BILLING CODE 3510–22–P**

Figure 1. Exemption lines for the state of Maine (shown as solid dark lines). The eastern boundary of the Exclusive Economic Zone (EEZ) is represented by the dashed line. Larger bodies of water are noted below.




Note: See proposed ALWTRP regulations for exact exemption line coordinates.

Figure 2. Exemption lines for the coastal waters of Massachusetts, Rhode Island, Connecticut, and New York (shown as dark lines). Larger bodies of water are noted below.

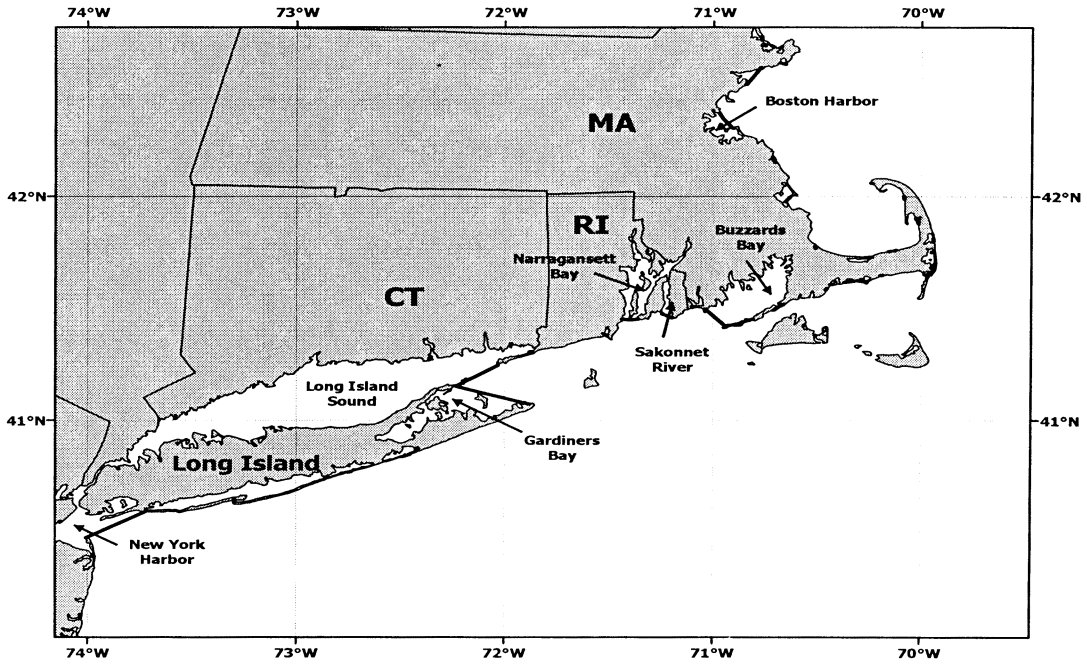


Figure 3. Exemption lines for Delaware Bay and nearby inlets (shown as dark lines).

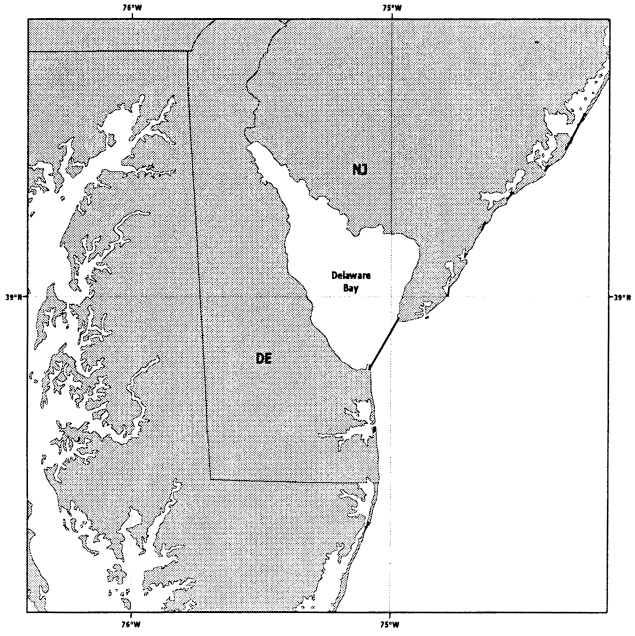
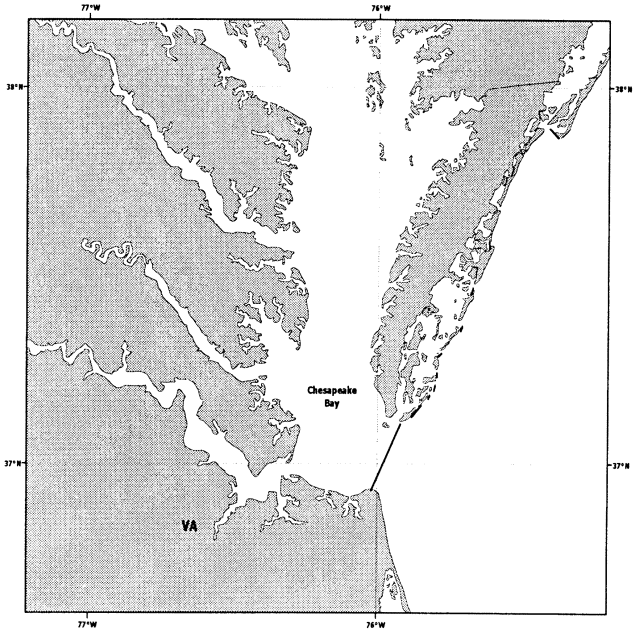
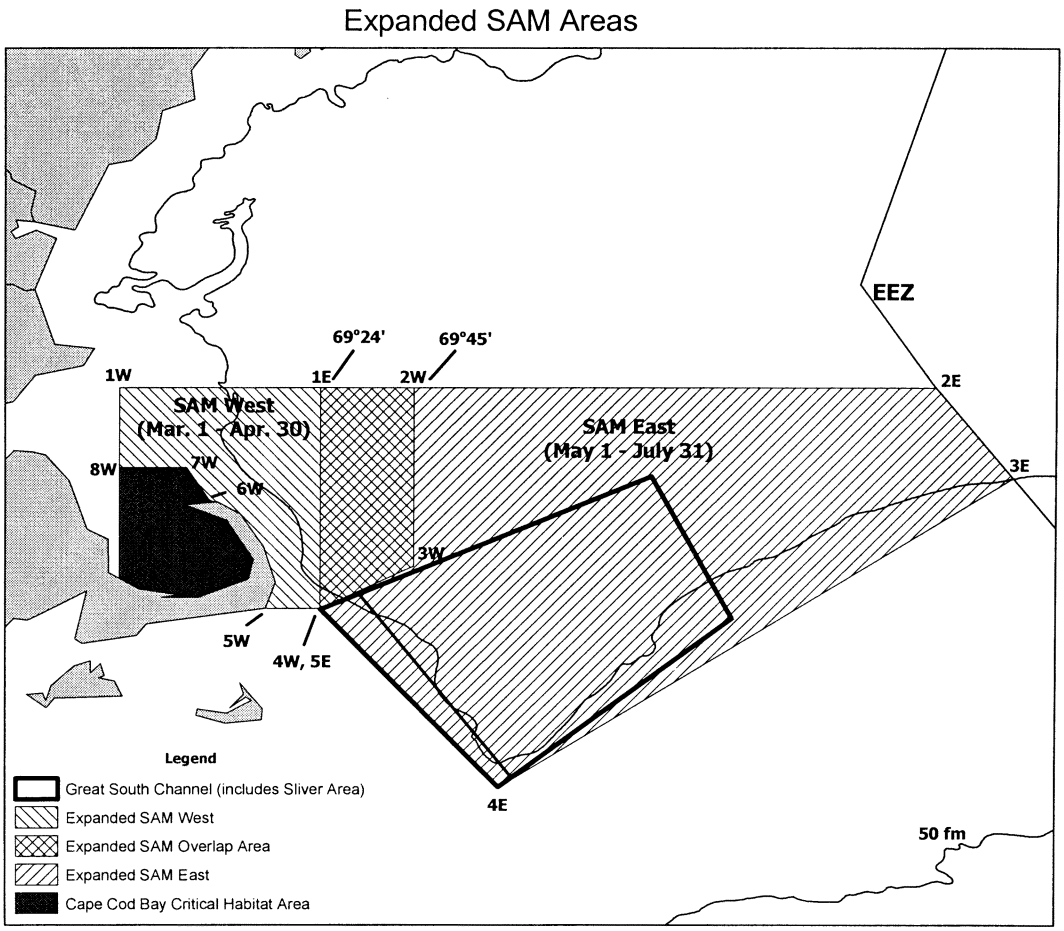



Figure 4. Exemption lines for Chesapeake Bay and Nearby inlets (shown as dark lines).




Note: See proposed ALWTRP regulations for exact exemption line coordinates.

Figure 5. Expanded ALWTRP Seasonal Area Management (SAM) Areas.




Note: See Table 1 for specific coordinates bounding expanded SAM areas.

BILLING CODE 3510–22–C

Mate, B.R.; Nieukirk, S.L.; Kraus, S.D. 1997. Satellite-monitored movements of the northern right whale, Journal of Wildlife Management, 61(4).

McKiernan, D.; Pol, M.; Malkoski, V. 2002. A Study of the Underwater Profiles of Lobster Trawl Ground Lines: Report to NMFS in support of the Massachusetts Right Whale Conservation Program, Contract # 50EANF–1–00048.

Merrick, R.L.; Clapham, P.J.; Cole, T.V.N.; Gerrior, P.; Pace, R.M., III. 2001. Identification of seasonal area management zones for North Atlantic right whale conservation. Northeast Fisheries Science Center Reference Document 01–14. October 2001.

NMFS. 2004. Draft Environmental Impact Statement on the Proposed Rule to Amend the Atlantic Large Whale Take Reduction Plan. Northeast Region.

**List of Subjects**

*50 CFR Part 229*

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

*50 CFR Part 635*

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

*50 CFR Part 648*

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 19, 2005.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 229, 50 CFR part 635 and 50 CFR part 648 are proposed to be amended as follows to implement Alternative 3 (Preferred):

## PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for 50 CFR part 229 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*

2. In § 229.2, the definitions of ''Lobster trap'' and ''Lobster trap trawl'' are removed. The definitions of ''Anchored gillnet'', ''Gillnet'', ''Groundline'', ''Shark gillnet or shark gillnetting'', and ''Strikenet or to fish with strikenet gear'' are revised in alphabetical order to read as follows below. The definitions of ''Bitter end'', ''Bottom portion of line'', ''Neutrally buoyant line'', ''Sinking line'', ''Straight set or to fish with gillnet gear in a straight set'', ''Sunrise'', ''Sunset'', ''Trap/Pot'', and ''Trap trawl'' are added in alphabetical order to read as follows:

**§ 229.2 Definitions.**

* * * * *

*Anchored gillnet* means any gillnet gear, including an anchored float gillnet, sink gillnet, or stab net, that is set anywhere in the water column and which is anchored, secured, or weighted to the bottom of the sea. Also called a set gillnet.

* * * * *

*Bitter end* means the loose end of a line that has detached from a weak link.

* * * * *

*Bottom portion of the line* means, for buoy lines, the portion of the line in the water column that is closest to the fishing gear.

* * * * *

*Gillnet* means fishing gear consisting of a wall of webbing (meshes) or nets, designed or configured so that the webbing (meshes) or nets are placed in the water column, usually held approximately vertically, and are designed to capture fish by entanglement, gilling, or wedging. The term ''gillnet'' includes gillnets of all types, including but not limited to sink gillnets, other anchored gillnets (e.g., anchored float gillnets, stab, and set nets), and drift gillnets. Gillnets may or may not be attached to a vessel.

*Groundline,* with reference to trap/pot gear, means a line connecting traps in a trap trawl, and, with reference to gillnet gear, means a line connecting a gillnet or gillnet bridle to an anchor or buoy line.

* * * * *

*Neutrally buoyant line* means, for both groundlines and buoy lines, line that has a specific gravity of 1.030 or greater, and, for groundlines only, does not float at any point in the water column (See also Sinking line).

* * * * *

*Shark gillnet or shark gillnetting* means a gillnet with webbing of 5 inches or greater stretched mesh that is fished in the waters south of the South Carolina/Georgia border, or to fish with such a gillnet in those waters.

* * * * *

*Sinking line* means, for both groundlines and buoy lines, line that has a specific gravity of 1.030 or greater, and, for groundlines only, does not float at any point in the water column (See also Neutrally buoyant line).

* * * * *

*Straight set or to fish with gillnet gear in a straight set* means a set in which the gillnet is placed in a line in the water column, as opposed to a circular set in which the gillnet is placed to encircle an area in the water column (not Strikenet).

* * * * *

*Strikenet or to fish with strikenet gear* means a method or technique of net deployment which is intended to encircle or enclose an area of water either with the net or by utilizing the shoreline to complete the encirclement (not Straight set).

*Sunrise* means the time of sunrise as determined for the date and location in The Nautical Almanac, prepared by the U.S. Naval Observatory.

* * * * *

*Sunset* means the time of sunset as determined for the date and location in The Nautical Almanac, prepared by the U.S. Naval Observatory.

* * * * *

*Trap/Pot* means any structure or other device, other than a net or longline, that is placed, or designed to be placed, on the ocean bottom and is designed for or is capable of, catching lobster, crab (red, Jonah, rock, and blue), hagfish, finfish (black sea bass, scup, tautog, cod, haddock, pollock, redfish (ocean perch), and white hake), conch/whelk, and shrimp.

*Trap trawl* means two or more trap/pots attached to a single groundline.

* * * * *

3. In § 229.3, paragraphs (h) through (l) are revised to read as follows:

**§ 229.3 Prohibitions.**

* * * * *

(h) It is prohibited to fish with or have available for immediate use trap/pot gear in the areas and for the times specified in § 229.32(b)(2) and (c)(2) through (c)(8) unless the trap/pot gear complies with the closures, marking requirements, modifications, and restrictions specified in § 229.32(b)(3)(i), (b)(3)(ii), and (c)(1) through (c)(9).

(i) It is prohibited to fish with or have available for immediate use anchored gillnet gear in the areas and for the times specified in § 229.32(b)(2) and (d)(2) through (d)(7) unless that gillnet gear complies with the closures, marking requirements, modifications, and restrictions specified in § 229.32(b)(3)(i), (b)(3)(ii), and (d)(1) through (d)(8).

(j) It is prohibited to fish with or have available for immediate use drift gillnet gear in the areas and for the times specified in § 229.32(d)(7) and (e)(1) unless the drift gillnet gear complies with the restrictions specified in § 229.32(e)(1).

(k) It is prohibited to fish with or have available for immediate use southeast Atlantic gillnet gear in the areas and for the times specified in § 229.32(f)(1)(i) unless the gillnet gear complies with the requirements specified in § 229.32(f)(1)(ii) and (f)(1)(iii).

(l) It is prohibited to fish with or have available for immediate use shark gillnet gear in the areas and for the times specified in § 229.32(b)(2), (g)(1)(i), and (g)(1)(ii) unless the gear complies with the closures, marking requirements, modifications, and restrictions specified in § 229.32(b)(3)(i), (b)(3)(ii), and (g)(2) through (g)(3)(iii)(D).

* * * * *

4. Section 229.32 is revised to read as follows:

**§ 229.32 Atlantic large whale take reduction plan regulations.**

(a)(1) *Purpose and scope.* The purpose of this section is to implement the Atlantic Large Whale Take Reduction Plan to reduce incidental bycatch of fin, humpback, and right whales in specific commercial fisheries from Maine to Florida. The gear types affected by this plan include anchored gillnets, traps/pots, drift gillnets, and shark gillnets (including strikenets).

(2) *Regulated waters.* The regulations in this section apply to all U.S. waters except for the areas exempted in paragraphs (a)(3) and (a)(4) of this section.

(3) *Exempted waters.* (i) The regulations in this section do not apply to waters landward of the 72 COLREGS demarcation lines (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts 1:80,000 scale), and as described in 33 CFR Part 80 with the exception of the waters landward of the following lines:

42°20.665′ N., 70°57.205′ W. TO 42°20.009′ N., 70°55.803′ W. and

42°19.548′ N., 70°55.436′ W. TO 42°18.599′ N., 70°52.961′ W. (Boston Harbor).

41°11.40′ N., 72°09.70′ W. TO 41°04.50′ N., 71°51.60′ W. (Gardiners Bay).

(ii) *Other exempted waters.* Where the 72 COLREGS demarcation lines do not exist, the regulations in this section do not apply to the waters landward of the Territorial sea baseline, where appropriate, in Maine (as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts 1:80,000 scale), and as described in 33 CFR 2.20) or landward of the following lines:

**Maine**

44°49.863′ N., 66°55.664′ W. TO 44°48.924′ N., 66°57.01′ W. (Quoddy Narrows, U.S./Canada border)
44°45.682′ N., 67°02.936′ W. TO 44°44.696′ N., 67°04.374′ W. (Baileys Mistake and Haycock Harbor)
44°44.446′ N., 67°04.858′ W. TO 44°43.843′ N., 67°05.909′ W. (Moose Cove)

*Territorial Sea Baseline (Little River)*

A line connecting the points (Little Machias Bay, Cross Island Narrows, Machias Bay, Englishman Bay, Chandler Bay, and Eastern Bay):
44°38.14′ N., 67°13.788′ W. (Great Head)
44°37.679′ N., 67°15.424′ W. (Cape Wash)
44°36.659′ N., 67°16.205′ W. (Scotch Island)
44°36.236′ N., 67°16.857′ W. (Spruce Point)
44°35.071′ N., 67°21.177′ W. (Libby Islands)
44°33.369′ N., 67°29.787′ W. (Great Spruce Island)
44°31.908′ N., 67°31.842′ W. (Mark Island)
44°30.637′ N., 67°31.431′ W. (Head Harbor Island)

A line connecting the points (Eastern Bay):
44°29.521′ N., 67°30.935′ W. (Black Head)
44°28.50′ N., 67°31.878′ W. (Moose Peak)
44°27.332′ N., 67°34.15′ W. (Little Pond Head)

A line connecting the points (Moosabec Reach and Wahoa Bay):
44°29.945′ N. 67°36.228′ W. (The Flying Place)
44°30.196′ N. 67°36.832′ W. (Beals Island)
44°30.334′ N. 67°38.573′ W. (Norton Island)
44°29.729′ N. 67°42.609′ W. (Tibbett Island)
44°29.824′ N. 67°44.107′ W. (Cape Split)

*Territorial Sea Baseline (Pleasant Bay, Narraguagus Bay, and Pigeon Hill Bay)*

A line connecting the points (Dyer Bay, Gouldsboro Bay, Prospect Harbor, and Schoodic Harbor):
44°23.69′ N., 67°53.951′ W. (Petit Manan Point)
44°23.113′ N., 67°58.853′ W. (Cranberry Point)
44°21.416′ N., 68°01.556′ W. (Spruce Point)
44°20.131′ N., 68°02.782′ W. (Schoodic Head)

*Territorial Sea Baseline (Frenchman Bay)*

A line connecting the points (Blue Hill Bay and Penobscot Bay):
44°18.431′ N., 68°11.337′ W. (Otter Point, Mount Desert Island)
44°14.504′ N., 68°11.040′ W. (Baker's Island)
44°06.00′ N., 68°20.07′ W. (Rich's Head, Long Island)
43°59.36′ N., 68°37.95′ W. (Roaring Bull Ledge, Isle au Haut)
43°59.83′ N., 68°50.06′ W. (South Vinalhaven Island)
43°56.72′ N., 69°04.89′ W. (Two Bush Channel)
43°54.903′ N., 69°13.175′ W. (Mosquito Island)
43°55.074′ N., 69°15.579′ W. (Marshall Point, Port Clyde)

*Territorial Sea Baseline (Johns Bay and Muscongus Bay)*

A line connecting the points (Sheepscot Bay and Booth Bay):
43°48.872′ N., 69°35.465′ W. (Linekin Neck)
43°48.206′ N., 69°35.913′ W. (Ram Island)
43°47.233′ N., 69°39.209′ W. (Cape Newagen)
43°47.168′ N., 69°39.621′ W. (Cape Newagen)
43°46.947′ N., 69°43.097′ W. (Outer Head)
43°44.658′ N., 69°45.288′ W. (Salter Island)
43°42.056′ N., 69°50.185′ W. (Small Point, Cape Small)
43°42.298′ N., 69°51.23′ W. (Bald Head, Cape Small)

*Territorial Sea Baseline (Saco Bay)*

43°23.963′ N., 70°23.882′ W. TO 43°22.401′ N., 70°25.296′ W. (Goosefare Bay)
43°22.198′ N., 70°25.065′ W. TO 43°21.823′ N., 70°24.977′ W. (Stage Island Harbor)
43°21.663′ N., 70°24.977′ W. TO 43°13.267′ N., 70°34.542′ W. (body of water between Cape Porpoise and Bald Head Cliff)
43°11.176′ N., 70°35.867′ W. TO 43°10.984′ N., 70°36.161′ W. (Cape Neddick Harbor)
43°08.115′ N., 70°37.434′ W. TO 43°07.56′ N., 70°38.049′ W. (York Harbor)
43°06.104′ N., 70°39.037′ W. TO 43°05.574′ N., 70°39.369′ W. (Brave Boat Harbor)

**New Hampshire**

42°53.691′ N., 70°48.516′ W. TO 42°53.516′ N., 70°48.748′ W. (Hampton Harbor)
42°59.986′ N., 70°44.654′ W. TO 42°59.956′ N., 70°44.737′ W. (Rye Harbor)

**Massachusetts**

42°49.136′ N., 70°48.242′ W. TO 42°48.964′ N., 70°48.282′ W. (Newburyport Harbor)
42°42.145 N., 70°46.995′ W. TO 42°41.523′ N., 70°47.356′ W. (Plum Island Sound)
42°40.266′ N., 70°43.838′ W. TO 42°39.778′ N., 70°43.142′ W. (Essex Bay)
42°39.645′ N., 70°36.715′ W. TO 42°39.613′ N., 70°36.60′ W. (Rockport Harbor)
42°15.203′ N., 70°46.324′ W. TO 42°15.214′ N., 70°47.352′ W. (Cohasset Harbor)
42°12.09′ N., 70°42.98′ W. TO 42°12.211′ N., 70°43.002 W. (Scituate Harbor)
42°09.724′ N., 70°42.378′ W. TO 42°10.085′ N., 70°42.875′ W. (New Inlet)
42°04.64′ N., 70°38.587′ W. TO 42°04.583′ N., 70°38.631′ W. (Green Harbor)
41°59.686′ N., 70°37.948′ W. TO 41°58.75′ N., 70°39.052′ W. (Duxbury Bay/Plymouth Harbor)
41°50.395′ N., 70°31.943′ W. TO 41°50.369′ N., 70°32.145′ W. (Ellisville Harbor)
41°45.53′ N., 70°09.387′ W. TO 41°45.523′ N., 70°09.307′ W. (Sesuit Harbor)
41°45.546′ N., 70°07.39′ W. TO 41°45.551′ N., 70°07.32′ W. (Quivett Creek)
41°47.269′ N., 70°01.411′ W. TO 41°47.418′ N., 70°01.306′ W. (Namskaket Creek)
41°47.961′ N., 70°0.561′ W. TO 41°48.07′ N., 70°0.514′ W. (Rock Harbor Creek)
41°48.932′ N., 70°0.286′ W. TO 41°48.483′ N., 70°0.216′ W. (Boat Meadow River)
41°48.777′ N., 70°0.317′ W. TO 41°48.983′ N., 70°0.196′ W. (Herring River)
41°53.922′ N., 70°01.333′ W. TO 41°54.497′ N., 70°01.182′ W. (Blackfish Creek/Loagy Bay)
41°55.503′ N., 70°02.07′ W. TO 41°55.753′ N., 70°02.281′ W. (Duck Creek)
41°55.501′ N., 70°03.51′ W. TO 41°55.322′ N., 70°03.191′ W. (Herring River, inside Wellfleet Harbor)

41°59.481′ N., 70°04.779′ W. TO 41°59.563′ N., 70°04.718′ W. (Pamet River)
42°03.601′ N., 70°14.269′ W. TO 42°03.601′ N., 70°14.416′ W. (Hatches Harbor)
41°48.708′ N., 69°56.319′ W. TO 41°48.554′ N., 69°56.238′ W. (Nauset Harbor)
41°40.685′ N., 69°56.781′ W. TO 41°40.884′ N., 69°56.28′ W. (Chatham Harbor)
41°39.429′ N., 69°58.827′ W. TO 41°39.442′ N., 69°59.037′ W. (Stage Harbor)
41°39.80′ N., 70°03.661′ W. TO 41°39.626′ N., 70°03.791′ W. (Wynchmere Harbor/Saquatucket Harbor)
41°39.764′ N., 70°05.324′ W. TO 41°39.666′ N., 70°05.371′ W. (Doanes Creek)
41°39.322′ N., 70°06.914′ W. TO 41°39.30′ N., 70°06.952′ W. (Herring River)
41°39.085′ N., 70°09.401′ W. TO 41°39.087′ N., 70°09.467′ W. (Swan Pond River)
41°38.584′ N., 70°11.724′ W. TO 41°38.643′ N., 70°11.849′ W (Bass River)
41°38.211′ N., 70°13.25′ W. TO 41°38.121′ N., 70°13.247′ W. (Parkers River)
41°36.575′ N., 70°15.95′ W. TO 41°37.452′ N., 70°17.537′ W. (Hyannis Harbor)
41°37.49′ N., 70°21.899′ W. TO 41°37.408′ N., 70°21.846′ W. (East Bay)
41°36.344′ N., 70°24.049′ W. TO 41°36.398′ N., 70°24.09′ W. (West Bay)
41°36.289′ N., 70°25.624′ W TO 41°36.302′ N., 70°26.254′ W. (Cotuit Bay)
41°35.32′ N., 70°27.047′ W. TO 41°35.202′ N., 70°27.041′ W. (Popponesset Bay)
41°32.862′ N., 70°31.614′ W. TO 41°32.804′ N., 70°31.762′ W. (Waquoit Bay)
41°33.086′ N., 70°32.53′ W. TO 41°33.07′ N., 70°32.884′ W. (Eel Pond)

A line formed by the centerline of the fixed bridges at both entrances (Bournes Pond)

41°32.871′ N., 70°34.214′ W. TO 41°32.855′ N., 70°34.252′ W. (Green Pond)

A line formed by the centerline of the fixed bridge at entrance (Great Pond)

41°32.542′ N., 70°36.449′ W. TO 41°32.535′ N., 70°36.505′ W. (Falmouth Inner Harbor)
41°30.597′ N., 71°05.285′ W. TO 41°30.444′ N., 71°05.281′ W. (Westport Harbor)

**Rhode Island**

41°22.41′ N., 71°30.80′ W. TO 41°22.41′ N., 71°30.85′ W. (Pt. Judith Pond Inlet)
41°21.31′ N., 71°38.30′ W. TO 41°21.30′ N., 71°38.33′ W. (Ninigret Pond Inlet)
41°19.90′ N., 71°43.08′ W. TO 41°19.90′ N., 71°43.10′ W. (Quonochontaug Pond Inlet)
41°19.66′ N., 71°45.75′ W. TO 41°19.66′ N., 71°45.78′ W. (Weekapaug Pond Inlet)

**South Carolina**

32°34.717′ N., 80°08.565′ W. TO 32°34.686′ N., 80°08.642′ W. (Captain Sams Inlet)

(4) Sinking and/or neutrally buoyant groundline exemption. The fisheries regulated under this section are exempt from the requirement to have groundlines composed of sinking and/or neutrally buoyant line on or before January 1, 2008, if gear is set in waters deeper than 280 fathoms (1,680 ft or 512.1 m).

(b) *Gear marking requirements.* (1) Specified gear consists of trap/pot gear and gillnet gear set in specified areas.

(2) *Specified areas.* The following areas are specified for gear marking purposes: Northern Inshore State Trap/Pot Waters, CCB Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Northern Nearshore Trap/Pot Waters Area, GSC Restricted Trap/Pot Area, GSC Restricted Gillnet Area, GSC Sliver Restricted Area, Southern Nearshore Trap/Pot Waters Area, Offshore Trap/Pot Waters Area, Other Northeast Gillnet Waters Area, Mid/South Atlantic Gillnet Waters Area, and Other Southeast Gillnet Waters Area.

(3) *Requirements for Shark Gillnet Gear in the Northern Monitoring and Restricted Area and Southern Monitoring Area.* From November 15 through March 31 of the following year, no person may fish with shark gillnet gear in the Northern Monitoring and Restricted Area and the Southern Monitoring Area unless that gear is marked in accordance with the gear marking codes specified under paragraphs (b)(3)(i)(A) and (b)(3)(i)(B) of this section. All buoy lines that are greater than 4 ft (1.22 m) long must be marked within 2 ft (0.6 m) of the top of the buoy line and midway along the length of the buoy line. Each net panel must be marked along both the float line and the lead line at least once every 100 yards (92.4 m), unless otherwise required by the Assistant Administrator under paragraph (h) of this section.

(i) *Color code.* Shark gillnet gear in the Northern Monitoring and Restricted Area and Southern Monitoring Area must be marked with the appropriate color code to designate gear types and areas as follows:

(A) *Gear type code—Shark gillnet gear.* Shark gillnet gear must be marked with a green marking.

(B) *Area code.* Shark gillnet gear set in the Northern Monitoring and Restricted Area and Southern Monitoring Area must be marked with a blue marking.

(ii) *Markings.* All shark gillnet gear in the Northern Monitoring and Restricted Area and Southern Monitoring Area must be marked with two color codes noted above, one designating the gear type, the other indicating the area where the gear is set. Each color of the two-color code must be permanently marked on or along the line or lines specified under paragraph (f)(2) of this section. Each color mark of the color codes must be clearly visible when the gear is hauled or removed from the water. Each mark must be at least 4 inches (10.2 cm) long. The two color marks must be placed within 6 inches (15.2 cm) of each other. If the color of the rope is the same as or similar to a color code, a white mark may be substituted for that color code. In marking or affixing the color code, the line may be dyed, painted, or marked with thin colored whipping line, thin colored plastic, or heat-shrink tubing, or other material; or a thin line may be woven into or through the line; or the line may be marked as approved in writing by the Assistant Administrator (AA). (A copy of a brochure illustrating the techniques for marking gear is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(4) *Requirements for other specified areas.* Any person who owns or fishes with specified gear in the other specified areas must mark that gear in accordance with paragraphs (b)(4)(i) and (b)(4)(ii) of this section, unless otherwise required by the Assistant Administrator under paragraph (h) of this section. For the purposes of the following gear marking requirements only, trap/pot gear set in the Northern Nearshore State Trap/Pot Waters Area, the CCB Restricted Area during the winter restricted period, the Federal-water portion of the CCB Restricted Area during the off-peak period, and the Stellwagen Bank/Jeffreys Ledge Restricted Area shall comply with the requirements for the Northern Nearshore Trap/Pot Waters Area specified in paragraph (b)(4)(i)(A) of this section. Trap/pot gear set in the GSC Restricted Trap/Pot Area shall comply with the requirements for the Offshore

Trap/Pot Waters Area specified in paragraph (b)(4)(i)(C) of this section. Similarly, anchored gillnet gear set in the CCB Restricted area, Stellwagen Bank/Jeffreys Ledge Restricted Area, GSC Restricted Gillnet Area, and GSC Sliver Restricted Area shall comply with the requirements for gillnet gear in the Other Northeast Gillnet Waters Area specified in paragraph (b)(4)(i)(D) of this section.

(i) *Color code.* Specified gear must be marked with the appropriate colors to designate gear-types and areas as follows:

(A) Trap/pot gear in the Northern Nearshore Trap/Pot Waters Area must be marked with a red marking.

(B) Trap/pot gear in the Southern Nearshore Trap/Pot Waters Area must be marked with an orange marking.

(C) Trap/pot gear in the Offshore Trap/Pot Waters Area must be marked with a black marking.

(D) Gillnet gear in the Other Northeast Gillnet Waters Area must be marked with a green marking.

(E) Gillnet gear in the Mid/South Atlantic Gillnet Waters Area must be marked with a blue marking.

(F) Gillnet gear in the Other Southeast Gillnet Waters Area (except shark gillnet gear) must be marked with a yellow marking.

(ii) *Markings.* All specified gear in specified areas must be marked with one color code (see paragraph (b)(4)(i) of this section) which indicates the gear type and general area where the gear is set. Each color code must be permanently affixed on or along the line or lines. Each color code must be clearly visible when the gear is hauled or removed from the water. Each mark must be at least 4 inches (10.2 cm) long. The mark must be placed every 10 fathoms (60 ft or 18.3 m) along the buoy line or in the center of the buoy line if it is 10 fathoms (60 ft or 18.3 m) or less. (A copy of a brochure illustrating the techniques for marking gear is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(5) *Buoy markings.* Trap/pot and gillnet gear regulated under this section must mark all surface buoys to identify the vessel or fishery with one of the following: the owner's motorboat registration number, the owner's U.S. vessel documentation number, the federal commercial fishing permit number, or whatever positive identification marking is required by the vessel's home-port state. The letters and numbers used to mark the gear must be at least 1 inch (2.5 cm) in height in block letters or arabic numbers in a color that contrasts with the background color of the buoy. (A copy of a brochure illustrating the techniques for marking gear is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(6) *Changes to requirements.* If the Assistant Administrator revises the gear marking requirements in accordance with paragraph (h) of this section, the gear must be marked in compliance with those requirements.

(c) *Restrictions applicable to trap/pot gear in regulated waters*—(1) *Universal trap/pot gear requirements.* In addition to the area-specific measures listed in paragraphs (c)(2) through (c)(8) of this section, all trap/pot gear in regulated waters, including the Northern Inshore State Trap/Pot Waters Area, must comply with the universal gear requirements listed here[1]. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(i) No buoy line floating at the surface. No person may fish with trap/pot gear that has any portion of the buoy line that is directly connected to the gear at the ocean bottom floating at the surface at any time. If more than one buoy is attached to a single buoy line or if a high flyer and a buoy are used together on a single buoy line, floating line may be used between these objects.

(ii) No wet storage of gear. Trap/pot gear must be hauled out of the water at least once every 30 days.

(2) *Cape Cod Bay (CCB) Restricted Area*—(i) *Area.* The CCB restricted area consists of the CCB right whale critical habitat area specified under 50 CFR 226.203(b) unless the Assistant Administrator changes that area in accordance with paragraph (h) of this section.

(ii) *Area-specific gear requirements during the winter restricted period.* No person may fish with or have available for immediate use trap/pot gear in the CCB Restricted Area during the winter restricted period unless that person's gear complies with the gear marking requirements in paragraph (b) of this section, the universal trap/pot gear requirements in (c)(1) of this section, and the area-specific requirements listed below for the winter restricted period. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(A) *Winter restricted period.* The winter restricted period for the CCB Restricted Area is from January 1 through May 15 of each year unless the Assistant Administrator changes this period in accordance with paragraph (h) of this section.

(B) *Weak links.* All buoys, flotation devices and/or weights, such as toggles and/or leaded lines, must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(*1*) The breaking strength of the weak link must not exceed 500 lb (226.7 kg).

(*2*) The weak link must be chosen from the following list of combinations approved by NMFS: swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(*3*) Weak links must break cleanly at the bitter end of the buoy line and the bitter end of the buoy line must be free of any knots when the line breaks. Splices are not considered to be knots for the purposes of this provision.

(C) *Single traps and multiple-trap trawls.* Single traps and three-trap trawls are prohibited. All traps must be set in either a two-trap string or in a trawl of four or more traps. A two-trap string must have no more than one buoy line.

(D) *Buoy lines.* All buoy lines must be comprised of sinking and/or neutrally buoyant line except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line.

(E) *Groundlines.* All groundlines must be comprised entirely of sinking and/or neutrally buoyant line. The attachment of buoys, toggles, or other floatation devices to groundlines comprised entirely of sinking and/or neutrally buoyant line is prohibited.

(iii) *Area-specific gear requirements during the other restricted period.* No person may fish with or have available for immediate use trap/pot gear in the CCB Restricted Area during the other restricted period unless that person's gear complies with the gear marking requirements in paragraph (b) of this section and the universal trap/pot gear requirements in (c)(1) of this section as well as the area-specific requirements listed below for the other restricted period. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

[1] Fishermen are also encouraged to maintain their buoy lines to be as knot-free as possible. Splices are not considered to be an entanglement threat and are thus preferable to knots.

(A) *Other restricted period.* The other restricted period for the CCB Restricted Area is from May 16 through December 31 of each year unless the Assistant Administrator revises this period in accordance with paragraph (h) of this section.

(B) *Gear requirements*—(*1*) *State-water portion.* No person may fish with or have available for immediate use trap/pot gear in the state-water portion of the CCB Restricted Area during the other restricted period unless that person's gear complies with the requirements for the Northern Inshore State Trap/Pot Waters Area listed in (c)(6) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(*2*) *Federal-water portion.* No person may fish with or have available for immediate use trap/pot gear in the Federal-water portion of the CCB Restricted Area during the other restricted period unless that person's gear complies with the requirements for the Northern Nearshore Trap/Pot Waters Area in (c)(7) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(3) *Great South Channel (GSC) Restricted Trap/Pot Area*—

(i) *Area.* The GSC Restricted Area consists of the GSC right whale critical habitat area specified under 50 CFR 226.203(a) unless the Assistant Administrator changes that area in accordance with paragraph (h) of this section.

(ii) *Closure during the spring restricted period*—The spring restricted period for the GSC Restricted Trap/Pot Area is from April 1 through June 30 of each year unless the Assistant Administrator revises this period in accordance with paragraph (h) of this section. During the spring restricted period, no person may fish with, set, or have available for immediate use trap/pot gear in this Area unless the Assistant Administrator specifies gear modifications or alternative fishing practices in accordance with paragraph (h) of this section and the gear or practices comply with those specifications.

(iii) *Area-specific gear requirements for the other restricted period.* The other restricted period for the GSC Restricted Trap/Pot Area is July 1 through March 31, unless the Assistant Administrator revises this period in accordance with paragraph (h) of this section. During the other restricted period, no person may fish with or have available for immediate use trap/pot gear in the GSC Restricted Trap/Pot Area unless that person's gear complies with the gear marking requirements in paragraph (b) of this section, the universal trap/pot gear requirements in (c)(1) of this section, and the area-specific requirements listed in paragraph (c)(5)(ii)(A) of this section for the Offshore Trap/Pot Waters Area or paragraph (c)(7)(ii)(A) of this section for the Northern Nearshore Lobster Waters Area, depending on the area of overlap. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(4) *Stellwagen Bank/Jeffreys Ledge Restricted Area—(i) Area.* The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except those designated as right whale critical habitat under 50 CFR 226.203(b), that lie south of 43°15′ N. and west of 70°00′ W. The Assistant Administrator may change that area in accordance with paragraph (h) of this section.

(ii) *Area-specific gear requirements.* No person may fish with or have available for immediate use trap/pot gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that person's gear complies with the gear marking requirements in paragraph (b) of this section, the universal trap/pot gear requirements in (c)(1) of this section, and the requirements listed for the Northern Nearshore Trap/Pot Waters Area in (c)(7) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(5) *Offshore Trap/Pot*[2] *Waters Area*—(i) *Area.* The Offshore Trap/Pot Waters Area includes all Federal waters of the EEZ Offshore Management Area 3 (including the area known as the Area 2/3 Overlap in the American Lobster Fishery regulations at 50 CFR 697.18 and the GSC Restricted Trap/Pot Area from July 1 through March 31) as defined in the American Lobster Fishery regulations at 50 CFR 697.18 and extending south along the 100 fathom (600 ft or 182.9 m) line from 35°30′ N. to 27°51′ N. and then out to the eastern boundary of the EEZ. From November 15 to April 15, the Offshore Trap/Pot Waters Area includes the area from the South Carolina/Georgia border south to 29°00′ N. and then out to the eastern boundary of the EEZ.

(ii) *Year-round area-specific gear requirements.* No person may fish with or have available for immediate use trap/pot gear in the Offshore Trap/Pot Waters Area unless that person's gear complies with the gear marking requirements in paragraph (b) of this section, the universal trap/pot gear requirements in (c)(1) of this section, and the gear requirements listed here. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(A) *Weak links.* All buoys, flotation devices, and/or weights, such as toggles and/or leaded lines must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device, and/or weight as operationally feasible and that meets the following specifications:

(*1*) The weak link must be chosen from the following list of combinations approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(*2*) The breaking strength of the weak links may not exceed 1,500 lb (680.4 kg).

(*3*) Weak links must break cleanly at the bitter end of the buoy line and the bitter end of the buoy line must be free of any knots when the line breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Groundline.* On or before January 1, 2008, all groundlines must be comprised entirely of sinking and/or neutrally buoyant line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other flotation devices to groundlines comprised entirely of sinking and/or neutrally buoyant line is prohibited.

(iii) *Seasonal area-specific gear requirements.* From November 15 to April 15, no person may fish with or have available for immediate use trap/pot gear from the South Carolina/Georgia border to 29°00′ N. unless that person's gear complies with the gear marking requirements in paragraph (b) of this section, the universal trap/pot gear requirements in paragraph (c)(1) of this section, and the area-specific gear requirements in paragraphs (c)(5)(ii)(A) and (B) of this section. The Assistant Administrator may revise this period and these requirements in accordance with paragraph (h) of this section.

(iv) *Seasonal area-specific gear requirements.* From December 1 to March 31, no person may fish with or have available for immediate use trap/pot gear from 29°00′ N. to 27°51′ N.

[2] Fishermen using red crab trap/pot gear should refer to § 229.32(c)(9) for the restrictions applicable to red crab trap/pot fishery.

unless that person's gear complies with the gear marking requirements in paragraph (b) of this section, the universal trap/pot gear requirements in (c)(1) of this section, and the area-specific gear requirements in paragraphs (c)(5)(ii)(A) and (B) of this section. The Assistant Administrator may revise this time period and these requirements in accordance with paragraph (h) of this section.

(6) *Northern Inshore State Trap/Pot Waters Area*—(i) Area. The Northern Inshore State Trap/Pot Waters Area includes the state waters of Rhode Island, Massachusetts, New Hampshire, and Maine but does not include waters exempted under (a)(3) of this section.

(ii) *Area-specific gear requirements.* No person may fish with or have available for immediate use trap/pot gear in the Northern Inshore State Trap/Pot Waters Area unless that person's gear complies with the gear marking requirements in paragraph (b) of this section, the universal trap/pot gear requirements in (c)(1) of this section, and the gear requirements listed here. The Assistant Administrator may revise this requirement in accordance with paragraph (h) of this section.

(A) *Weak links.* All buoys, flotation devices, and/or weights, such as toggles and/or leaded lines must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device, and/or weight as operationally feasible and that meets the following specifications:

(*1*) The weak link must be chosen from the following list of combinations approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(*2*) The breaking strength of the weak links may not exceed 600 lb (272.4 kg).

(*3*) Weak links must break cleanly at the bitter end of the buoy line and the bitter end of the buoy line must be free of any knots when the line breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Groundlines.* On or before January 1, 2008, all groundlines must be comprised entirely of sinking and/or neutrally buoyant line. The attachment of buoys, toggles, or other floatation devices to groundlines comprised entirely of sinking and/or neutrally buoyant line is prohibited.

(7) *Northern Nearshore Trap/Pot Waters Area*—(i) *Area.* The Northern Nearshore Trap/Pot Waters Area includes all Federal waters of EEZ Nearshore Management Area 1, Area 2, and the Outer Cape Lobster Management Area as defined in the American Lobster Fishery regulations at 50 CFR 697.18, with the exception of the CCB Restricted Area and the Stellwagen Bank/Jeffreys Ledge Restricted Area. The Assistant Administrator may change this area in accordance with paragraph (h) of this section.

(ii) *Area-specific gear requirements.* No person may fish with or have available for immediate use trap/pot gear in the Northern Nearshore Trap/Pot Waters Area unless that person's gear complies with the gear marking requirements in paragraph (b) of this section, the universal trap/pot gear requirements in (c)(1) of this section, and the gear requirements listed below for this area. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(A) *Weak Links.* All buoys, flotation devices, and/or weights, such as toggles and/or leaded lines, must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(*1*) The weak link must be chosen from the following list of combinations approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(*2*) The breaking strength of the weak links must not exceed 600 lb (272.4 kg).

(*3*) Weak links must break cleanly at the bitter end of the buoy line and the bitter end of the buoy line must be free of any knots when the line breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Single traps and multiple-trap trawls.* Single traps are prohibited. All traps must be set in trawls of two or more traps. All trawls up to and including four traps must have no more than one buoy line.

(C) *Groundlines.* On or before January 1, 2008, all groundlines must be comprised entirely of sinking and/or neutrally buoyant line. The attachment of buoys, toggles, or other floatation devices to groundlines comprised entirely of sinking and/or neutrally buoyant line is prohibited.

(8) *Southern Nearshore Trap/Pot Waters Area*—(i) *Area.* The Southern Nearshore Trap/Pot Waters Area includes all state and Federal waters which fall within EEZ Nearshore Management Area 4, EEZ Nearshore Management Area 5, and EEZ Nearshore Management Area 6 (except for those waters exempted under paragraph (a)(3) of this section) as described in the American Lobster Fishery regulations in 50 CFR 697.18. The Assistant Administrator may change this area in accordance with paragraph (h) of this section.

(ii) *Area-specific gear requirements for the restricted period*—(A) *Restricted period.* The restricted period for Southern Nearshore Trap/Pot Waters is year round unless the Assistant Administrator revises this period in accordance with paragraph (h) of this section.

(B) *Gear requirements.* No person may fish with or have available for immediate use trap/pot gear in the Southern Nearshore Trap/Pot Waters Area during the restricted period unless that person's gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements in paragraph (c)(1) of this section, and the following gear requirements for this area, which the Assistant Administrator may revise in accordance with paragraph (h) of this section:

(*1*) *Weak Links.* All buoys, flotation devices, and/or weights, such as toggles and/or leaded lines, must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(*i*) The weak link must be chosen from the following list of combinations approved by NMFS: swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(*ii*) The breaking strength of the weak links may not exceed 600 lb (272.4 kg).

(*iii*) Weak links must break cleanly at the bitter end of the buoy line and the bitter end of the buoy line must be free of any knots when the line breaks. Splices are not considered to be knots for the purpose of this provision.

(*2*) *Groundlines.* On or before January 1, 2008, all groundlines must be comprised entirely of sinking and/or neutrally buoyant line. The attachment of buoys, toggles, or other floatation devices to groundlines comprised entirely of sinking and/or neutrally buoyant line is prohibited.

(9) *Restrictions applicable to the red crab trap/pot fishery*—(i) *Area.* The red crab trap/pot fishery is regulated in the waters identified in paragraphs (c)(5)(i) and (c)(8)(i) of this section.

(ii) *Area-specific gear requirements.* No person may fish with or have available for immediate use red crab trap/pot gear in the area identified in paragraph (c)(9)(i) of this section unless that person's gear complies with the gear marking requirements in (c)(1) of this section, the universal trap/pot gear requirements in (c)(1) of this section, and the gear requirements listed here. The Assistant Administrator revises these requirements in accordance with paragraph (h) of this section.

(A) *Weak links.* All buoys, flotation devices, and/or weights, such as toggles and/or leaded lines must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device, and/or weight as operationally feasible and that meets the following specifications:

(*1*) The weak link must be chosen from the following list of combinations approved by NMFS: swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(*2*) The breaking strength of the weak links may not exceed 2,000 lb (907.2 kg).

(*3*) Weak links must break cleanly at the bitter end of the buoy line and the bitter end of the buoy line must be free of any knots when the line breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Groundlines.* On or before January 1, 2008, all groundlines must be comprised entirely of sinking and/or neutrally buoyant line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other floatation devices to groundlines comprised entirely of sinking and/or neutrally buoyant line is prohibited.

(d) *Restrictions applicable to anchored gillnet gear*—(1) *Universal anchored gillnet gear requirements.* In addition to the area-specific measures listed in paragraphs (d)(2) through (d)(7) of this section, all anchored gillnet gear in regulated waters must comply with the universal gear requirements listed here [3]. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(i) No buoy line floating at the surface. No person may fish with anchored gillnet gear that has any portion of the buoy line that is directly connected to the gear on the ocean bottom floating at the surface at any time. If more than one buoy is attached to a single buoy line or if a high flyer and a buoy are used together on a single buoy line, sinking and/or neutrally buoyant line must be used between these objects.

(ii) No wet storage of gear. Anchored gillnet gear must be hauled out of the water at least once every 30 days.

(2) *Cape Cod Bay Restricted Area*—(i) *Area.* The CCB Restricted Area consists of the CCB right whale critical habitat area specified under 50 CFR 226.203(b), unless the Assistant Administrator changes that area in accordance with paragraph (h) of this section.

(ii) *Closure during the winter restricted period*—(A) *Winter restricted period.* The winter restricted period for this area is from January 1 through May 15 of each year, unless the Assistant Administrator changes this period in accordance with paragraph (h) of this section.

(B) *Closure.* During the winter restricted period, no person may fish with or have available for immediate use anchored gillnet gear in the CCB Restricted Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (h) of this section and the gear or practices comply with those specifications. The Assistant Administrator may waive this closure for the remaining portion of the winter restricted period in any year through a notification in the **Federal Register** if NMFS determines that right whales have left the restricted area and are unlikely to return for the remainder of the season.

(iii) *Area-specific gear requirements for the other restricted period*—(A) *Other restricted period.* The other restricted period for the CCB Restricted Area is from May 16 through December 31 of each year unless the Assistant Administrator revises this period in accordance with paragraph (h) of this section.

(B) No person may fish with or have available for immediate use anchored gillnet gear in the CCB Restricted Area during the other restricted period unless that person's gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(3) *Great South Channel Restricted Gillnet Area*—(i) *Area.* The GSC Restricted Gillnet Area consists of the area bounded by lines connecting the following four points: 41°02.2′ N./69°02′ W., 41°43.5′ N./69°36.3′ W., 42°10′ N./68°31′ W., and 41°38′ N./68°13′ W. This area includes most of the GSC right whale critical habitat area specified under 50 CFR 226.203(a), with the exception of the sliver along the western boundary described in paragraph (d)(4)(i) of this section. The Assistant Administrator may change this area in accordance with paragraph (h) of this section.

(ii) *Closure during the spring restricted period*—(A) *Spring restricted period.* The spring restricted period for the GSC Restricted Gillnet Area is from April 1 through June 30 of each year unless the Assistant Administrator revises this period in accordance with paragraph (h) of this section.

(B) *Closure.* During the spring restricted period, no person may set, fish with or have available for immediate use anchored gillnet gear in the GSC Restricted Gillnet Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (h) of this section and the gear or practices comply with those specifications.

(iii) *Area-specific gear requirements for the other restricted period*—(A) *Other restricted period.* The other restricted period for the GSC Restricted Gillnet Area is from July 1 though March 31 of each year unless the Assistant Administrator revises this period in accordance with paragraph (h) of this section.

(B) During the other restricted period, no person may fish with or have available for immediate use anchored gillnet gear in the GSC Restricted Gillnet Area unless that person's gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in (d)(1) of

[3] Fishermen are also encouraged to maintain their buoy lines to be as knot-free as possible. Splices are not considered to be an entanglement threat and are thus preferable to knots.

this section, and the area-specific requirements listed in (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(4) *Great South Channel Sliver Restricted Area*—(i) *Area.* The GSC Sliver Restricted Area consists of the area bounded by lines connecting the following points: 41°02.2′ N./69°02′ W., 41°43.5′ N./69°36.3′ W., 41°40′ N./69°45′ W., and 41°00′ N./69°05′ W. The Assistant Administrator may change this area in accordance with paragraph (h) of this section.

(ii) *Area-specific gear requirements.* No person may fish with or have available for immediate use anchored gillnet gear in the GSC Sliver Restricted Area unless that person's gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area. The Assistnat Administrator may revise these requirements in accordance with paragraph (h) of this section.

(5) *Stellwagen Bank/Jeffreys Ledge Restricted Area*—(i) *Area.* The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except those designated as right whale critical habitat under 50 CFR 226.203(b), that lie south of 43°15′ N. and west of 70°00′ W. The Assistant Administrator may change this area in accordance with paragraph (h) of this section.

(ii) *Area-specific gear requirements.* No person may fish with or have available for immediate use anchored gillnet gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that person's gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in (d)(1) of this section, and the area-specific requirements listed in (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(6) *Other Northeast Gillnet Waters Area*—(i) *Area.* The Other Northeast Gillnet Waters Area consists of all U.S. waters west of the U.S./Canada border and north of a line extending due east from the Virginia/North Carolina border with the exception of the CCB Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, GSC Restricted Gillnet Area, GSC Sliver Restricted Area, Mid/South Atlantic Gillnet Waters Area, and exempted waters listed in (a)(3) of this section. The Assistant Administrator may change this area in accordance with paragraph (h) of this section.

(ii) *Area-specific gear requirements.* No person may fish with or have available for immediate use anchored gillnet gear in the Other Northeast Gillnet Waters Area unless that person's gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed below. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(A) *Weak links.* All buoys, flotation devices, and/or weights, such as toggles and/or leaded lines, must be attached to the buoy line with a weak link placed as close to the buoy, flotation device, and/or weight as operationally feasible and that meets the following specifications:

(*1*) The weak link must be chosen from the following list of combinations approved by NMFS: swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(*2*) The breaking strength of the weak links must not exceed 1,100 lb (498.8 kg).

(*3*) Weak links must break cleanly at the bitter end of the buoy line and the bitter end of the buoy line must be free of any knots when the line breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Net panel weak links.* The breaking strength of each weak link must not exceed 1,100 lb (498.9 kg). The weak link requirements apply to all variations in panel size. Weak links must break cleanly at the bitter end of the buoy line and the bitter end of the buoy line must be free of any knots when the line breaks. Splices are not considered to be knots for the purposes of this provision. (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(*1*) For all variations in panel size, the following weak link requirements apply:

(*i*) Weak links must be placed in the center of each of the up and down lines at both ends of the net panel; and

(*ii*) One floatline weak link must be placed as close as possible to each end of the net panel where the floatline meets the up and down line.

(*2*) For net panels of 50 fathoms (300 ft or 91.4 m) or less in length, one weak link must be placed in the center of the floatline.

(*3*) For net panels of 50 fathoms (300 ft or 91.4 m) or greater in length, weak links must be placed at least every 25 fathoms (150 ft or 45.7 m) along the floatline.

(C) *Anchoring system.* All anchored gillnets, regardless of the number of net panels, must be secured at each end of the net string with a burying anchor (an anchor that holds through the use of a fluke, spade, plow, or pick) having the holdingcapacity equal to or greater than a 22 lb (10.0 kg) Danforth-style anchor. Dead weights do not meet this requirement.

(D) *Groundlines.* On or before January 1, 2008, all groundlines must be comprised entirely of sinking and/or neutrally buoyant line. The attachment of buoys, toggles, or other floatation devices to groundlines comprised entirely of sinking and/or neutrally buoyant line is prohibited.

(7) *Mid/South Atlantic Gillnet Waters Area*—(i) *Area.* The Mid/South Atlantic Gillnet Waters Area consists of all U.S. waters bounded by the line defined by the following points: The southern shore of Long Island, NY, at 72°30′ W., then due south to 33°51′ N., and west to the North Carolina/South Carolina border, as defined in § 229.2. The Assistant Administrator may change this area in accordance with paragraph (h) of this section.

(ii) *Area-specific gear requirements.* From October 1 through April 30, no person may fish with or have available for immediate use anchored gillnet gear in the Mid/South Atlantic Gillnet Waters Area unless that person's gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the following area-specific requirements, which the Assistant Administrator may revise in accordance with paragraph (h) of this section:

(A) *Weak links.* All buoys, flotation devices, and/or weights, such as toggles and/or leaded lines, must be attached to the buoy line with a weak link placed as close to the buoy, flotation device, and/or weight as operationally feasible and that meets the following specifications:

(*1*) The weak link must be chosen from the following list of combinations approved by NMFS: swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(*2*) The breaking strength of the weak links must not exceed 1,100 lb (498.8 kg).

(*3*) Weak links must break cleanly at the bitter end of the buoy line and the bitter end of the buoy line must be free of any knots when the line breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Net panel weak links.* All net panels must contain weak links that meet the following specifications (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930):

(*1*) Weak links must be placed in the center of the floatline of each net panel up to and including 50 fathoms (300 ft or 91.4 m), or at least every 25 fathoms (150 ft or 45.7 m) along the floatline for longer panels.

(*2*) The breaking strength of each weak link must not exceed 1,100 lb (498.8 kg).

(C) *Tending/anchoring/weak links.* All gillnets must return to port with the vessel unless the gear meets the following specifications:

(*1*) *Anchoring system.* All anchored gillnets, regardless of the number of net panels, must be secured at each end of the net string with a burying anchor (an anchor that holds through the use of a fluke, spade, plow, or pick) having the holding capacity equal to or greater than a 22 lb (10.0 kg) Danforth-style anchor. Dead weights do not meet this requirement.

(*2*) *Additional net panel weak links.* The breaking strength of each weak link must not exceed 1,100 lb (498.9 kg). The weak link requirements apply to all variations in panel size. Weak links must break cleanly at the bitter end of the buoy line and the bitter end of the buoy line must be free of any knots when the line breaks. Splices are not considered to be knots for the purposes of this provision. (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(*i*) For all variations in panel size, the following weak link requirements apply: Weak links must be placed in the center of each of the up and down lines at both ends of the net panel, and one floatline weak link must be placed as close as possible to each end of the net panel where the floatline meets the up and down line.

(*ii*) For net panels of 50 fathoms (300 ft or 91.4 m) or less in length, one weak link must be placed in the center of the floatline.

(*iii*) For net panels of 50 fathoms (300 ft or 91.4 m) or greater in length, weak links must be placed at least every 25 fathoms (150 ft or 45.7 m) along the floatline.

(D) *Groundlines.* On or before January 1, 2008, all groundlines must be comprised entirely of sinking and/or neutrally buoyant line. The attachment of buoys, toggles, or other floatation devices to groundlines comprised entirely of sinking and/or neutrally buoyant line is prohibited.

(8) [Reserved]

(e) *Restrictions applicable to driftnet gear*—(1) *Cape Cod Bay Restricted Area*—(i) *Area.* The CCB Restricted Area consists of the CCB right whale critical habitat area specified under 50 CFR 226.203(b), unless the Assistant Administrator changes this area in accordance with paragraph (h) of this section.

(ii) *Closure during the winter restricted period*—(A) *Winter restricted period.* The winter restricted period for this area is from January 1 through May 15 of each year, unless the Assistant Administrator changes this period in accordance with paragraph (h) of this section.

(B) *Closure.* During the winter restricted period, no person may fish with or have available for immediate use driftnet gear in the CCB Restricted Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (h) of this section and the gear or practices comply with those specifications. The Assistant Administrator may waive this closure for the remaining portion of the winter restricted period in any year through a notification in the **Federal Register** if NMFS determines that right whales have left the restricted area and are unlikely to return for the remainder of the season.

(iii) *Area-specific gear requirements for the other restricted period*—(A) *Other restricted period.* The other restricted period for the CCB Restricted Area is from May 16 through December 31 of each year unless the Assistant Administrator changes this period in accordance with paragraph (h) of this section.

(B) No person may fish with or have available for immediate use driftnet gear in the CCB Restricted Area during the other restricted period unless that gear contains weak links with a breaking strength no greater than 1,100 lb (498.9 kg) in the middle of each 50 fathom (300 ft or 91.4 m) net panel, or every 25 fathoms (150 ft or 45.7 m) for longer net panels. (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.) In addition, no person may fish with or have available for immediate use driftnet gear at night in the CCB Restricted Area during the other restricted period unless that gear is tended. During that time, all driftnet gear set by that vessel in the CCB Restricted Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(2) *Great South Channel Restricted Gillnet Area*—(i) *Area.* The GSC Restricted Gillnet Area consists of the area bounded by lines connecting the following four points: 41°02.2′ N./69°02′ W., 41°43.5′ N./69°36.3′ W., 42°10′ N./68°31′ W., and 41°38′ N/68°13′ W. This area includes most of the GSC right whale critical habitat area specified under 50 CFR 226.203(a), with the exception of the sliver along the western boundary described in paragraph (e)(3)(i) of this section. The Assistant Administrator may change this area in accordance with paragraph (h) of this section.

(ii) *Closure during the spring restricted period*—(A) *Spring restricted period.* The spring restricted period for the GSC Restricted Gillnet Area is from April 1 through June 30 of each year unless the Assistant Administrator changes this period in accordance with paragraph (h) of this section.

(B) *Closure.* During the spring restricted period, no person may set, fish with or have available for immediate use driftnet gear in the GSC Restricted Gillnet Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (h) of this section and the gear or practices comply with those specifications.

(iii) *Area-specific gear requirements for the other restricted period*—(A)

*Other restricted period.* The other restricted period for the GSC Restricted Gillnet Area is from July 1 though March 31 of each year unless the Assistant Administrator changes this period in accordance with paragraph (h) of this section.

(B) No person may fish with or have available for immediate use driftnet gear in the GSC Restricted Gillnet Area during the other restricted period unless that gear contains weak links with a breaking strength no greater than 1,100 lb (498.9 kg) in the middle of each 50 fathom (300 ft or 91.4 m) net panel, or every 25 fathoms (150 ft or 45.7 m) for longer net panels. (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.) In addition, during the other restricted period, no person may fish with or have available for immediate use driftnet gear at night in the GSC Restricted Gillnet Area unless that gear is tended. During that time, all driftnet gear set by that vessel in the GSC Restricted Gillnet Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(3) *Great South Channel Sliver Restricted Area*—(i) *Area.* The GSC Sliver Restricted Area consists of the area bounded by lines connecting the following points: 41°02.2′ N./69°02′ W., 41°43.5′ N./69°36.3′ W., 41°40′ N./69°45′ W., and 41°00′ N./69°05′ W. The Assistant Administrator may change this area in accordance with paragraph (h) of this section.

(ii) *Area-specific gear requirements.* No person may fish with or have available for immediate use driftnet gear in the GSC Sliver Restricted Area during the other restricted period unless that gear contains weak links with a breaking strength no greater than 1,100 lb (498.9 kg) in the middle of each 50 fathom (300 ft or 91.4 m) net panel, or every 25 fathoms (150 ft or 45.7 m) for longer net panels. (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.) In addition, no person may fish with or have available for immediate use driftnet gear at night in the GSC Sliver Restricted Area unless that gear is tended. During that time, all driftnet gear set by that vessel in the GSC Sliver Restricted Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(4) *Other Northeast Gillnet Waters Area*—(i) *Area.* The Other Northeast Gillnet Waters Area consists of all U.S. waters west of the U.S./Canada border and north of a line extending due east from the Virginia/North Carolina border with the exception of the CCB Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, GSC Restricted Gillnet Area, GSC Sliver Restricted Area, Mid/South Atlantic Gillnet Waters Area, and exempted waters listed in paragraph (a)(3) of this section. The Assistant Administrator may change this area in accordance with paragraph (h) of this section.

(ii) *Area-specific gear requirements.* No person may fish with or have available for immediate use driftnet gear in the Other Northeast Gillnet Waters Area during the other restricted period unless that gear contains weak links with a breaking strength no greater than 1,100 lb (498.9 kg) in the middle of each 50 fathom (300 ft or 91.4 m) net panel, or every 25 fathoms (150 ft or 45.7 m) for longer net panels. (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.) In addition, no person may fish with or have available for immediate use driftnet gear at night in the Other Northeast Gillnet Waters Area unless that gear is tended. During that time, all driftnet gear set by that vessel in the Other Northeast Gillnet Waters Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(5) *Mid/South Atlantic Gillnet Waters Area*—(i) *Area.* The Mid/South Atlantic Gillnet Waters Area consists of all U.S. waters bounded by the line defined by the following points: The southern shore of Long Island, NY, at 72°30′ W., then due south to 33°51′ N., and west to the North Carolina/South Carolina border, as defined in § 229.2. The Assistant Administrator may change this area in accordance with paragraph (h) of this section.

(ii) *Area-specific gear requirements.* From December 1 through March 31, no person may fish with or have available for immediate use driftnet gear in the Mid/South Atlantic Gillnet Waters Area unless that gear contains weak links with a breaking strength no greater than 1,100 lb (498.9 kg) in the middle of each 50 fathom (300 ft or 91.4 m) net panel, or every 25 fathoms (150 ft or 45.7 m) for longer net panels. (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.) In addition, from December 1 through March 31, no person may fish with or have available for immediate use driftnet gear at night in the Mid/South Atlantic Gillnet Waters Area unless that gear is tended. During that time, all driftnet gear set by that vessel in the Mid/South Atlantic Gillnet Waters Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(f) *Restrictions applicable to southeast Atlantic gillnet gear*—(1) *Other Southeast Gillnet Waters Area*—(i) *Other southeast gillnet waters area.* From November 15 through April 15, the Other Southeast Gillnet Waters consists of the area from the South Carolina/Georgia border south to 29°00′ N. (near Cape Canaveral, FL), extending from the shore out to the eastern boundary of the EEZ, unless the Assistant Administrator changes that area in accordance with paragraph (h) of this section. From December 1 through March 31, the Other Southeast Gillnet Waters consists of the area from the South Carolina/Georgia border south to 27°51′ N., extending from the shore out to the eastern boundary of the EEZ, unless the Assistant Administrator changes that area in accordance with paragraph (h) of this section.

(ii) *Area-specific gear requirements.* For all gillnets, except for shark gillnets as defined in 229.2 of this section, no person may fish with or have available for immediate use anchored gillnet gear in the Other Southeast Gillnet Waters Area unless that person's gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements specified in paragraph (d)(7)(ii) of this section, which the Assistant Administrator may revise in accordance with paragraph (h) of this section.

(iii) *Restrictions for straight sets.* Except as provided for shark gillnet gear under paragraph (g) of this section, no person may fish with or have available for immediate use a straight set of gillnet gear at night in the Other Southeast Gillnet Waters Area during the restricted period.

(2) [Reserved]

(g) *Restrictions applicable to southeast Atlantic shark gillnet gear*—(1) *Management areas and restricted periods*—(i) *Northern Monitoring and Restricted Area.* From November 15 through April 15, the Northern Monitoring and Restricted Area consists of the area from the South Carolina/Georgia border south to 29°00′ N. (near Cape Canaveral, FL), extending from the shore out to the eastern boundary of the EEZ, unless the Assistant Administrator changes this area in accordance with paragraph (h) of this section. From December 1 through March 31, the Northern Monitoring and Restricted Area consists of the area from the South Carolina/Georgia border south to 27°51′ N., extending from the shore out to the eastern boundary of the EEZ, unless the Assistant Administrator changes this area in accordance with paragraph (h) of this section.

(ii) *Southern Monitoring Area.* From December 1 through March 31, the Southern Monitoring Area consists of the area from 27°51′ N. south to 26°46.5′ N. (near West Palm Beach, FL) and extending from the shore out to the eastern boundary of the EEZ, unless the Assistant Administrator changes that area in accordance with paragraph (h) of this section.

(iii) *Area-specific gear requirements.* For all shark gillnets, no person may fish with or have available for immediate use shark gillnet gear in the Northern Monitoring and Restricted Area or Southern Monitoring Area unless that person's gear complies with the gear marking requirements specified in paragraph (b)(3) of this section, and the vessel monitoring system requirements specified in paragraphs (g)(3) and (g)(4) of this section.

(2) [Reserved]

(3) *Vessel monitoring systems.* (i) *Applicability.* No person may fish with or have available for immediate use shark gillnet gear in the Northern Monitoring and Restricted Area or the Southern Monitoring Area during the restricted period unless the operator of the vessel is in compliance with the vessel monitoring system (VMS) requirements found in 50 CFR 635.69. NMFS retains the authority to request that an observer be taken on board a vessel during a fishing trip at any time during the restricted period. If NMFS requests that an observer be taken on board a vessel, no person may fish with or have available for immediate use shark gillnet gear aboard that vessel in the Northern Monitoring and Restricted Area or Southern Monitoring Area unless an observer is on board that vessel during the trip.

(ii) [Reserved]

(4) *At-sea observer coverage.* (i) *Applicability.* NMFS may select any shark gillnet vessel regulated under § 229.32 to carry an observer. When selected, vessels are required to take observers on a mandatory basis in compliance with the requirements for at-sea observer coverage found in 50 CFR 229.7.

(ii) [Reserved]

(5) *Closure for shark gillnet gear.* Except as provided for strikenets under paragraph (g)(5)(i) of this section, no person may fish with or have available for immediate use shark gillnet gear in the Northern Monitoring and Restricted Area or the Southern Monitoring Area during the restricted period.

(i) *Special provision for strikenets.* Fishing for sharks with strikenet gear is exempt from the restrictions under paragraphs (g)(5) of this section if:

(A) No nets are set at night or when visibility is less than 500 yards (460 m);

(B) Each set is made under the observation of a spotter plane;

(C) No net is set within 3 nautical miles (5.6 km) of a right, humpback, or fin whale; and

(D) If a right, humpback, or fin whale moves within 3 nautical miles (5.6 km) of the set gear, the gear is removed immediately from the water.

(ii) [Reserved]

(h) *Other provisions.* In addition to any other emergency authority under the Marine Mammal Protection Act, the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, or other appropriate authority, the Assistant Administrator may take action under this section in the following situations:

(1) *Entanglements in critical habitat.* If a serious injury or mortality of a right whale occurs in the Cape Cod Bay Restricted Area from January 1 through May 15, in the Great South Channel Restricted Area from April 1 through June 30, or in the Northern Monitoring and Restricted Area and the Southern Monitoring Area from November 15 through March 31 as a result of an entanglement by trap/pot or gillnet gear allowed to be used in those areas and times, the Assistant Administrator shall close that area to that gear type for the rest of that time period and for that same time period in each subsequent year, unless the Assistant Administrator changes the time periods in accordance with paragraph (h)(2) of this section or unless other measures are implemented under paragraph (h)(2).

(2) *Other special measures.* The Assistant Administrator may revise the requirements of this section through a publication in the **Federal Register** if:

(i) NMFS verifies that certain gear characteristics are both operationally effective and reduce serious injuries and mortalities of endangered whales;

(ii) New gear technology is developed and determined to be appropriate;

(iii) Revised breaking strengths are determined to be appropriate;

(iv) New marking systems are developed and determined to be appropriate;

(v) NMFS determines that right whales are remaining longer than expected in a closed area or have left earlier than expected;

(vi) NMFS determines that the boundaries of a closed area are not appropriate;

(vii) Gear testing operations are considered appropriate; or

(viii) Similar situations occur.

(3) Until January 1, 2008, for the purpose of reducing the risk of fishery interactions with right whales, NMFS may establish a temporary Dynamic Area Management (DAM) zone in the following manner:

(i) *Trigger.* Upon receipt of a single reliable report from a qualified individual of three or more right whales within an area NMFS will plot each individual sighting (event) and draw a circle with a 2.8-nm (5.2-km) radius around it, which will be adjusted for the number of right whales sighted such that a density of at least 0.04 right whales per nm2 (1.85 $km^2$) is maintained within the circle. If any circle or group of contiguous circles includes 3 or more right whales, NMFS would consider this core area and its surrounding waters a candidate DAM zone.

(ii) *DAM zone.* Areas for consideration for DAM zones are limited to areas north of 40°N. Having identified any circle or group of contiguous circles including 3 or more right whales as candidates for protection, as identified in paragraph (h)(3)(i) of this section, NMFS will determine the extent of the DAM zone as follows:

(A) A larger circular zone will be drawn to extend 15 nm (27.8 km) from the perimeter of a circle around each core area.

(B) The DAM zone will then be defined by a polygon drawn outside but tangential to the circular buffer zone(s). The latitudinal and longitudinal coordinates of the corners of the polygon will then be identified.

(iii) *Requirements and prohibitions within DAM zones.* Notice of specific area restrictions will be published in the **Federal Register** and will become effective 2 days after publication. Gear not in compliance with the imposed

restrictions may not be set in the DAM zone after the effective date. NMFS may:

(A) require owners of gillnet and trap/pot gear set within the DAM zone to remove all such gear within 2 days after notice is published in the **Federal Register**,

(B) Allow fishing within a DAM zone with anchored gillnet and trap/pot gear, provided such gear satisfies the requirements specified in paragraphs (h)(4)(i)(B)(*1*) and (h)(4)(i)(B)(*2*) of this section, except that a second buoy line and a section of floating line in the bottom portion of each line not to exceed one-third the overall length of the buoy line are allowed within a DAM zone. These requirements are in addition to requirements found in § 229.32(b) through (d) but supersede them when the requirements in paragraphs (h)(4)(i)(B)(*1*) and (h)(4)(i)(B)(*2*) of this section, with the exception that a second buoy line and a section of floating line in the bottom portion of each line not to exceed one-third the overall length of the buoy line are allowed within a DAM zone, are more restrictive than those in § 229.32(b) through (d). Requirements for anchored gillnet gear in Other Northeast Gillnet Waters are as specified in paragraphs (h)(4)(i)(B)(*1*) of this section, except that a second buoy line and a section of floating line in the bottom portion of each line not to exceed one-third the overall length of the buoy line are allowed within a DAM zone. Requirements for trap/pot gear in Offshore Trap/Pot Waters, Northern Nearshore Trap/Pot Waters and Northern Inshore State Trap/Pot Waters are as specified in paragraph (g)(4)(i)(B)(*2*) of this section, except that a second buoy line and a section of floating line in the bottom portion of each line not to exceed one-third the overall length of the buoy line are allowed within a DAM zone. Requirements for anchored gillnet gear in Cape Cod Bay Restricted Area (May 16 through December 31), Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area (July 1 through March 31), Great South Channel Sliver Restricted Area (July 1 through March 31), and Mid/South Atlantic Gillnet Waters are the same as requirements for Other Northeast Gillnet Waters. Requirements for trap/pot gear in Southern Nearshore Trap/Pot Waters, Cape Cod Bay Restricted Area (May 16 through December 31) and Stellwagen Bank/Jeffreys Ledge Restricted Area are the same as requirements for Northern Nearshore Trap/Pot Waters and Northern Inshore State Trap/Pot Waters. Requirements for trap/pot gear in the Great South Channel Restricted Trap/Pot Area (July 1 through March 31) are the same as requirements for Offshore Trap/Pot Waters.

(C) Issue an alert to fishermen using appropriate media to inform them of the fact that right whale density in a certain area has triggered a DAM zone. In the alert, NMFS will provide detailed information on the location of the DAM zone and the number of animals sighted within it. Furthermore, NMFS will request that fishermen voluntarily remove trap/pot and anchored gillnet gear from the DAM zone and ask that no additional gear be set inside it for 15 days or until NMFS rescinds the alert.

(D) The determination of whether restrictions will be imposed within a DAM zone would be based on NMFS' review of a variety of factors, including but not limited to: The location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

(iv) *Restricted period.* Any DAM zone will remain in effect for a minimum period of 15 days. At the conclusion of the 15-day period, the DAM zone will expire automatically unless it is extended by subsequent publication in the **Federal Register**.

(v) *Extensions of the restricted period.* Any 15-day period may be extended if NMFS determines that the trigger established in paragraph (h)(3)(i) of this section continues to be met.

(vi) *Reopening of restricted zone.* NMFS may remove any gear restriction or prohibition and reopen the DAM zone prior to its automatic expiration if there are no confirmed sightings of right whales for at least 1 week, or other credible evidence indicates that right whales have left the DAM zone. NMFS will notify the public of the reopening of a DAM zone prior to the expiration of the 15-day period by issuing a document in the **Federal Register** and through other appropriate media.

(4) *Seasonal Area Management (SAM) Program.* Until January 1, 2008, in addition to existing requirements for vessels deploying anchored gillnet or trap/pot gear in the Other Northeast Gillnet Waters, Northern Inshore State Trap/Pot Waters, Northern Nearshore Trap/Pot Waters, Offshore Trap/Pot Waters, and Stellwagen Bank/Jeffreys Ledge Restricted Area found at § 229.32(b)–(d), a vessel may fish in the SAM Areas as described in paragraphs (h)(4)(i)(A) and (h)(4)(ii)(A) of this section, which overlay the previously mentioned areas, provided the vessel complies with the gear requirements specified in paragraphs (h)(4)(i)(B) and (h)(4)(ii)(B) of this section during the times specified in those paragraphs. The gear requirements in paragraphs (h)(4)(i)(B) and (h)(4)(ii)(B) of this section supercede requirements found at § 229.32(b)–(d) when the former are more restrictive than the latter. Copies of a chart depicting these areas are available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.

(i) *SAM West.* (A) *Area.* SAM West consists of all waters bounded by straight lines connecting the following points in the order stated:

SAM WEST

| Point | N. lat. | W. long. |
|---|---|---|
| SAM1 ..... | 42°04.8′ | 70°10′ |
| SAM2 ..... | 42°12′ | 70°15′ |
| SAM3 ..... | 42°30′ | 70°15′ |
| SAM4 ..... | 42°30′ | 69°24′ |
| SAM5 ..... | 41°48.9′ | 69°24′ |
| SAM6 ..... | 41°45′ | 69°33′ |
| SAM7 ..... | 41°45′ | 69°55.8′ |

(B) *Gear requirements.* Unless otherwise authorized by the Assistant Administrator, in accordance with paragraph (h)(2) of this section, from March 1 through April 30, no person may fish with or have available for immediate use anchored gillnet or trap/pot gear in SAM West unless that person's gear complies with the following gear characteristics:

(*1*) *Anchored gillnet gear.* (*i*) *Groundlines and Buoy lines*—All groundlines and buoy lines must be made entirely of sinking and/or neutrally buoyant line. Floating groundlines and buoy lines are prohibited. The attachment of buoys, toggles, or other floatation devices to groundlines comprised entirely of sinking and/or neutrally buoyant line is prohibited.

(*ii*) *Weak links*—All buoys, flotation devices, and/or weights, such as toggles and/or leaded lines, are attached to the buoy line with a weak link placed as close to each individual buoy, flotation device, and/or weight as operationally feasible that has a maximum breaking strength of up to 1,100 lb (498.9 kg). The weak link must be chosen from the following list of combinations approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. Weak links must break cleanly at the bitter end of the buoy line and the bitter end of the buoy line must be free of any knots when the line

breaks. Splices are not considered to be knots for the purposes of this provision. (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(*iii*) *Net panel weak link*—Each net panel must have a total of five weak links. The breaking strength of each of these weak links must not exceed 1,100 lb (498.9 kg). The weak link requirements apply to all variations in panel size. Three of the five weak links must be located on the floatline. One floatline weak link must be placed at the center of the net panel, and two weak links must be placed as close as possible to each of the bridle ends of the net panel. The remaining two of the five weak links must be placed in the center of each of the up and down lines at either end of each panel. Weak links must break cleanly at the bitter end of the buoy line and the bitter end of the buoy line must be free of any knots when the line breaks. Splices are not considered to be knots for the purposes of this provision. (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(*iv*) *Buoy line*—No more than one buoy line per net string may be used, and it must be deployed at the northern or western end of the gillnet string depending on the direction of the set.

(*v*) *Gillnet anchor*—All anchored gillnets, regardless of the number of net panels, must be secured at each end of the net string with a burying anchor (an anchor that holds through the use of a fluke, spade, plow, or pick) having the holding capacity equal to or greater than a 22 lb (10.0 kg) Danforth-style anchor. Dead weights do not meet this requirement.

(*2*) *Trap/pot gear.* (*i*) *Groundlines and Buoy lines.* All groundlines and buoy lines must be made entirely of sinking and/or neutrally buoyant line. Floating ground lines and buoy lines are prohibited. The attachment of buoys, toggles, or other floatation devices to groundlines comprised entirely of sinking and/or neutrally buoyant line is prohibited.

(*ii*) *Northern Inshore State Trap/Pot Waters and Northern Nearshore Trap/Pot Waters Areas weak links.* All flotation devices or weights must be attached to the buoy line with a weak link placed as close to the buoy as operationally feasible that has a maximum breaking strength of up to 600 lb (272.4 kg). The weak link must be chosen from the following list of combinations approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. Weak links must break cleanly at the bitter end of the buoy line and the bitter end of the buoy line must be free of any knots when the line breaks. Splices are not considered to be knots for the purposes of this provision. (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(*iii*) *Offshore Trap/Pot Waters Area weak links*—All flotation devices or weights must be attached to the buoy line with a weak link placed as close to the buoy as operationally feasible that has a maximum breaking strength of up to 1,500 lb (680.4 kg). The weak link must be chosen from the following list of combinations approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. Weak links must break cleanly at the bitter end of the buoy line and the bitter end of the buoy line must be free of any knots when the line breaks. Splices are not considered to be knots for the purposes of this provision. (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(*iv*) *Buoy line*—No more than one buoy line per trawl is allowed. The buoy line must be attached to the northern or western end of the trawl string depending on the direction of the set. These requirements supersede the requirements found at § 697.21, which require one radar reflector at each end of a trawl with more than three traps.

(ii) *SAM East.* (A) *Area.* SAM East consists of all waters bounded by straight lines connecting the following points in the order stated:

SAM EAST

| Point | N. lat. | W. long. |
|---|---|---|
| SAM5 ..... | 41°48.9′ | 69°24′ |
| SAM4 ..... | 42°30′ | 69°24′ |
| SAM8 ..... | 42°30′ | 67°26′ |
| SAM9 ..... | 41°45′ | 66°50′ |
| SAM10 ..... | 41°45′ | 68°17′ |
| SAM11 ..... | 42°10′ | 68°31′ |

(B) *Gear requirements.* Unless otherwise authorized by the Assistant Administrator, in accordance with paragraph (h)(2) of this section, from May 1 through July 31, no person may fish with anchored gillnet or trap/pot gear in SAM East unless that person's gear complies with the gear characteristics found at paragraph (h)(4)(i)(B) of this section.

**Note to § 229.32:** Additional regulations that affect fishing with lobster trap gear have also been issued under authority of the Atlantic Coastal Fisheries Cooperative Management Act in part 697 of this title.

## PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for 50 CFR part 635 continues to read as follows:

**Authority:** 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.69, paragraph (a)(3) is revised to read as follows:

**§ 635.69 Vessel monitoring systems.**

(a) * * *

(3) Whenever a vessel, issued a directed shark LAP, is away from port with a gillnet on board during the right whale calving season specified in the regulations implementing the Atlantic Large Whale Take Reduction Plan Regulations in § 229.32 of this title.

* * * * *

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for 50 CFR part 648 continues to read as follows:

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

2. In § 648.264, paragraph (a)(6)(i) is revised to read as follows:

**§ 648.264 Gear requirements/restrictions.**

(a) * * *

(6) *Additional gear requirements.* (i) Vessels must comply with the gear regulations found at § 229.32 of this title.

* * * * *

For the reasons set out in the preamble, 50 CFR parts 229, 635 and 648 are proposed to be amended to read as follows to implement Alternative 6 (Preferred):

## PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for 50 CFR part 229 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*

2. In § 229.2, the definitions of ''Lobster trap'' and ''Lobster trap trawl'' are removed. The definitions of ''Anchored gillnet'', ''Gillnet'',

''Groundline'', ''Shark gillnet or shark gillnetting'', ''Sinking line'', and ''Strikenet or to fish with strikenet gear'' are revised in alphabetical order to read as follows below. The definitions of ''Bitter end'', ''Bottom portion of line'', ''Neutrally buoyant line'', ''Straight set or to fish with gillnet gear in a straight set'', ''Sunrise'', ''Sunset'', ''Trap/Pot'', and ''Trap trawl'' are added in alphabetical order to read as follows:

**§ 229.2 Definitions.**

* * * * *

*Anchored gillnet* means any gillnet gear, including an anchored float gillnet, sink gillnet or stab net, that is set anywhere in the water column and which is anchored, secured, or weighted to the bottom of the sea. Also called a set gillnet.

* * * * *

*Bitter end* means the loose end of a line that has detached from a weak link.

* * * * *

*Bottom portion of the line* means, for buoy lines, the portion of the line in the water column that is closest to the fishing gear.

* * * * *

*Gillnet* means fishing gear consisting of a wall of webbing (meshes) or nets, designed or configured so that the webbing (meshes) or nets are placed in the water column, usually held approximately vertically, and are designed to capture fish by entanglement, gilling, or wedging. The term ''gillnet'' includes gillnets of all types, including but not limited to sink gillnets, other anchored gillnets (*e.g.*, anchored float gillnets, stab, and set nets), and drift gillnets. Gillnets may or may not be attached to a vessel.

*Groundline,* with reference to trap/pot gear, means a line connecting traps in a trap trawl, and, with reference to gillnet gear, means a line connecting a gillnet or gillnet bridle to an anchor or buoy line.

* * * * *

*Neutrally buoyant line* means, for both groundlines and buoy lines, line that has a specific gravity of 1.030 or greater, and, for groundlines only, does not float at any point in the water column (See also Sinking line).

* * * * *

*Shark gillnet or shark gillnetting* means a gillnet with webbing of 5 inches or greater stretched mesh that is fished in the waters south of the South Carolina/Georgia border, or to fish with such a gillnet in those waters.

* * * * *

*Sinking line* means, for both groundlines and buoy lines, line that has a specific gravity of 1.030 or greater, and, for groundlines only, does not float at any point in the water column (See also Neutrally buoyant line).

* * * * *

*Straight set or to fish with gillnet gear in a straight set* means a set in which the gillnet is placed in a line in the water column, as opposed to a circular set in which the gillnet is placed to encircle an area in the water column (not Strikenet).

* * * * *

*Strikenet or to fish with strikenet gear* means a method or technique of net deployment which is intended to encircle or enclose an area of water either with the net or by utilizing the shoreline to complete the encirclement (not Straight set).

*Sunrise* means the time of sunrise as determined for the date and location in The Nautical Almanac, prepared by the U.S. Naval Observatory.

*Sunset* means the time of sunset as determined for the date and location in The Nautical Almanac, prepared by the U.S. Naval Observatory.

* * * * *

*Trap/Pot* means any structure or other device, other than a net or longline, that is placed, or designed to be placed, on the ocean bottom and is designed for or is capable of, catching lobster, crab (red, Jonah, rock, and blue), hagfish, finfish (black sea bass, scup, tautog, cod, haddock, pollock, redfish (ocean perch), and white hake), conch/whelk, and shrimp.

*Trap trawl* means two or more trap/pots attached to a single groundline.

* * * * *

3. In section 229.3, paragraphs (h) through (l) are revised to read as follows:

**§ 229.3 Prohibitions.**

* * * * *

(h) It is prohibited to fish with or have available for immediate use trap/pot gear in the areas and for the times specified in § 229.32(b)(2) and (c)(2) through (c)(8) unless the trap/pot gear complies with the closures, marking requirements, modifications, and restrictions specified in § 229.32(b)(3)(i), (b)(3)(ii), and (c)(1) through (c)(9).

(i) It is prohibited to fish with or have available for immediate use anchored gillnet gear in the areas and for the times specified in § 229.32(b)(2) and (d)(2) through (d)(7) unless that gillnet gear complies with the closures, marking requirements, modifications, and restrictions specified in § 229.32(b)(3)(i), (b)(3)(ii), and (d)(1) through (d)(8).

(j) It is prohibited to fish with or have available for immediate use drift gillnet gear in the areas and for the times specified in § 229.32(d)(7) and (e)(1) unless the drift gillnet gear complies with the restrictions specified in § 229.32(e)(1).

(k) It is prohibited to fish with or have available for immediate use southeast Atlantic gillnet gear in the areas and for the times specified in § 229.32(f)(1)(i) unless the gillnet gear complies with the requirements specified in § 229.32(f)(1)(ii) and (f)(1)(iii).

(l) It is prohibited to fish with or have available for immediate use shark gillnet gear in the areas and for the times specified in § 229.32(b)(2), (g)(1)(i), and (g)(1)(ii) unless the gear complies with the closures, marking requirements, modifications, and restrictions specified in § 229.32(b)(3)(i), (b)(3)(ii), and (g)(2) through (g)(3)(iii)(D).

* * * * *

4. In § 229.32, paragraphs (a) through (g) are revised to read as follows:

**§ 229.32 Atlantic large whale take reduction plan regulations.**

(a)(1) *Purpose and scope.* The purpose of this section is to implement the Atlantic Large Whale Take Reduction Plan to reduce incidental bycatch of fin, humpback, and right whales in specific commercial fisheries from Maine to Florida. The gear types affected by this plan include anchored gillnets, traps/pots, drift gillnets, and shark gillnets (including strikenets).

(2) *Definitions.* Unless otherwise noted, in this § 229.32: *Night* means, with reference to the regulated waters of Georgia and Florida, any time between one half hour before sunset and one half hour after sunrise.

(3) *Regulated waters.* The regulations in this section apply to all U.S. waters except for the areas exempted in paragraphs (a)(3) and (a)(4) of this section.

(4) *Exempted waters.* (i) The regulations in this section do not apply to waters landward of the 72 COLREGS demarcation lines (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts 1:80,000 scale), and as described in 33 CFR Part 80 with the exception of the waters landward of the following lines:

42°20.665′ N., 70°57.205′ W. TO 42°20.009′ N., 70°55.803′ W. and

42°19.548′ N., 70°55.436′ W. TO 42°18.599′ N., 70°52.961′ W. (Boston Harbor)

41°11.40′ N., 72°09.70′ W. TO 41°04.50′ N., 71°51.60′ W. (Gardiners Bay)

(ii) *Other exempted waters.* Where the 72 COLREGS demarcation lines do not

exist, the regulations in this section do not apply to the waters landward of the Territorial sea baseline, where appropriate, in Maine (as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts 1:80,000 scale), and as described in 33 CFR 2.20) or landward of the following lines:

**Maine**

44°49.863′ N., 66°55.664′ W. TO 44°48.924′ N., 66°57.01′ W. (Quoddy Narrows, U.S./Canada border)
44°45.682′ N., 67°02.936′ W. TO 44°44.696′ N., 67°04.374′ W. (Baileys Mistake and Haycock Harbor)
44°44.446′ N., 67°04.858′ W. TO 44°43.843′ N., 67°05.909′ W. (Moose Cove)

*Territorial Sea Baseline (Little River)*

A line connecting the points (Little Machias Bay, Cross Island Narrows, Machias Bay, Englishman Bay, Chandler Bay, and Eastern Bay):

44°38.14′ N., 67°13.788′ W. (Great Head)
44°37.679′ N., 67°15.424′ W. (Cape Wash)
44°36.659′ N., 67°16.205′ W. (Scotch Island)
44°36.236′ N., 67°16.857′ W. (Spruce Point)
44°35.071′ N., 67°21.177′ W. (Libby Islands)
44°33.369′ N., 67°29.787′ W. (Great Spruce Island)
44°31.908′ N., 67°31.842′ W. (Mark Island)
44°30.637′ N., 67°31.431′ W. (Head Harbor Island)

A line connecting the points (Eastern Bay):

44°29.521′ N., 67°30.935′ W. (Black Head)
44°28.5′ N., 67°31.878′ W. (Moose Peak)
44°27.332′ N., 67°34.15′ W. (Little Pond Head)

A line connecting the points (Moosabec Reach and Wahoa Bay):

44°29.945′ N., 67°36.228′ W. (The Flying Place)
44°30.196′ N., 67°36.832′ W. (Beals Island)
44°30.334′ N., 67°38.573′ W. (Norton Island)
44°29.729′ N., 67°42.609′ W. (Tibbett Island)
44°29.824′ N., 67°44.107′ W. (Cape Split)

*Territorial Sea Baseline (Pleasant Bay, Narraguagus Bay, and Pigeon Hill Bay)*

A line connecting the points (Dyer Bay, Gouldsboro Bay, Prospect Harbor, and Schoodic Harbor):

44°23.69′ N., 67°53.951′ W. (Petit Manan Point)
44°23.113′ N., 67°58.853′ W. (Cranberry Point)
44°21.416′ N., 68°01.556′ W. (Spruce Point)
44°20.131′ N., 68°02.782′ W. (Schoodic Head)

*Territorial Sea Baseline (Frenchman Bay)*

A line connecting the points (Blue Hill Bay and Penobscot Bay):

44°18.431′ N., 68°11.337′ W. (Otter Point, Mount Desert Island)
44°14.504′ N., 68°11.040′ W. (Baker's Island)
44°06.00′ N., 68°20.07′ W. (Rich's Head, Long Island)
43°59.36′ N., 68°37.95′ W. (Roaring Bull Ledge, Isle au Haut)
43°59.83′ N., 68°50.06′ W. (South Vinalhaven Island)
43°56.72′ N., 69°04.89′ W. (Two Bush Channel)
43°54.903′ N., 69°13.175′ W. (Mosquito Island)
43°55.074′ N., 69°15.579′ W. (Marshall Point, Port Clyde)

*Territorial Sea Baseline (Johns Bay and Muscongus Bay)*

A line connecting the points (Sheepscot Bay and Booth Bay):

43°48.872′ N., 69°35.465′ W. (Linekin Neck)
43°48.206′ N., 69°35.913′ W. (Ram Island)
43°47.233′ N., 69°39.209′ W. (Cape Newagen)
43°47.168′ N., 69°39.621′ W. (Cape Newagen)
43°46.947′ N., 69°43.097′ W. (Outer Head)
43°44.658′ N., 69°45.288′ W. (Salter Island)
43°42.056′ N., 69°50.185′ W. (Small Point, Cape Small)
43°42.298′ N., 69°51.23′ W. (Bald Head, Cape Small)

*Territorial Sea Baseline (Saco Bay)*

43°23.963′ N., 70°23.882′ W. TO 43°22.401′ N., 70°25.296′ W. (Goosefare Bay)
43°22.198′ N., 70°25.065′ W. TO 43°21.823′ N., 70°24.977′ W. (Stage Island Harbor)
43°21.663′ N., 70°24.977′ W. TO 43°13.267′ N., 70°34.542′ W. (body of water between Cape Porpoise and Bald Head Cliff)
43°11.176′ N., 70°35.867′ W. TO 43°10.984′ N., 70°36.161′ W. (Cape Neddick Harbor)
43°08.115′ N., 70°37.434′ W. TO 43°07.56′ N., 70°38.049′ W. (York Harbor)
43°06.104′ N., 70°39.037′ W. TO 43°05.574′ N., 70°39.369′ W. (Brave Boat Harbor)

**New Hampshire**

42°53.691′ N., 70°48.516′ W. TO 42°53.516′ N., 70°48.748′ W. (Hampton Harbor)
42°59.986′ N., 70°44.654′ W. TO 42°59.956′ N., 70°44.737′ W. (Rye Harbor)

**Massachusetts**

42°49.136′ N., 70°48.242′ W. TO 42°48.964′ N., 70°48.282′ W. (Newburyport Harbor)
42°42.145′ N., 70°46.995′ W. TO 42°41.523′ N., 70°47.356′ W. (Plum Island Sound)
42°40.266′ N., 70°43.838′ W. TO 42°39.778′ N., 70°43.142′ W. (Essex Bay)
42°39.645′ N., 70°36.715′ W. TO 42°39.613′ N., 70°36.60′ W. (Rockport Harbor)
42°15.203′ N., 70°46.324′ W. TO 42°15.214′ N., 70°47.352′ W. (Cohasset Harbor)
42°12.09′ N., 70°42.98′ W. TO 42°12.211′ N., 70°43.002′ W. (Scituate Harbor)
42°09.724′ N., 70°42.378′ W. TO 42°10.085′ N., 70°42.875′ W. (New Inlet)
42°04.64′ N., 70°38.587′ W. TO 42°04.583′ N., 70°38.631′ W. (Green Harbor)
41°59.686′ N., 70°37.948′ W. TO 41°58.75′ N., 70°39.052′ W. (Duxbury Bay/Plymouth Harbor)
41°50.395′ N., 70°31.943′ W. TO 41°50.369′ N., 70°32.145′ W. (Ellisville Harbor)
41°45.53′ N., 70°09.387′ W. TO 41°45.523′ N., 70°09.307′ W. (Sesuit Harbor)
41°45.546′ N., 70°07.39′ W. TO 41°45.551′ N., 70°07.32′ W. (Quivett Creek)
41°47.269′ N., 70°01.411′ W. TO 41°47.418′ N., 70°01.306′ W. (Namskaket Creek)
41°47.961′ N., 70°0.561′ W. TO 41°48.07′ N., 70°0.514′ W. (Rock Harbor Creek)
41°48.932′ N., 70°0.286′ W. TO 41°48.483′ N., 70°0.216′ W. (Boat Meadow River)
41°48.777′ N., 70°0.317′ W. TO 41°48.983′ N., 70°0.196′ W. (Herring River)
41°53.922′ N., 70°01.333′ W. TO 41°54.497′ N., 70°01.182′ W. (Blackfish Creek/Loagy Bay)
41°55.503′ N., 70°02.07′ W. TO 41°55.753′ N., 70°02.281′ W. (Duck Creek)
41°55.501′ N., 70°03.51′ W. TO 41°55.322′ N., 70°03.191′ W. (Herring River, inside Wellfleet Harbor)
41°59.481′ N., 70°04.779′ W. TO 41°59.563′ N., 70°04.718′ W. (Pamet River)

42°03.601′ N., 70°14.269′ W. TO 42°03.601′ N., 70°14.416′ W. (Hatches Harbor)

41°48.708′ N., 69°56.319′ W. TO 41°48.554′ N., 69°56.238′ W. (Nauset Harbor)

41°40.685′ N., 69°56.781′ W. TO 41°40.884′ N., 69°56.28′ W. (Chatham Harbor)

41°39.429′ N., 69°58.827′ W. TO 41°39.442′ N., 69°59.037′ W. (Stage Harbor)

41°39.80′ N., 70°03.661′ W. TO 41°39.626′ N., 70°03.791′ W. (Wynchmere Harbor/Saquatucket Harbor)

41°39.764′ N., 70°05.324′ W. TO 41°39.666′ N., 70°05.371′ W. (Doanes Creek)

41°39.322′ N., 70°06.914′ W. TO 41°39.30′ N., 70°06.952′ W. (Herring River)

41°39.085′ N., 70°09.401′ W. TO 41°39.087′ N., 70°09.467′ W. (Swan Pond River)

41°38.584′ N., 70°11.724′ W. TO 41°38.643′ N., 70°11.849′ W. (Bass River)

41°38.211′ N., 70°13.25′ W. TO 41°38.121′ N., 70°13.247′ W. (Parkers River)

41°36.575′ N., 70°15.95′ W. TO 41°37.452′ N., 70°17.537′ W. (Hyannis Harbor)

41°37.49′ N., 70°21.899′ W. TO 41°37.408′ N., 70°21.846′ W. (East Bay)

41°36.344′ N., 70°24.049′ W. TO 41°36.398′ N., 70°24.09′ W. (West Bay)

41°36.289′ N., 70°25.624′ W. TO 41°36.302′ N., 70°26.254′ W. (Cotuit Bay)

41°35.32′ N., 70°27.047′ W. TO 41°35.202′ N., 70°27.041′ W. (Popponesset Bay)

41°32.862′ N., 70°31.614′ W. TO 41°32.804′ N., 70°31.762′ W. (Waquoit Bay)

41°33.086′ N., 70°32.53′ W. TO 41°33.07′ N., 70°32.884′ W. (Eel Pond)

A line formed by the centerline of the fixed bridges at both entrances (Bournes Pond)

41°32.871′ N., 70°34.214′ W. TO 41°32.855′ N., 70°34.252′ W. (Green Pond)

A line formed by the centerline of the fixed bridge at entrance (Great Pond)

41°32.542′ N., 70°36.449′ W. TO 41°32.535′ N., 70°36.505′ W. (Falmouth Inner Harbor)

41°30.597′ N., 71°05.285′ W. TO 41°30.444′ N., 71°05.281′ W. (Westport Harbor)

**Rhode Island**

41°22.41′ N., 71°30.80′ W. TO 41°22.41′ N., 71°30.85′ W. (Pt. Judith Pond Inlet)

41°21.31′ N., 71°38.30′ W. TO 41°21.30′ N., 71°38.33′ W. (Ninigret Pond Inlet)

41°19.90′ N., 71°43.08′ W. TO 41°19.90′ N., 71°43.10′ W. (Quonochontaug Pond Inlet)

41°19.66′ N., 71°45.75′ W. TO 41°19.66′ N., 71°45.78′ W. (Weekapaug Pond Inlet)

**South Carolina**

32°34.717′ N, 80°08.565′ W. TO 32°34.686′ N., 80°08.642′ W. (Captain Sams Inlet)

(5) *Sinking and/or neutrally buoyant groundline exemption.* The fisheries regulated under this section are exempt from the requirement to have groundlines composed of sinking and/or neutrally buoyant line on or before January 1, 2008, if their gear is set in waters deeper than 280 fathoms (1,680 ft or 512.1 m).

(b) *Gear marking requirements.* (1) Specified gear consists of trap/pot gear and gillnet gear set in specified areas.

(2) *Specified areas.* The following areas are specified for gear marking purposes: Northern Inshore State Trap/Pot Waters, CCB Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Northern Nearshore Trap/Pot Waters Area, GSC Restricted Trap/Pot Area, GSC Restricted Gillnet Area, GSC Sliver Restricted Area, Southern Nearshore Trap/Pot Waters Area, Offshore Trap/Pot Waters Area, Other Northeast Gillnet Waters Area, Mid/South Atlantic Gillnet Waters Area, Other Southeast Gillnet Waters Area, Northern Monitoring and Restricted Area, and Southern Monitoring Area.

(3) *Requirements for Shark Gillnet Gear in the Northern Monitoring and Restricted Area and Southern Monitoring Area.* From November 15 through March 31 of the following year, no person may fish with shark gillnet gear in the southeast U.S. observer area unless that gear is marked according to the gear marking code specified under paragraphs (b)(3)(i)(A) and (b)(3)(i)(B) of this section. All buoy lines that are greater than 4 ft (1.22 m) long must be marked within 2 ft (0.6 m) of the top of the buoy line and midway along the length of the buoy line. Each net panel must be marked along both the float line and the lead line at least once every 100 yards (92.4 m), unless otherwise required by the Assistant Administrator under paragraph (h) of this section.

(i) *Color code.* Shark gillnet gear in the Northern Monitoring and Restricted Area and Southern Monitoring Area must be marked with the appropriate color code to designate gear types and areas as follows:

(A) *Gear type code—Shark gillnet gear.* Shark gillnet gear must be marked with a green marking.

(B) *Area code.* Shark gillnet gear set in the Northern Monitoring and Restricted Area and Southern Monitoring Area must be marked with a blue marking.

(ii) *Markings.* All specified gear in specified areas must be marked with two color codes, one designating the gear type, the other indicating the area where the gear is set. Each color of the two-color code must be permanently marked on or along the line or lines specified under paragraph (f)(2) of this section. Each color mark of the color codes must be clearly visible when the gear is hauled or removed from the water. Each mark must be at least 4 inches (10.2 cm) long. The two color marks must be placed within 6 inches (15.2 cm) of each other. If the color of the rope is the same as or similar to a color code, a white mark may be substituted for that color code. In marking or affixing the color code, the line may be dyed, painted, or marked with thin colored whipping line, thin colored plastic, or heat-shrink tubing, or other material; or a thin line may be woven into or through the line; or the line may be marked as approved in writing by the Assistant Administrator. (A copy of a brochure illustrating the techniques for marking gear is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(4) *Requirements for other specified areas.* Any person who owns or fishes with specified gear in the other specified areas must mark that gear in accordance with paragraphs (b)(4)(i) and (b)(4)(ii) of this section, unless otherwise required by the Assistant Administrator under paragraph (h) of this section. For the purposes of the following gear marking requirements only, trap/pot gear set in the Northern Inshore State Trap/Pot Waters Area, the CCB Restricted Area during the winter restricted period, the Federal-water portion of the CCB Restricted Area during the off-peak period, and the Stellwagen Bank/Jeffreys Ledge Restricted Area shall comply with the requirements for the Northern Nearshore Trap/Pot Waters Area. Trap/pot gear set in the GSC Restricted Trap/Pot Area shall comply with the requirements for the Offshore Trap/Pot Waters Area. Similarly, anchored gillnet gear set in the CCB Restricted area, Stellwagen Bank/Jeffreys Ledge

Restricted Area, GSC Restricted Gillnet Area, and GSC Sliver Restricted Area shall comply with the requirements for gillnet gear in the Other Northeast Gillnet Waters Area.

(i) *Color code.* Specified gear must be marked with the appropriate colors to designate gear-types and areas as follows:

(A) Trap/pot gear in the Northern Nearshore Trap/Pot Waters Area must be marked with a red marking.

(B) Trap/pot gear in the Southern Nearshore Trap/Pot Waters Area must be marked with an orange marking.

(C) Trap/pot gear in the Offshore Trap/Pot Waters Area must be marked with a black marking.

(D) Gillnet gear in the Other Northeast Gillnet Waters Area must be marked with a green marking.

(E) Gillnet gear in the Mid/South Atlantic Gillnet Waters Area must be marked with a blue marking.

(F) Gillnet gear in the Northern Monitoring and Restricted Area and Southern Monitoring Area (except shark gillnet gear) must be marked with a yellow marking.

(ii) *Markings.* All specified gear in specified areas must be marked with one color code (see paragraph (4)(i) of this section) which indicates the gear type and general area where the gear is set. Each color code must be permanently affixed on or along the line or lines. Each color code must be clearly visible when the gear is hauled or removed from the water. Each mark must be at least 4 inches (10.2 cm) long. The mark must be placed every 10 fathoms (60 ft or 18.3 m) along the buoy line or in the center of the buoy line if it is 10 fathoms (60 ft or 18.3 m) or less. (A copy of a brochure illustrating the techniques for marking gear is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(5) *Buoy markings.* Trap/pot and gillnet gear regulated under this section must mark all surface buoys to identify the vessel or fishery with one of the following: The owner's motorboat registration number, the owner's U.S. vessel documentation number, the federal commercial fishing permit number, or whatever positive identification marking is required by the vessel's home-port state. The letters and numbers used to mark the gear must be at least 1 inch (2.5 cm) in height in block letters or arabic numbers in a color that contrasts with the background color of the buoy. (A copy of a brochure illustrating the techniques for marking gear is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(6) *Changes to requirements.* If the Assistant Administrator revises the gear marking requirements in accordance with paragraph (h) of this section, the gear must be marked in compliance with those requirements.

(c) *Restrictions applicable to trap/pot gear in regulated waters*—(1) *Universal trap/pot gear requirements.* In addition to the area-specific measures listed in paragraphs (c)(2) through (c)(8) of this section, all trap/pot gear in regulated waters, including the Northern Inshore State Trap/Pot Waters Area, must comply with the universal gear requirements listed here.[1] The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(i) No buoy line floating at the surface. No person may fish with trap/pot gear that has any portion of the buoy line that is directly connected to the gear at the ocean bottom floating at the surface at any time. If more than one buoy is attached to a single buoy line or if a high flyer and a buoy are used together on a single buoy line, floating line may be used between these objects.

(ii) No wet storage of gear. Trap/pot gear must be hauled out of the water at least once every 30 days.

(2) *Cape Cod Bay (CCB) Restricted Area*—(i) *Area.* The CCB restricted area consists of the CCB right whale critical habitat area specified under 50 CFR 226.203(b) unless the Assistant Administrator changes that area in accordance with paragraph (h) of this section.

(ii) *Area-specific gear requirements during the winter restricted period.* No person may fish with or have available for immediate use trap/pot gear in the CCB Restricted Area during the winter restricted period unless that person's gear complies with the gear marking requirements in paragraph (b) of this section, the universal trap/pot gear requirements in paragraph (c)(1) of this section, and the area-specific requirements listed below for the winter restricted period. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(A) *Winter restricted period.* The winter restricted period for the CCB Restricted Area is from January 1 through May 15 of each year unless the Assistant Administrator changes this period in accordance with paragraph (h) of this section.

(B) *Weak links.* All buoys, flotation devices and/or weights, such as toggles and/or leaded lines, must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(*1*) The breaking strength of the weak links must not exceed 500 lb (226.7 kg).

(*2*) The weak link must be chosen from the following list of combinations approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(*3*) Weak links must break cleanly at the bitter end of the buoy line and the bitter end of the buoy line must be free of any knots when the line breaks. Splices are not considered to be knots for the purposes of this provision.

(C) *Single traps and multiple-trap trawls.* Single traps and three-trap trawls are prohibited. All traps must be set in either a two-trap string or in a trawl of four or more traps. A two-trap string must have no more than one buoy line.

(D) *Buoy lines.* All buoy lines must be comprised of sinking and/or neutrally buoyant line except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line.

(E) *Groundlines.* All groundlines must be comprised entirely of sinking and/or neutrally buoyant line. The attachment of buoys, toggles, or other flotation devices to groundlines comprised entirely of sinking and/or neutrally buoyant line is prohibited.

(iii) *Area-specific gear requirements during the other restricted period.* No person may fish with or have available for immediate use trap/pot gear in the CCB Restricted Area during the other restricted period unless that person's gear complies with the gear marking requirements in paragraph (b) of this section and the universal trap/pot gear requirements in paragraph (c)(1) of this section as well as the area-specific requirements listed below for the other restricted period. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(A) *Other restricted period.* The other restricted period for the CCB Restricted Area is from May 16 through December 31 of each year unless the Assistant Administrator revises this period in

[1] Fisherman are also encouraged to maintain their buoy lines to be as knot-free as possible. Splices are not considered to be an entanglement threat and are thus preferable to knots.

accordance with paragraph (h) of this section.

(B) *Gear requirements*—(*1*) *State-water portion.* No person may fish with or have available for immediate use trap/pot gear in the state-water portion of the CCB Restricted Area during the other restricted period unless that person's gear complies with the requirements for the Northern Inshore State Trap/Pot Waters Area listed in paragraph (c)(6) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(*2*) *Federal-water portion.* No person may fish with or have available for immediate use trap/pot gear in the Federal-water portion of the CCB Restricted Area during the other restricted period unless that person's gear complies with the requirements for the Northern Nearshore Trap/Pot Waters Area in paragraph (c)(7) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(*3*) *Great South Channel (GSC) Restricted Trap/Pot Area*—(*i*) *Area.* The GSC Restricted Trap/Pot Area consists of the GSC right whale critical habitat area specified under 50 CFR 226.203(a) unless the Assistant Administrator changes that area in accordance with paragraph (h) of this section.

(*ii*) *Closure during the spring restricted period*—The spring restricted period for the GSC Restricted Trap/Pot Area is from April 1 through June 30 of each year unless the Assistant Administrator revises this period in accordance with paragraph (h) of this section. During the spring restricted period, no person may fish with, set, or have available for immediate use trap/pot gear in this Area unless the Assistant Administrator specifies gear modifications or alternative fishing practices in accordance with paragraph (h) of this section and the gear or practices comply with those specifications.

(*iii*) *Area-specific gear requirements for the other restricted period.* The other restricted period for the GSC Restricted Trap/Pot Area is July 1 through March 31, unless the Assistant Administrator revises this period in accordance with paragraph (h) of this section. During the other restricted period, no person may fish with or have available for immediate use trap/pot gear in the GSC Restricted Trap/Pot Area unless that person's gear complies with the gear marking requirements in paragraph (b) of this section, the universal trap/pot gear requirements in paragraph (c)(1) of this section, and the area-specific requirements listed in paragraph (c)(5)(ii)(A) of this section for the Offshore Trap/Pot Waters Area or paragraph (c)(7)(ii)(A) of this section for the Northern Nearshore Trap/Pot Waters Area, depending on the area of overlap. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(4) *Stellwagen Bank/Jeffreys Ledge Restricted Area*—(i) *Area.* The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except those designated as right whale critical habitat under 50 CFR 226.203(b), that lie south of 43°15′ N. and west of 70°00′ W. The Assistant Administrator may change that area in accordance with paragraph (h) of this section.

(ii) *Area-specific gear requirements.* No person may fish with or have available for immediate use trap/pot gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that person's gear complies with the gear marking requirements in paragraph (b) of this section, the universal trap/pot gear requirements in paragraph (c)(1) of this section, and the requirements listed for the Northern Nearshore Trap/Pot Waters Area in paragraph (c)(7) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(5) *Offshore Trap/Pot*[2] *Waters Area*—(i) *Area.* The Offshore Trap/Pot Waters Area includes all Federal waters of the EEZ Offshore Management Area 3 (including the area known as the Area 2/3 Overlap in the American Lobster Fishery regulations at 50 CFR 697.18 and the GSC Restricted Trap/Pot Area from July 1 through March 31) as defined in the American Lobster Fishery regulations at 50 CFR 697.18 and extending south along the 100 fathom (600 ft or 182.9 m) line from 35°30′ N. to 27°51′ N. and then out to the eastern boundary of the EEZ. From November 15 to April 15, the Offshore Trap/Pot Waters Area includes the area from the South Carolina/Georgia border south to 29°00′ N. and then out to the eastern boundary of the EEZ. The Assistant Administrator may change that area in accordance with paragraph (h) of this section.

(ii) *Year-round area-specific gear requirements.* No person may fish with or have available for immediate use trap/pot gear in the Offshore Trap/Pot Waters Area unless that person's gear complies with the gear marking requirements in paragraph (b) of this section, the universal trap/pot gear requirements in paragraph (c)(1) of this section, and the gear requirements listed here. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(A) *Weak links.* All buoys, flotation devices, and/or weights, such as toggles and/or leaded lines must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device, and/or weight as operationally feasible and that meets the following specifications:

(*1*) The weak link must be chosen from the following list of combinations approved by NMFS: swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(*2*) The breaking strength of the weak links may not exceed 1,500 lb (680.4 kg).

(*3*) Weak links must break cleanly at the bitter end of the buoy line and the bitter end of the buoy line must be free of any knots when the line breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Groundlines.* On or before January 1, 2008, all groundlines must be comprised entirely of sinking and/or neutrally buoyant line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other floatation devices to groundlines comprised entirely of sinking and/or neutrally buoyant line is prohibited.

(iii) *Seasonal area-specific gear requirements.* From November 15 to April 15, no person may fish with or have available for immediate use trap/pot gear from the South Carolina/Georgia border to 29°00′ N. and out to the eastern boundary of the EEZ unless that person's gear complies with the gear marking requirements in paragraph (b) of this section, the universal trap/pot gear requirements in paragraph (c)(1) of this section, and the area-specific gear requirements in paragraphs (c)(5)(ii)(A) and (B) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(iv) *Seasonal area-specific gear requirements.* From December 1 to March 31, no person may fish with or have available for immediate use trap/pot gear from 29°00′ N. to 27°51′ N. and out to the eastern boundary of the EEZ

[2] Fisherman using red crab trap/pot gear should refer to § 229.32(c)(9) for the restrictions applicable to red crab trap/pot fishery.

unless that person's gear complies with the gear marking requirements in paragraph (b) of this section, the universal trap/pot gear requirements in (c)(1) of this section, and the area-specific gear requirements in paragraphs (c)(5)(ii)(A) and (B) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(6) *Northern Inshore State Trap/Pot Waters Area*—(i) *Area.* The Northern Inshore State Trap/Pot Waters Area includes the state waters of Rhode Island, Massachusetts, New Hampshire, and Maine but does not include waters exempted under paragraph (a)(3) of this section. The Assistant Administrator may change that area in accordance with paragraph (h) of this section.

(ii) *Area-specific gear requirements.* No person may fish with or have available for immediate use trap/pot gear in the Northern Inshore State Trap/Pot Waters Area unless that person's gear complies with the gear marking requirements in paragraph (b) of this section, the universal trap/pot gear requirements in paragraph (c)(1) of this section, and the gear requirements listed here. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(A) *Weak links.* All buoys, flotation devices, and/or weights, such as toggles and/or leaded lines must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device, and/or weight as operationally feasible and that meets the following specifications:

(*1*) The weak link must be chosen from the following list of combinations approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(*2*) The breaking strength of the weak links may not exceed 600 lb (272.4 kg).

(*3*) Weak links must break cleanly at the bitter end of the buoy line and the bitter end of the buoy line must be free of any knots when the line breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Groundlines.* On or before January 1, 2008, all groundlines must be comprised entirely of sinking and/or neutrally buoyant line. The attachment of buoys, toggles, or other floatation devices to groundlines comprised entirely of sinking and/or neutrally buoyant line is prohibited.

(7) *Northern Nearshore Trap/Pot Waters Area*—(i) *Area.* The Northern Nearshore Trap/Pot Waters Area includes all Federal waters of EEZ Nearshore Management Area 1, Area 2, and the Outer Cape Lobster Management Area as defined in the American Lobster Fishery regulations at 50 CFR 697.18, with the exception of the CCB Restricted Area and the Stellwagen Bank/Jeffreys Ledge Restricted Area. The Assistant Administrator may change this area in accordance with paragraph (h) of this section.

(ii) *Area-specific gear requirements.* No person may fish with or have available for immediate use trap/pot gear in the Northern Nearshore Trap/Pot Waters Area unless that person's gear complies with the gear marking requirements in paragraph (b) of this section, the universal trap/pot gear requirements in paragraph (c)(1) of this section, and the gear requirements listed below for this area. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(A) *Weak Links.* All buoys, flotation devices, and/or weights, such as toggles and/or leaded lines, must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(*1*) The weak link must be chosen from the following list of combinations approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(*2*) The breaking strength of the weak links must not exceed 600 lb (272.4 kg).

(*3*) Weak links must break cleanly at the bitter end of the buoy line and the bitter end of the buoy line must be free of any knots when the line breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Single traps and multiple-trap trawls.* Single traps are prohibited. All traps must be set in trawls of two or more traps. All trawls up to and including four traps must have no more than one buoy line.

(C) *Groundlines.* On or before January 1, 2008, all groundlines must be comprised entirely of sinking and/or neutrally buoyant line. The attachment of buoys, toggles, or other floatation devices to groundlines comprised entirely of sinking and/or neutrally buoyant line is prohibited.

(8) *Southern Nearshore Trap/Pot Waters Area*—(i) *Area.* The Southern Nearshore Trap/Pot Waters Area includes all state and federal waters which fall within EEZ Nearshore Management Area 4, EEZ Nearshore Management Area 5, and EEZ Nearshore Management Area 6 (except for those waters exempted under paragraph (a)(3) of this section) as described in the American Lobster Fishery regulations in 50 CFR 697.18. The Assistant Administrator may change this area in accordance with paragraph (h) of this section.

(ii) *Area-specific gear requirements for the restricted period*—(A) *Restricted period.* The restricted period for Southern Nearshore Trap/Pot Waters is year round unless the Assistant Administrator revises this period in accordance with paragraph (h) of this section.

(B) *Gear requirements.* No person may fish with or have available for immediate use trap/pot gear in the Southern Nearshore Trap/Pot Waters Area during the restricted period unless that person's gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements in paragraph (c)(1) of this section, and the following gear requirements for this area, which the Assistant Administrator may revise in accordance with paragraph (h) of this section:

(*1*) *Weak Links.* All buoys, flotation devices, and/or weights, such as toggles and/or leaded lines, must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(*i*) The weak link must be chosen from the following list of combinations approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(*ii*) The breaking strength of the weak links may not exceed 600 lb (272.4 kg).

(*iii*) Weak links must break cleanly at the bitter end of the buoy line and the bitter end of the buoy line must be free of any knots when the line breaks.

Splices are not considered to be knots for the purpose of this provision.

(*2*) *Groundlines.* On or before January 1, 2008, all groundlines must be comprised entirely of sinking and/or neutrally buoyant line. The attachment of buoys, toggles, or other floatation devices to groundlines comprised entirely of sinking and/or neutrally buoyant line is prohibited.

(9) *Restrictions applicable to the red crab trap/pot fishery*—(i) *Area.* The red crab trap/pot fishery is regulated in the waters identified in paragraphs (c)(5)(i) and (c)(8)(i) of this section.

(ii) *Area-specific gear requirements.* No person may fish with or have available for immediate use red crab trap/pot gear in the area identified in paragraph (c)(9)(i) of this section unless that person's gear complies with the gear marking requirements in paragraph (c)(1) of this section, the universal trap/pot gear requirements in paragraph (c)(1) of this section, and the gear requirements listed here. The Assistant Administrator revises this period in accordance with paragraph (h) of this section.

(A) *Weak links.* All buoys, flotation devices, and/or weights, such as toggles and/or leaded lines must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device, and/or weight as operationally feasible and that meets the following specifications:

(*1*) The weak link must be chosen from the following list of combinations approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(*2*) The breaking strength of the weak links may not exceed 2,000 lb (907.2 kg).

(*3*) Weak links must break cleanly at the bitter end of the buoy line and the bitter end of the buoy line must be free of any knots when the line breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Groundlines.* On or before January 1, 2008, all groundlines must be comprised entirely of sinking and/or neutrally buoyant line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other floatation devices to groundlines comprised entirely of sinking and/or neutrally buoyant line is prohibited.

(d) *Restrictions applicable to anchored gillnet gear*—(1) *Universal anchored gillnet gear requirements.* In addition to the area-specific measures listed in paragraphs (d)(2) through (d)(7) of this section, all anchored gillnet gear in regulated waters must comply with the universal gear requirements listed here.[3] The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(i) No buoy line floating at the surface. No person may fish with anchored gillnet gear that has any portion of the buoy line that is directly connected to the gear on the ocean bottom floating at the surface at any time. If more than one buoy is attached to a single buoy line or if a high flyer and a buoy are used together on a single buoy line, sinking and/or neutrally buoyant line must be used between these objects.

(ii) *No wet storage of gear.* Anchored gillnet gear must be hauled out of the water at least once every 30 days.

(2) *Cape Cod Bay Restricted Area*—(i) *Area.* The CCB Restricted Area consists of the CCB right whale critical habitat area specified under 50 CFR 226.203(b), unless the Assistant Administrator changes this area in accordance with paragraph (h) of this section.

(ii) *Closure during the winter restricted period—(A) Winter restricted period.* The winter restricted period for this area is from January 1 through May 15 of each year, unless the Assistant Administrator revises this period in accordance with paragraph (h) of this section.

(B) *Closure.* During the winter restricted period, no person may fish with or have available for immediate use anchored gillnet gear in the CCB Restricted Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (h) of this section and the gear or practices comply with those specifications. The Assistant Administrator may waive this closure for the remaining portion of the winter restricted period in any year through a notification in the **Federal Register** if NMFS determines that right whales have left the restricted area and are unlikely to return for the remainder of the season.

(iii) *Area-specific gear requirements for the other restricted period—(A) Other restricted period.* The other restricted period for the CCB Restricted Area is from May 16 through December 31 of each year unless the Assistant Administrator changes this period in accordance with paragraph (h) of this section.

(B) No person may fish with or have available for immediate use anchored gillnet gear in the CCB Restricted Area during the other restricted period unless that person's gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(3) *Great South Channel Restricted Gillnet Area*—(i) *Area.* The GSC Restricted Gillnet Area consists of the area bounded by lines connecting the following four points: 41°02.2′ N./69°02′ W., 41°43.5′ N./69°36.3′ W., 42°10′ N./68°31′ W., and 41°38′ N./68°13′ W. This area includes most of the GSC right whale critical habitat area specified under 50 CFR 226.203(a), with the exception of the sliver along the western boundary described here in paragraph (d)(4)(i) of this section. The Assistant Administrator may change this area in accordance with paragraph (h) of this section.

(ii) *Closure during the spring restricted period*—(A) *Spring restricted period.* The spring restricted period for the GSC Restricted Gillnet Area is from April 1 through June 30 of each year unless the AA revises that period in accordance with paragraph (h) of this section.

(B) *Closure.* During the spring restricted period, no person may set, fish with or have available for immediate use anchored gillnet gear in the GSC Restricted Gillnet Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (h) of this section and the gear or practices comply with those specifications.

(iii) *Area-specific gear requirements for the other restricted period*—(A) *Other restricted period.* The other restricted period for the GSC Restricted Gillnet Area is from July 1 though March 31 of each year unless the Assistant Administrator changes this period in accordance with paragraph (h) of this section.

(B) During the other restricted period, no person may fish with or have available for immediate use anchored gillnet gear in the GSC Restricted Gillnet Area unless that person's gear complies with the gear marking requirements

[3] Fishermen are also encouraged to maintain their buoy lines to be as knot-free as possible. Splices are not considered to be an entanglement threat and are thus preferable to knots.

specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(4) *Great South Channel Sliver Restricted Area*—(i) *Area.* The GSC Sliver Restricted Area consists of the area bounded by lines connecting the following points: 41°02.2′ N./69°02′ W., 41°43.5′ N./69°36.3′ W., 41°40′ N./69°45′ W., and 41°00′ N./69°05′ W. The Assistant Administrator may change this area in accordance with paragraph (h) of this section.

(ii) *Area-specific gear requirements.* No person may fish with or have available for immediate use anchored gillnet gear in the GSC Sliver Restricted Area unless that person's gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(5) *Stellwagen Bank/Jeffreys Ledge Restricted Area*—(i) *Area.* The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except those designated as right whale critical habitat under 50 CFR 226.203(b), that lie south of 43°15′ N. and west of 70°00′ W. The Assistant Administrator may change this area in accordance with paragraph (h) of this section.

(ii) *Area-specific gear requirements.* No person may fish with or have available for immediate use anchored gillnet gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that person's gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(6) *Other Northeast Gillnet Waters Area*—(i) *Area.* The Other Northeast Gillnet Waters Area consists of all U.S. waters west of the U.S./Canada border and north of a line extending due east from the Virginia/North Carolina border with the exception of the CCB Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, GSC Restricted Gillnet Area, GSC Sliver Restricted Area, Mid/South Atlantic Gillnet Waters, and exempted waters listed in paragraph (a)(3) of this section. The Assistant Administrator may change this area in accordance with paragraph (h) of this section.

(ii) *Area-specific gear requirements.* No person may fish with or have available for immediate use anchored gillnet gear in the Other Northeast Gillnet Waters Area unless that person's gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed below. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(A) *Weak links.* All buoys, flotation devices, and/or weights, such as toggles and/or leaded lines, must be attached to the buoy line with a weak link placed as close to the buoy, flotation device, and/or weight as operationally feasible and that meets the following specifications:

(*1*) The weak link must be chosen from the following list of combinations approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(*2*) The breaking strength of the weak links must not exceed 1,100 lb (498.8 kg).

(*3*) Weak links must break cleanly at the bitter end of the buoy line and the bitter end of the buoy line must be free of any knots when the line breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Net panel weak links.* The breaking strength of each weak links must not exceed 1,100 lb (498.9 kg). The weak link requirements apply to all variations in panel size. Weak links must break cleanly at the bitter end of the buoy line and the bitter end of the buoy line must be free of any knots when the line breaks. Splices are not considered to be knots for the purposes of this provision. (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(*1*) For all variations in panel size, the following weak link requirements apply:

(*i*) Weak links must be placed in the center of each of the up and down lines at both ends of the net panel; and

(*ii*) One floatline weak link must be placed as close as possible to each of the net panel where the floatline meets the up and down line.

(*2*) For net panels of 50 fathoms (300 ft or 91.4 m) or less in length, one weak link must be placed in the center of the floatline.

(*3*) For net panels of 50 fathoms (300 ft or 91.4 m) or greater in length, weak links must be placed at least every 25 fathoms (150 ft or 45.7 m) along the floatline.

(C) *Anchoring system.* All anchored gillnets, regardless of the number of net panels, must be secured at each end of the net string with a burying anchor (an anchor that holds through the use of a fluke, spade, plow, or pick) having the holding capacity equal to or greater than a 22-lb (10.0-kg) Danforth-style anchor. Dead weights do not meet this requirement.

(D) *Groundlines.* On or before January 1, 2008, all groundlines must be comprised entirely of sinking and/or neutrally buoyant line. The attachment of buoys, toggles, or other floatation devices to groundlines comprised entirely of sinking and/or neutrally buoyant line is prohibited.

(7) *Mid/South Atlantic Gillnet Waters*—(i) *Area.* The Mid/South Atlantic Gillnet Waters consists of all U.S. waters bounded by the line defined by the following points: The southern shore of Long Island, NY, at 72°30′ W., then due south to 33°51′ N., and then west to the North Carolina/South Carolina border, as defined in § 229.2. The Assistant Administrator may change this area in accordance with paragraph (h) of this section.

(ii) *Area-specific gear requirements.* From October 1 through April 30, no person may fish with or have available for immediate use anchored gillnet gear in the Mid/South Atlantic Gillnet Waters unless that person's gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the following area-specific requirements, which the Assistant Administrator may revise in accordance with paragraph (h) of this section:

(A) *Weak links.* All buoys, flotation devices, and/or weights, such as toggles and/or leaded lines, must be attached to the buoy line with a weak link placed

as close to the buoy, flotation device, and/or weight as operationally feasible and that meets the following specifications:

(*1*) The weak link must be chosen from the following list of combinations approved by NMFS: swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(*2*) The breaking strength of the weak links must not exceed 1,100 lb (498.8 kg).

(*3*) Weak links must break cleanly at the bitter end of the buoy line and the bitter end of the buoy line must be free of any knots when the line breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Net panel weak links.* All net panels must contain weak links that meet the following specifications:

(*1*) Weak links must be placed in the center of the floatline of each net panel up to and including 50 fathoms (300 ft or 91.4 m), or at least every 25 fathoms (150 ft or 45.7 m) along the floatline for longer panels.

(*2*) The breaking strength for each of the weak links must not exceed 1,100 lb (498.8 kg).

(C) *Additional tending/anchoring/weak links.* All gillnets must return to port with the vessel unless the gear meets the following specifications:

(*1*) *Anchoring system.* All anchored gillnets, regardless of the number of net panels, must be secured at each end of the net string with a burying anchor (an anchor that holds through the use of a fluke, spade, plow, or pick) having the holding capacity equal to or greater than a 22-lb (10.0-kg) Danforth-style anchor. Dead weights do not meet this requirement.

(*2*) *Net panel weak links.* The breaking strength of each weak link must not exceed 1,100 lb (498.9 kg). The weak link requirements apply to all variations in panel size. Weak links must break cleanly at the bitter end of the buoy line and the bitter end of the buoy line must be free of any knots when the line breaks. Splices are not considered to be knots for the purposes of this provision. (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(*i*) For all variations in panel size, the following weak link requirements apply: Weak links must be placed in the center of each of the up and down lines at both ends of the net panel, and one floatline weak link must be placed as close as possible to each of the net panel where the floatline meets the up and down line.

(*ii*) For net panels of 50 fathoms (300 ft or 91.4 m) or less in length, one weak link must be placed in the center of the floatline.

(*iii*) For net panels of 50 fathoms (300 ft or 91.4 m) or greater in length, weak links must be placed at least every 25 fathoms (150 ft or 45.7 m) along the floatline.

(D) *Groundlines.* On or before January 1, 2008, all groundlines must be comprised entirely of sinking and/or neutrally buoyant line. The attachment of buoys, toggles, or other floatation devices to groundlines comprised entirely of sinking and/or neutrally buoyant line is prohibited.

(8) [Reserved]

(e) *Restrictions applicable to driftnet gear*—(1) *Cape Cod Bay Restricted Area (i) Area.* The CCB Restricted Area consists of the CCB right whale critical habitat area specified under 50 CFR 226.203(b), unless the Assistant Administrator changes this area in accordance with paragraph (h) of this section.

(ii) *Closure during the winter restricted period*—(A) *Winter restricted period.* The winter restricted period for this area is from January 1 through May 15 of each year, unless the Assistant Administrator changes this period in accordance with paragraph (h) of this section.

(B) *Closure.* During the winter restricted period, no person may fish with or have available for immediate use driftnet gear in the CCB Restricted Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (h) of this section and the gear or practices comply with those specifications. The Assistant Administrator may waive this closure for the remaining portion of the winter restricted period in any year through a notification in the **Federal Register** if NMFS determines that right whales have left the restricted area and are unlikely to return for the remainder of the season.

(iii) *Area-specific gear requirements for the other restricted period*—(A) *Other restricted period.* The other restricted period for the CCB Restricted Area is from May 16 through December 31 of each year unless the Assistant Administrator changes this period in accordance with paragraph (h) of this section.

(B) No person may fish with or have available for immediate use driftnet gear in the CCB Restricted Area during the other restricted period unless that gear contains weak links with a breaking strength no greater than 1,100 lb (498.9 kg) in the middle of each 50 fathom (300 ft or 91.4 m) net panel, or every 25 fathoms (150 ft or 45.7 m) for longer net panels. In addition, no person may fish with or have available for immediate use driftnet gear at night in the CCB Restricted Area during the other restricted period unless that gear is tended. During that time, all driftnet gear set by that vessel in the CCB Restricted Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(2) *Great South Channel Restricted Gillnet Area*—(i) *Area.* The GSC Restricted Gillnet Area consists of the area bounded by lines connecting the following four points: 41°02.2′ N/69°02′ W, 41°43.5′ N./69°36.3′ W., 42°10′ N./68°31′ W., and 41°38′ N./68°13′ W. This area includes most of the GSC right whale critical habitat area specified under 50 CFR 226.203(a), with the exception of the sliver along the western boundary described here in paragraph (e)(3)(i) of this section. The Assistant Administrator may change this area in accordance with paragraph (h) of this section.

(ii) *Closure during the spring restricted period—(A) Spring restricted period.* The spring restricted period for the GSC Restricted Gillnet Area is from April 1 through June 30 of each year unless the Assistant Administrator changes this period in accordance with paragraph (h) of this section.

(B) *Closure.* During the spring restricted period, no person may set, fish with or have available for immediate use driftnet gear in the GSC Restricted Gillnet Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (h) of this section and the gear or practices comply with those specifications.

(iii) *Area-specific gear requirements for the other restricted period*—(A) *Other restricted period.* The other restricted period for the GSC Restricted Gillnet Area is from July 1 though March 31 of each year unless the Assistant Administrator changes this period in accordance with paragraph (h) of this section.

(B) No person may fish with or have available for immediate use driftnet gear in the GSC Restricted Gillnet Area during the other restricted period unless that gear contains weak links with a breaking strength no greater than 1,100 lb (498.9 kg) in the middle of each 50 fathom (300 ft or 91.4 m) net panel, or every 25 fathoms (150 ft or 45.7 m) for longer net panels. In addition, during the other restricted period, no person may fish with or have available for immediate use driftnet gear at night in the GSC Restricted Gillnet Area unless that gear is tended. During that time, all driftnet gear set by that vessel in the GSC Restricted Gillnet Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(3) *Great South Channel Sliver Restricted Area*—(i) *Area.* The GSC Sliver Restricted Area consists of the area bounded by lines connecting the following points: 41°02.2′ N./69°02′ W., 41°43.5′ N./69°36.3′ W., 41°40′ N./69°45′ W., and 41°00′ N./69°05′ W. The Assistant Administrator may change this area in accordance with paragraph (h) of this section.

(ii) *Area-specific gear requirements.* No person may fish with or have available for immediate use driftnet gear in the GSC Sliver Restricted Area during the other restricted period unless that gear contains weak links with a breaking strength no greater than 1,100 lb (498.9 kg) in the middle of each 50 fathom (300 ft or 91.4 m) net panel, or every 25 fathoms (150 ft or 45.7 m) for longer net panels. In addition, no person may fish with or have available for immediate use driftnet gear at night in the GSC Sliver Restricted Area unless that gear is tended. During that time, all driftnet gear set by that vessel in the GSC Sliver Restricted Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(4) *Other Northeast Gillnet Waters Area*—(i) *Area.* The Other Northeast Gillnet Waters Area consists of all U.S. waters west of the U.S./Canada border and north of a line extending due east from the Virginia/North Carolina border with the exception of the CCB Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, GSC Restricted Gillnet Area, GSC Sliver Restricted Area, Mid/South Atlantic Gillnet Waters Area, and exempted waters listed in paragraph (a)(3) of this section. The Assistant Administrator may change this area in accordance with paragraph (h) of this section.

(ii) *Area-specific gear requirements.* No person may fish with or have available for immediate use driftnet gear in the Other Northeast Gillnet Waters Area during the other restricted period unless that gear contains weak links with a breaking strength no greater than 1,100 lb (498.9 kg) in the middle of each 50 fathom (300 ft or 91.4 m) net panel, or every 25 fathoms (150 ft or 45.7 m) for longer net panels. In addition, no person may fish with or have available for immediate use driftnet gear at night in the Other Northeast Gillnet Waters Area unless that gear is tended. During that time, all driftnet gear set by that vessel in the Other Northeast Gillnet Waters Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(5) *Mid/South Atlantic Gillnet Waters Area*—(i) *Area.* The Mid/South Atlantic Gillnet Waters Area consists of all U.S. waters bounded by the line defined by the following points: The southern shore of Long Island, NY, at 72°30′ W., then due south to 33°51′ N., and west to the North Carolina/South Carolina border, as defined in § 229.2. The Assistant Administrator may change this area in accordance with paragraph (h) of this section.

(ii) *Area-specific gear requirements.* From December 1 through March 31, no person may fish with or have available for immediate use driftnet gear in the Mid/South Atlantic Gillnet Waters Area unless that gear contains weak links with a breaking strength no greater than 1,100 lb (498.9 kg) in the middle of each 50 fathom (300 ft or 91.4 m) net panel, or every 25 fathoms (150 ft or 45.7 m) for longer net panels. In addition, from December 1 through March 31, no person may fish with or have available for immediate use driftnet gear at night in the Mid/South Atlantic Gillnet Waters Area unless that gear is tended. During that time, all driftnet gear set by that vessel in the Mid/South Atlantic Gillnet Waters Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (h) of this section.

(f) *Restrictions applicable to southeast Atlantic gillnet gear*—(1) *Other Southeast Gillnet Waters Area*—(i) *Other Southeast Gillnet Waters Area.* From November 15 through April 15, the Other Southeast Gillnet Waters Area consists of the area from the South Carolina/Georgia border south to 29°00′ N. (near Cape Canaveral, FL), extending from the shore out to the eastern boundary of the EEZ, unless the Assistant Administrator changes this area in accordance with paragraph (h) of this section. From December 1 through March 31, the Other Southeast Gillnet Waters consists of the area from the South Carolina/Georgia border south to 27°51′ N., extending from the shore out to the eastern boundary of the EEZ, unless the Assistant Administrator changes this area in accordance with paragraph (h) of this section.

(ii) *Area-specific gear requirements.* For all gillnets, except for shark gillnets as defined in § 229.2, no person may fish with or have available for immediate use anchored gillnet gear in the Other Southeast Gillnet Waters Area unless that person's gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements specified in paragraph (d)(7)(ii) of this section, which the Assistant Administrator may revise in accordance with paragraph (h) of this section.

(iii) *Restrictions for straight sets.* Except as provided for shark gillnet gear under paragraph (g) of this section, no person may fish with or have available for immediate use a straight set of gillnet gear at night in the Other Southeast Gillnet Waters Area during the restricted period.

(2) [Reserved]

(g) *Restrictions applicable to southeast Atlantic shark gillnet gear*—(1) *Management areas and restricted periods*—(i) *Northern Monitoring and Restricted Area.* From November 15 through April 15, the Northern Monitoring and Restricted Area consists of the area from the South Carolina/Georgia border south to 29°00′ N. (near Cape Canaveral, FL), extending from the shore out to the eastern boundary of the EEZ, unless the Assistant Administrator changes this area in accordance with paragraph (h) of this section. From December 1 through March 31, the Northern Monitoring and Restricted Area consists of the area from the South Carolina/Georgia border south to 27°51′ N., extending from the shore out to the eastern boundary of the EEZ, unless the Assistant Administrator changes this area in accordance with paragraph (h) of this section.

(ii) *Southern Monitoring Area.* From December 1 through March 31, the Southern Monitoring Area consists of the area from 27°51′ N. south to 26°46.5′ N. (near West Palm Beach, FL) and extending from the shore out to the

eastern boundary of the EEZ, unless the Assistant Administrator changes that area in accordance with paragraph (h) of this section.

(iii) *Area-specific gear requirements.* For all shark gillnets, no person may fish with or have available for immediate use shark gillnet gear in the Northern Monitoring and Restricted Area or Southern Monitoring Area unless that person's gear complies with the gear marking requirements specified in paragraph (b)(3) of this section, and the vessel monitoring system requirements specified in paragraphs (g)(3) and (4) of this section.

(2) [Reserved]

(3) *Vessel monitoring systems.* (i) *Applicability.* No person may fish with or have available for immediate use shark gillnet gear in the Northern Monitoring and Restricted Area or the Southern Monitoring Area during the restricted period unless the operator of the vessel is in compliance with the vessel monitoring system (VMS) requirements found in 50 CFR 635.69. NMFS retains the authority to request that an observer be taken on board a vessel during a fishing trip at any time during the restricted period. If NMFS requests that an observer be taken on board a vessel, no person may fish with or have available for immediate use shark gillnet gear aboard that vessel in the Northern Monitoring and Restricted Area and Southern Monitoring Area unless an observer is on board that vessel during the trip.

(ii) [Reserved]

(4) *At-sea observer coverage.* (i) *Applicability.* NMFS may select any shark gillnet vessel regulated under § 229.32 to carry an observer. When selected, vessels are required to take observers on a mandatory basis in compliance with the requirements for at-sea observer coverage found in 50 CFR 229.7.

(ii) [Reserved]

(5) *Closure for shark gillnet gear.* Except as provided for strikenets under paragraph (g)(5)(i) of this section, no person may fish with or have available for immediate use shark gillnet gear in the Northern Monitoring and Restricted Area or the Southern Monitoring Area during the restricted period.

(i) *Special provision for strikenets.* Fishing for sharks with strikenet gear is exempt from the restrictions under paragraphs (g)(5) of this section if:

(A) No nets are set at night or when visibility is less than 500 yards (460m);

(B) Each set is made under the observation of a spotter plane;

(C) No net is set within 3 nautical miles (5.6 km) of a right, humpback, or fin whale; and

(D) If a right, humpback, or fin whale moves within 3 nautical miles (5.6 km) of the set gear, the gear is removed immediately from the water.

(ii) [Reserved]

(h) *Other provisions.* In addition to any other emergency authority under the Marine Mammal Protection Act, the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, or other appropriate authority, the Assistant Administrator may take action under this section in the following situations:

(1) *Entanglements in critical habitat.* If a serious injury or mortality of a right whale occurs in the Cape Cod Bay Restricted Area from January 1 through May 15, in the Great South Channel Restricted Area from April 1 through June 30, or in the Northern Monitoring and Restricted Area and the Southern Monitoring Area from November 15 through March 31 as a result of an entanglement by trap/pot or gillnet gear allowed to be used in those areas and times, the Assistant Administrator shall close that area to that gear type for the rest of that time period and for that same time period in each subsequent year, unless the Assistant Administrator revises the restricted period in accordance with paragraph (h)(2) of this section or unless other measures are implemented under paragraph (h)(2) of this section.

(2) *Other special measures.* The Assistant Administrator may revise the requirements of this section through a publication in the **Federal Register** if:

(i) NMFS verifies that certain gear characteristics are both operationally effective and reduce serious injuries and mortalities of endangered whales;

(ii) New gear technology is developed and determined to be appropriate;

(iii) Revised breaking strengths are determined to be appropriate;

(iv) New marking systems are developed and determined to be appropriate;

(v) NMFS determines that right whales are remaining longer than expected in a closed area or have left earlier than expected;

(vi) NMFS determines that the boundaries of a closed area are not appropriate;

(vii) Gear testing operations are considered appropriate; or

(viii) Similar situations occur.

(3) Until 6 months after the publication of the final rule amending § 229.32, NMFS may establish a temporary Dynamic Area Management (DAM) zone in the following manner:

(i) *Trigger.* Upon receipt of a single reliable report from a qualified individual of three or more right whales within an area NMFS will plot each individual sighting (event) and draw a circle with a 2.8 nm (5.2 km) radius around it, which will be adjusted for the number of right whales sighted such that a density of at least 0.04 right whales per nm2 (1.85 km2) is maintained within the circle. If any circle or group of contiguous circles includes 3 or more right whales, NMFS would consider this core area and its surrounding waters a candidate DAM zone.

(ii) *DAM zone.* Areas for consideration for DAM zones are limited to areas north of 40°00′ N. Having identified any circle or group of contiguous circles including 3 or more right whales as candidates for protection, as identified in paragraph (g)(3)(i) of this section, NMFS will determine the extent of the DAM zone as follows:

(A) A larger circular zone will be drawn to extend 15 nm (27.8 km) from the perimeter of a circle around each core area.

(B) The DAM zone will then be defined by a polygon drawn outside but tangential to the circular buffer zone(s). The latitudinal and longitudinal coordinates of the corners of the polygon will then be identified.

(iii) *Requirements and prohibitions within DAM zones.* Notice of specific area restrictions will be published in the **Federal Register** and will become effective 2 days after publication. Gear not in compliance with the imposed restrictions may not be set in the DAM zone after the effective date. NMFS may:

(A) require owners of gillnet and trap/pot gear set within the DAM zone to remove all such gear within 2 days after notice is published in the **Federal Register**,

(B) Allow fishing within a DAM zone with anchored gillnet and trap/pot gear, provided such gear satisfies the requirements specified in paragraphs (h)(4)(i)(B)(*1*) and (h)(4)(i)(B)(*2*) of this section, except that a second buoy line and a section of floating line in the bottom portion of each line not to exceed one-third the overall length of the buoy line are allowed within a DAM zone. These requirements are in addition to requirements found in § 229.32 (b) through (d) but supersede them when the requirements in paragraphs (h)(4)(i)(B)(*1*) and (h)(4)(i)(B)(*2*) of this section, with the exception that a second buoy line and a section of floating line in the bottom portion of each line not to exceed one-third the overall length of the buoy line are allowed within a DAM zone, are more restrictive than those in § 229.32 (b) through (d). Requirements for

anchored gillnet gear in Other Northeast Gillnet Waters are as specified in paragraphs (h)(4)(i)(B)(*1*) of this section, except that a second buoy line and a section of floating line in the bottom portion of each line not to exceed one-third the overall length of the buoy line are allowed within a DAM zone. Requirements for trap/pot gear in Offshore Trap/Pot Waters, Northern Nearshore Trap/Pot Waters and Northern Inshore State Trap/Pot Waters are as specified in paragraph (g)(4)(i)(B)(*2*) of this section, except that a second buoy line and a section of floating line in the bottom portion of each line not to exceed one-third the overall length of the buoy line are allowed within a DAM zone. Requirements for anchored gillnet gear in Cape Cod Bay Restricted Area (May 16 through December 31), Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area (July 1 through March 31), Great South Channel Sliver Restricted Area (July 1 through March 31), and Mid/South Atlantic Gillnet Waters are the same as requirements for Other Northeast Gillnet Waters. Requirements for trap/pot gear in Southern Nearshore Trap/Pot Waters, Cape Cod Bay Restricted Area (May 16 through December 31) and Stellwagen Bank/Jeffreys Ledge Restricted Area are the same as requirements for Northern Nearshore Trap/Pot Waters and Northern Inshore State Trap/Pot Waters. Requirements for trap/pot gear in the Great South Channel Restricted Trap/Pot Area (July 1 through March 31) are the same as requirements for Offshore Trap/Pot Waters.

(C) Issue an alert to fishermen using appropriate media to inform them of the fact that right whale density in a certain area has triggered a DAM zone. In the alert, NMFS will provide detailed information on the location of the DAM zone and the number of animals sighted within it. Furthermore, NMFS will request that fishermen voluntarily remove trap/pot and anchored gillnet gear from the DAM zone and ask that no additional gear be set inside it for 15 days or until NMFS rescinds the alert.

(D) The determination of whether restrictions will be imposed within a DAM zone would be based on NMFS' review of a variety of factors, including but not limited to: The location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

(iv) *Restricted period.* Any DAM zone will remain in effect for a minimum period of 15 days. At the conclusion of the 15-day period, the DAM zone will expire automatically unless it is extended by subsequent publication in the **Federal Register**.

(v) *Extensions of the restricted period.* Any 15-day period may be extended if NMFS determines that the trigger established in paragraph (h)(3)(i) of this section continues to be met.

(vi) *Reopening of restricted zone.* NMFS may remove any gear restriction or prohibition and reopen the DAM zone prior to its automatic expiration if there are no confirmed sightings of right whales for at least 1 week, or other credible evidence indicates that right whales have left the DAM zone. NMFS will notify the public of the reopening of a DAM zone prior to the expiration of the 15-day period by issuing a document in the **Federal Register** and through other appropriate media.

(4) *Seasonal Area Management (SAM) Program.* Until January 1, 2008, in addition to existing requirements for vessels deploying anchored gillnet or trap/pot gear in the Other Northeast Gillnet Waters, Northern Inshore State Trap/Pot Waters, Northern Nearshore Trap/Pot Waters, Offshore Trap/Pot Waters, Great South Channel Restricted Gillnet Area (July 1 through July 31), Great South Channel Sliver Restricted Area (May 1 through July 31), Great South Channel Restricted Trap/Pot Area (July 1 through July 31), and Stellwagen Bank/Jeffreys Ledge Restricted Area found at § 229.32 (b)–(d), a vessel may fish in the SAM Areas as described in paragraphs (h)(4)(i)(A) and (h)(4)(ii)(A) of this section, which overlay the previously mentioned areas, provided the vessel complies with the gear requirements specified in paragraphs (h)(4)(i)(B) and (h)(4)(ii)(B) of this section during the times specified in those paragraphs. The gear requirements in (h)(4)(i)(B) and (h)(4)(ii)(B) of this section supercede requirements found at § 229.32 (b)–(d) when the former are more restrictive than the latter. For example, the closures applicable to trap/pot and gillnet gear in the Great South Channel found in paragraphs (c)(3)(ii) and (d)(3)(ii) of this section are more restrictive than the gear modifications described in this section and, therefore, supercede them. (Copies of a chart depicting these areas are available upon request from the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(i) *SAM West.* (A) *Area.* SAM West consists of all waters bounded by straight lines connecting the following points in the order stated:

SAM WEST

| Point | N. lat. | W. long. |
|---|---|---|
| SAM1 ..... | 42°30′ | 70°30′ |
| SAM2 ..... | 42°30′ | 69°24′ |
| SAM3 ..... | 41°48.9′ | 69°24′ |
| SAM4 ..... | 41°40′ | 69°45′ |
| SAM5 ..... | 41°40′ | 69°57′ and along the Eastern Shore of Cape Cod to |
| SAM6 ..... | 42°04.8′ | 70°10′ |
| SAM7 ..... | 42°12′ | 70°15′ |
| SAM8 ..... | 42°12′ | 70°30′ |

(B) *Gear requirements.* Unless otherwise authorized by the Assistant Administrator, in accordance with paragraph (h)(2) of this section, from March 1 through April 30, no person may fish with or have available for immediate use anchored gillnet or trap/pot gear in SAM West unless that person's gear complies with the following gear modifications:

(*1*) *Anchored gillnet gear.* (i) *Groundlines*—All groundlines must be made entirely of sinking and/or neutrally buoyant line. Floating groundlines are prohibited. The attachment of buoys, toggles, or other floatation devices to groundlines comprised entirely of sinking and/or neutrally buoyant line is prohibited.

(*ii*) *Weak links*—All buoys, flotation devices, and/or weights, such as toggles and/or leaded lines, are attached to the buoy line with a weak link placed as close to each individual buoy, flotation device, and/or weight as operationally feasible that has a maximum breaking strength of up to 1,100 lb (498.9 kg). The weak link must be chosen from the following list of combinations approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. Weak links must break cleanly at the bitter end of the buoy line and the bitter end of the buoy line must be free of any knots when the line breaks. Splices are not considered to be knots for the purposes of this provision. (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(*iii Net panel weak links.* The breaking strength of each weak link must not exceed 1,100 lb (498.9 kg). The weak link requirements apply to all variations in panel size. Weak links must break cleanly at the bitter end of

the buoy line and the bitter end of the buoy line must be free of any knots when the line breaks. Splices are not considered to be knots for the purposes of this provision. (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(*iv*) For all variations in panel size, the following weak link requirements apply: Weak links must be placed in the center of each of the up and down lines at both ends of the net panel, and one floatline weak link must be placed as close as possible to each end of the net panel where the floatline meets the up and down line.

(*v*) For net panels of 50 fathoms (300 ft or 91.4 m) or less in length, one weak link must be placed in the center of the floatline.

(*vi*) For net panels of 50 fathoms (300 ft or 91.4 m) or greater in length, weak links must be placed continuously along the floatline separated by a maximum distance of 25 fathoms (150 ft or 45.7 m).

(*vii*) *Buoy lines.* All buoy lines must be comprised of sinking line except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line.

(*viii*) *Gillnet anchor.* All anchored gillnets, regardless of the number of net panels, must be securely anchored with a holding power of at least a 22-lb (10-kg) Danforth-style anchor at each end of the net string.

(*2*) *Trap/pot gear.* (i) *Groundlines*—All groundlines must be made entirely of sinking and/or neutrally buoyant line. Floating groundlines are prohibited. The attachment of buoys, toggles, or other floatation devices to groundlines comprised entirely of sinking and/or neutrally buoyant line is prohibited.

(*ii*) *Northern Inshore State Trap/Pot Waters, Northern Nearshore Trap/Pot Waters Areas, and Stellwagen Bank/Jeffreys Ledge Restricted Area weak links*—All flotation devices or weights must be attached to the buoy line with a weak link placed as close to the buoy as operationally feasible that has a maximum breaking strength of up to 600 lb (272.4 kg). The weak link must be chosen from the following list of combinations approved by NMFS: swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. Weak links must break cleanly at the bitter end of the buoy line and the bitter end of the buoy line must be free of any knots when the line breaks. (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(*iii*) *Offshore Trap/Pot Waters Area weak links*—All flotation devices or weights must be attached to the buoy line with a weak link placed as close to the buoy as operationally feasible that has a maximum breaking strength of up to 1,500 lb (680.4 kg). The weak link must be chosen from the following list of combinations approved by NMFS: swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. Weak links must break cleanly at the bitter end of the buoy line and the bitter end of the buoy line must be free of any knots when the line breaks. Splices are not considered to be knots for the purposes of this provision. (A copy of a brochure illustrating the techniques for making weak links is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(*iv*) *Buoy lines*—All buoy lines must be comprised of sinking line except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line.

(ii) *SAM East.* (A) *Area.* SAM East consists of all waters bounded by straight lines connecting the following points in the order stated:

SAM EAST

| Point | N. lat. | W. long. |
|---|---|---|
| SAM9 ..... | 42°30′ | 69°45′ |
| SAM10 ..... | 42°30′ | 67°27′ |
| SAM11 ..... | 42°09′ | 67°08.4′ |
| SAM12 ..... | 41°00′ | 69°05′ |
| SAM4 ..... | 41°40′ | 69°45′ |

(B) *Gear requirements.* Unless otherwise authorized by the Assistant Administrator, in accordance with paragraph (h)(2) of this section, from May 1 through July 31, no person may fish with anchored gillnet or trap/pot gear in SAM East unless that person's gear complies with the gear modifications found at paragraph (h)(4)(i)(B) of this section.

**Note to § 229.32:** Additional regulations that affect fishing with lobster trap gear have also been issued under authority of the Atlantic Coastal Fisheries Cooperative Management Act in part 697 of this title.

## PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for 50 CFR part 635 continues to read as follows:

**Authority:** 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.69, paragraph (a)(3) is revised to read as follows:

### § 635.69 Vessel monitoring systems.

(a) * * *

(3) Whenever a vessel, issued a directed shark LAP, is away from port with a gillnet on board during the right whale calving season specified in the regulations implementing the Atlantic Large Whale Take Reduction Plan Regulations in § 229.32 of this title.

* * * * *

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for 50 CFR part 648 continues to read as follows:

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

2. In § 648.264, paragraph (a)(6)(i) is revised to read as follows:

### § 648.264 Gear requirements/restrictions.

(a) * * *

(6) *Additional gear requirements.* (i) Vessels must comply with the gear regulations found at § 229.32 of this title.

* * * * *

[FR Doc. 05–11847 Filed 6–20–05; 8:45 am]

BILLING CODE 3510–22–P

Federal Register

**Tuesday,**

**June 21, 2005**

## Part IV

# Environmental Protection Agency

**40 CFR Parts 52 and 81**

**Approval and Promulgation of State Implementation Plans and Designation of Areas for Air Quality Planning Purposes in Ohio; Final Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

**[R05–OAR–2005–OH–0004; FRL–7925–3]**

# Approval and Promulgation of State Implementation Plans and Designation of Areas for Air Quality Planning Purposes in Ohio; Redesignation of Cincinnati to Attainment of the 1–Hour Ozone Standard and Approval of Ozone Maintenance Plan; Approval of Volatile Organic Compound Emissions Control Regulations; and Approval of Motor Vehicle Emissions Budgets

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a request from the State of Ohio, submitted in draft on March 10, 2005 and in final on May 20, 2005, to redesignate the Cincinnati area (Butler, Clermont, Hamilton, and Warren Counties) from nonattainment to attainment for the 1–hour ozone National Ambient Air Quality Standard (NAAQS). In conjunction with this approval, EPA is approving the State's plan for maintaining the 1–hour ozone NAAQS in the Cincinnati area through 2015 as a revision to the Ohio State Implementation Plan (SIP). EPA is approving Volatile Organic Compound (VOC) emission control regulations for various source categories, thus completing Ohio's obligation to adopt Reasonably Available Control Technology (RACT) regulations for the Cincinnati area. EPA is approving periodic VOC and Oxides of Nitrogen ($NO_x$) emission inventories for the Cincinnati area. EPA finds as adequate and is approving the 2015 VOC and $NO_x$ Motor Vehicle Emission Budgets (MVEBs) for the Cincinnati area as contained in the Cincinnati area ozone maintenance plan.

EPA is not, at this time, taking action on Ohio's demonstrations that termination of the vehicle Inspection and Maintenance (I/M) programs in the Cincinnati and Dayton areas will not interfere with the attainment and maintenance of the 1–hour ozone NAAQS in these areas, and is not taking action on the State's requests for conversion of the vehicle I/M programs in these areas to contingency measures in the 1–hour ozone maintenance plans. The State did not submit a demonstration of non-interference with the 8–hour ozone or fine particulate ($PM_{2.5}$) standards, or with any other applicable requirements of the Clean Air Act (CAA). Such actions, however, may be considered in subsequent rulemakings.

**DATES:** This rule is effective on June 14, 2005, except 40 CFR 52.1870 which is effective on July 21, 2005.

**ADDRESSES:** EPA has established a docket for this action under Regional Material in EDocket (RME) Docket ID No. R05–OAR–2005–OH–0004. All documents in the docket are listed in the RME index at *http://docket.epa.gov/rmepub/*, once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. We recommend that you telephone Edward Doty, Environmental Scientist, at (312) 886–6057 before visiting the Region 5 office. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Edward Doty, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6057, *doty.edward@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In the following, whenever ''we,'' ''us,'' or ''our'' are used, we mean the United States Environmental Protection Agency.

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## I. What Is The Background for This Rule?

In accordance with section 107(d) of the Clean Air Act (CAA) as amended in 1977, EPA designated all counties in the Cincinnati-Hamilton area (the Ohio portion of this area includes Butler, Clermont, Hamilton, and Warren Counties, and the Kentucky portion of this area includes Boone, Campbell, and Kenton Counties) as an ozone nonattainment area for the 1-hour ozone NAAQS in March 1978 (43 FR 8962). On November 6, 1991 (56 FR 56694), pursuant to section 107(d)(4)(A) of the CAA as amended in 1990, EPA designated the Cincinnati-Hamilton area as a moderate ozone nonattainment area based on monitored violations of the 1-hour ozone NAAQS recorded during the 1987–1989 period.

From 1996 through 1998, air quality monitors in Ohio and Kentucky in the vicinity of the Cincinnati-Hamilton area recorded three years of complete, quality-assured ambient ozone data that did not violate the 1-hour ozone NAAQS.[1] Thus, the area met the air quality requirement [2] for redesignation to attainment of the 1-hour ozone NAAQS. This area has continued to

[1] The 1-hour ozone NAAQS is violated when the annual average expected number of daily peak 1-hour ozone concentrations equaling or exceeding 0.125 parts per million (ppm) (125 parts per billion (ppb)) is 1.05 or greater over a three-year period at any monitoring site in the area of interest.

[2] Section 107(d)(3)(E) of the CAA specifies five criteria for redesignation to attainment of the NAAQS, of which acceptable air quality is only one of the criteria. See 70 FR 19898 for a complete listing of all five criteria.

monitor attainment of the 1-hour ozone NAAQS from 1996 through the present.

In 1999, the Ohio Environmental Protection Agency (Ohio EPA) and the Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet (Cabinet) submitted separate requests for the redesignation of the State-specific portions of the Cincinnati-Hamilton area to attainment of the 1-hour ozone NAAQS. On January 24, 2000 (65 FR 3630), EPA proposed approval of the Ohio and Kentucky ozone redesignation requests. EPA issued a final rulemaking (65 FR 37879) on June 19, 2000, effective July 5, 2000, determining that the Cincinnati-Hamilton area had attained the 1-hour ozone NAAQS and approving the Ohio and Kentucky ozone redesignation requests, the States' plans for maintaining the 1-hour ozone NAAQS, and their $NO_X$ emission control exemption requests ($NO_X$ control waiver requests).

On August 17, 2000, two Ohio residents and the Ohio chapter of the Sierra Club petitioned the United States Court of Appeals for the 6th Circuit (Court) for review of EPA's final rule on the States' ozone redesignation requests for the Cincinnati-Hamilton area. The petitioners urged the Court to find that the EPA had erred in a number of respects in approving the redesignation requests. In its September 11, 2001 decision, the Court upheld EPA's actions with respect to all requirements for redesignation that related to Kentucky. The Court also rejected the majority of the petitioners' challenges with respect to EPA's approval of the Ohio redesignation request, with the sole exception of EPA's finding that it could approve Ohio's redesignation request before Ohio had fully adopted all of the VOC emission control rules needed to comply with the RACT requirements of part D, subpart 2 of the CAA. The Court concluded that EPA exceeded its discretion by determining that Ohio did not need to fully adopt all of the VOC RACT rules required by the CAA as a prerequisite for EPA's approval of Ohio's ozone redesignation request for the Cincinnati area. The Court thus vacated EPA's action in redesignating the Cincinnati-Hamilton area to attainment of the 1-hour ozone NAAQS and ''remanded for further proceedings consistent with this opinion.'' See *Wall* v. *EPA* (265 F.3d 436, 6th Circuit 2001).

On February 12, 2002 (67 FR 6411), in a direct final rule, the EPA took action to reinstate a designation of attainment of the 1-hour ozone NAAQS for the Kentucky portion of the Cincinnati-Hamilton area. A submittal of a negative comment, however, resulted in the withdrawal of this rule on April 8, 2002 (67 FR 16646). The reinstatement of the attainment designation for the Kentucky portion of the Cincinnati-Hamilton area was subsequently completed through promulgation of a final rule responding to comments on July 31, 2002 (67 FR 49600).

On March 12, 2002 (67 FR 11041), through a technical amendment to its June 19, 2000 final rule, the EPA revised the ozone designation of the Ohio portion of the Cincinnati-Hamilton area to nonattainment of the 1-hour ozone NAAQS with a classification of moderate nonattainment. This technical amendment became effective on April 11, 2002.

On April 30, 2004 (69 FR 23858), the Cincinnati area was designated as nonattainment for the 8-hour ozone NAAQS and classified as a subpart 1 (subpart 1 of the CAA) or ''Basic'' area. This designation became effective on June 15, 2004. Please note, however, that today's final action primarily deals with the designation of this area for the 1-hour ozone NAAQS and not for the 8-hour ozone NAAQS.

On March 10, 2005, the Ohio EPA submitted a new ozone redesignation request and ozone maintenance plan, in draft, for the Cincinnati area. This submittal also included draft VOC emission control rules that Ohio was preparing to adopt to comply with the RACT requirements of the CAA. The submittal requested the EPA to parallel process [3] the ozone redesignation request, ozone maintenance plan, and VOC emission control rules, and noted that the State had scheduled a public hearing to address the submittal items.

On April 4, 2005, the Ohio EPA submitted additional information, including a negative declaration to avoid RACT for plastic parts coating, and demonstrations showing that terminating the vehicle inspection and maintenance (vehicle I/M) programs in the Cincinnati and Dayton areas will not interfere with the attainment and maintenance of the 1-hour ozone NAAQS in these areas. Consequently, the Ohio EPA proposed to revise the SIP and the ozone maintenance plans for these areas to move the vehicle I/M programs from the active portion of the SIP to the contingency measure portions of the area-specific maintenance plans. This submittal revised the ozone maintenance demonstrations for these areas and revised mobile source emission budgets to reflect the changes in mobile source VOC and $NO_X$ emissions that will result when the I/M programs are terminated. Finally, this submittal included a committal from the State to complete and submit analyses in compliance with section 110(l) of the CAA to demonstrate that terminating the vehicle I/M programs will not interfere with the attainment of any NAAQS and with compliance with requirements of the CAA.

On April 15, 2005, EPA published a proposed rule (70 FR 19895), proposing to: (1) Find that the Cincinnati-Hamilton area has continued to attain the 1-hour ozone NAAQS and to approve Ohio's request for the redesignation of the Cincinnati area to attainment of the 1-hour ozone NAAQS; (2) approve Ohio's ozone maintenance plan for the Cincinnati area; (3) approve certain VOC emission control regulations as meeting the RACT requirements of the CAA; (4) approve periodic emission inventories for the Cincinnati area; and (5) notify the public that the mobile source VOC and $NO_X$ emission estimates projected through 2015 in the Cincinnati area maintenance plan are approvable and adequate for conformity purposes. In addition, we proposed to find that Ohio has demonstrated that termination of the vehicle I/M programs in the Cincinnati and Dayton areas will not interfere with the attainment and maintenance of the 1-hour ozone NAAQS in these areas. This proposed rule established a 30-day public comment period.

This rule is EPA's final action on the April 15, 2005 proposed rule as it relates to attainment and maintenance of the 1-hour ozone NAAQS in the Cincinnati area. Since the final, State-adopted SIP revision request is substantially the same as that submitted for parallel processing by the EPA and contains only significant revisions as requested by the EPA and noted in our April 15, 2005 proposed rule, we will not publish an additional proposed rule on this State submittal. EPA is, however, not taking final action on certain portions of the April 15, 2005 proposed rule as noted below.

## II. What Actions Are We Taking and When Are They Effective?

After consideration of the comments received in response to the April 15, 2005 proposed rule, as described in section V below, and the State's final,

[3] A state request for parallel processing is used when the state has not completed adoption of a SIP revision request, but anticipates doing so prior to EPA's completion of final rulemaking for the requested SIP revision. Parallel processing of a state's draft SIP revision request can only lead to a final EPA rulemaking (without additional proposed rulemaking by the EPA) if the state's final, adopted SIP revision request is essentially the same as the initial drafted SIP revision request or is modified in a manner requested by the EPA and noted in EPA's parallel processing proposed rule.

adopted SIP revisions and supporting material (reviewed in draft form in the April 15, 2005 proposed rule), we are taking the following actions:

*A. Finding of Continued Attainment for Cincinnati*

In its June 19, 2000 rulemaking, EPA issued a final rule determining that the Cincinnati-Hamilton area had attained the 1-hour ozone NAAQS (65 FR 37879). While the Court, in *Wall* v. *EPA*, vacated EPA's action redesignating the area to attainment, it did not vacate EPA's determination of attainment for the area. Therefore, the determination of attainment remains intact and in effect. 67 FR 49600 (July 31, 2002). As a result of this determination of attainment, EPA also determined that certain attainment demonstration requirements, along with certain other related requirements of part D of title I of the CAA are not applicable to the area. In its April 15, 2005 proposal, EPA proposed to find that the Cincinnati-Hamilton area has continued to attain the 1-hour NAAQS. 70 FR 19899, 19901. In this notice we are finalizing this finding. In addition, since the Cincinnati-Hamilton area continues to attain the 1-hour ozone NAAQS, we note that a $NO_X$ emission control waiver pursuant to section 182(f) of the CAA, approved on July 13, 1995 (60 FR 36060) and extended on June 19, 2000 (65 FR 37879), continues in the Cincinnati area.

The State must continue to operate an appropriate monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The air quality data relied on to determine that the area is attaining the ozone NAAQS must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance and recorded in EPA's Aerometric Information Retrieval System (AIRS).

EPA has reviewed the ambient air monitoring data for ozone for the Cincinnati-Hamilton area from the 2002 to 2004 ozone seasons (for the Cincinnati-Hamilton area, the ozone season is April 1 through October 31 of each year, when the highest 1-hour ozone concentrations are typically recorded). On the basis of this review, EPA has determined that the area has continued to attain the 1-hour ozone NAAQS during the 2002–2004 period. Therefore, the State of Ohio is not required to submit an ozone attainment demonstration, Reasonably Available Control Measures (RACM) regulations, a Reasonable Further Progress (RFP) plan, and a section 172(c)(9) contingency measure plan, nor does it need any other measures (other measures mandated by the CAA) to attain the 1-hour ozone NAAQS in the Cincinnati-Hamilton area.

*B. Redesignation of the Cincinnati Area to Attainment of the 1-Hour Ozone NAAQS*

As just explained, EPA has determined that the entire Cincinnati-Hamilton area has attained the 1-hour ozone standard. In this final rule, EPA is taking action on Ohio's request to redesignate the Ohio portion (the Cincinnati area) of the Cincinnati-Hamilton area to attainment of the 1-hour ozone NAAQS. As noted above, on February 12, 2002 (67 FR 6411), EPA reinstated its approval of a redesignation to attainment of the 1-hour NAAQS for the Kentucky portion of the Cincinnati-Hamilton area. Also as noted above, on remand from the Court, *Wall* v. *EPA*, 265 F.3d 436 (6th Cir. 2001), on March 12, 2002 (67 FR 11041), EPA reinstated a designation of nonattainment of the 1-hour ozone NAAQS for the Ohio portion of the Cincinnati-Hamilton area. Thus, only the Ohio portion of the Cincinnati-Hamilton area was left with a designation of nonattainment for the 1-hour ozone NAAQS in this area. Thus, this final rule only affects the Ohio portion of the Cincinnati-Hamilton area.

EPA is approving the request from the State of Ohio to redesignate the Cincinnati area to attainment of the 1-hour ozone NAAQS. With our approval of Ohio's VOC RACT rules, as discussed below, the Cincinnati area has complied with all CAA criteria for redesignation to attainment of the NAAQS, as set forth in section III below.

*C. Approval of Ohio's Ozone Maintenance Plan for the Cincinnati Area*

EPA is approving Ohio's plan for maintaining the 1-hour ozone NAAQS in the Cincinnati area through 2015 as a revision to the Ohio SIP. The adopted maintenance plan contains triggering mechanisms and contingency measures designed to promptly correct a violation of the 1-hour ozone NAAQS that occurs after redesignation of the Cincinnati area to attainment of the NAAQS. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the State will promptly correct a violation of the NAAQS that occurs after redesignation.

The VOC contingency measures listed in the adopted maintenance plan are the following: [4]

1. Lower Reid Vapor Pressure (RVP) gasoline; [5]
2. Reformulated gasoline;
3. Broader geographic coverage of existing regulations;
4. Application of RACT to smaller existing sources;
5. Implementation of one or more transportation control measures sufficient to achieve at least a 0.5 percent reduction in area wide VOC emissions;
6. Alternative fuel programs for fleet vehicle operations;
7. Controls on consumer products consistent with those adopted elsewhere in the United States;
8. VOC offsets for new or modified major sources;
9. VOC offsets for new or modified minor sources;
10. Increased ratio of VOC offsets required for new sources; and
11. Requirements of VOC controls on new minor sources.

Ohio also requested that the vehicle I/M program, known as E-Check in Ohio, be converted to a contingency measure in the maintenance plan. However, Ohio offered EPA the option of first approving a maintenance plan in which E-Check remains an active measure and later approving a revision to the maintenance plan to convert E-Check to a contingency measure. For reasons described below, EPA is approving a maintenance plan in which the projected emission estimates take no credit for the operation of E-Check, even though E-Check would remain an active measure in the SIP.

Consideration and selection of one or more of the contingency measures will take place in the event that it is verified that the 1-hour ozone NAAQS is violated after the redesignation of the Cincinnati area to attainment of the NAAQS. The selected contingency measure(s) will be implemented within 12 months, after verification of a NAAQS violation. If the NAAQS continues to be violated after the implementation of the VOC contingency control measure, $NO_X$ RACT will be adopted and implemented. As noted above, the list of contingency measures is made up entirely of VOC emission control measures. Ohio's first preference for the selection of an emissions control measure as a contingency measure is to pursue a VOC emissions reduction

[4] Note that the contingency plan adopted by the State also includes VOC RACT for sources covered by new control technology guidelines issued in response to the 1990 CAA amendments. This contingency measure has become moot because the State has adopted such RACT rules and is in the process implementing these regulations.

[5] Prior to implementing lower RVP gasoline requirements, the State of Ohio would have to be granted a waiver to address preemption requirements under section 211(c)(4)(C) of the CAA.

measure. The State wants to pursue $NO_X$ RACT as an additional, contingency emissions control measure only if the implementation of the VOC emissions control measure fails to prevent additional violations of the 1-hour ozone NAAQS.

The maintenance plan estimates emissions 10 years into the future from the anticipated year of the redesignation as required by section 175A of the CAA. These emission estimates are for point, area, and mobile sources in the Ohio portion of the Cincinnati-Hamilton area. The emissions estimates demonstrate continued maintenance of the 1-hour ozone standard through 2015. The latest information was used to project these emissions. The mobile source emissions estimates were developed using the MOBILE6 model. As noted above, the mobile source emission estimates do not include the emission reductions resulting from the continued implementation of the E-Check program. The maintenance plan demonstrates that the 1-hour standard can be maintained without taking credit for the E-Check program. The State continues to implement the E-Check program in the Cincinnati area in compliance with the current SIP, but anticipates it will submit a request for its future termination and retention as a contingency measure. In this request, the State will demonstrate that termination of the E-Check program will not interfere with the attainment of any NAAQS and with compliance with any requirement of the CAA. In addition, the State will demonstrate compliance with 40 CFR 51.372(c).

Despite the fact that Ohio is continuing with the implementation of the E-Check program, we believe we can approve the ozone maintenance plan even though Ohio has not taken credit for the emissions reductions resulting from the E-Check program in the maintenance demonstration. Ohio's approach provides a conservative demonstration that shows that maintenance of the 1-hour ozone standard will occur in the Cincinnati area even if the E-Check program is terminated.

*D. Approval and Finding of Adequacy of VOC and $NO_X$ Motor Vehicle Emission Budgets for the Cincinnati Area*

EPA finds as adequate and approves the 2015 Motor Vehicle Emission Budgets (MVEBs) of 26.2 tons per day for VOC and 39.5 tons per day for $NO_X$ for the Ohio portion of the Cincinnati-Hamilton area in the State-adopted maintenance plan. These MVEBs are subarea budgets for the Ohio portion of the Cincinnati-Hamilton area and will be used for future transportation conformity determinations.

Although these budgets do not include emissions reductions from the E-Check program, the emissions estimates continue to decline from current estimates (from 1996 and 2005 levels, see Tables 4 and 5 in our April 15, 2005 proposed rule, 70 FR 19911) and demonstrate that the 1-hour ozone standard will be maintained. These MVEBs have been through the appropriate public involvement and comment period requirements without receiving adverse comment. The budgets meet the adequacy criteria, 40 CFR 93.118(e)(4), and are approvable as part of the 1-hour ozone maintenance plan. These budgets set a tighter limit (the budgets are lower) than the current 2010 Cincinnati area emissions budgets, which are currently being used for transportation conformity purposes. The current 2010 budgets are: 37.9 tons per day of VOC and 62.3 tons per day of $NO_X$. The approved 2015 budgets will replace the current 2010 budgets, as detailed in our April 15, 2005 proposed rule, upon the effective date of this rule so that the maintenance plan, as approved, will extend 10 years past the redesignation date as required by section 175A of the CAA. The newer budgets, which are being approved as part of the 1-hour maintenance plan, are consistent with the goals of section 110(l) of the CAA because they set a tighter cap on mobile source VOC and $NO_X$ emissions for transportation conformity purposes, thereby limiting growth in mobile source emissions allowed in the transportation plan.

Subsequent to the effective date of this rule, the State of Ohio and local planning agencies in the Cincinnati area will have to use the 2015 emissions budgets in all transportation conformity analyses and demonstrations.

*E. Approval of VOC Emission Control Regulations for Various Sources in the Cincinnati Area and Approval of Negative Declarations for Some VOC Source Categories*

As noted below, EPA is approving VOC emission control regulations that the State has adopted for the following source categories: (1) Bakeries; (2) batch chemical operations; (3) industrial wastewater; (4) synthetic organic chemical manufacturing industry reactor and distillation units; and (5) wood furniture manufacturing as meeting the VOC RACT requirements of the CAA. EPA is also approving negative declarations (determinations that there are no applicable sources in the Cincinnati area requiring the implementation of RACT emission control measures) for the following source categories: (1) Industrial cleaning solvents; (2) shipbuilding and ship repair industry; (3) automobile refinishing; (4) aerospace manufacturing and rework facilities; (5) volatile organic liquid storage tanks; (6) lithographic printing; and (7) plastic parts coating. These adopted VOC RACT rules and negative declarations complete Ohio's obligations to meet the VOC RACT requirements of the CAA.

*F. Approval of Periodic Emission Inventories for the Cincinnati Area*

EPA approves Ohio's emission inventories for 1996, 1999, and 2002 documented in Ohio's July 2, 1999, December 22, 1999, March 8, 2005, and April 4, 2005 submittals, as meeting the requirements for such periodic emission inventories contained in section 182(a)(3)(A) of the CAA.

*G. Termination of the Vehicle Inspection and Maintenance Programs in the Cincinnati and Dayton Areas*

As noted above, EPA is approving Ohio's maintenance plan for the Cincinnati area as demonstrating that the area will maintain the 1-hour ozone standard even without taking credit for emissions reductions due to the E-Check program. This, however, does not mean that EPA is approving the termination of the E-Check program in this area. As explained in detail below, in response to public comments on our April 15, 2005 proposed rule, EPA is not taking action on the conversion of E-Check to contingency measures in the Cincinnati and Dayton areas until the State has submitted, and EPA has approved certain demonstrations and other information in compliance with 40 CFR 51.372(c) and section 110(l) of the CAA.

In our April 15, 2005 proposed rule at 70 FR 19912, we requested the State of Ohio to project VOC and $NO_X$ emissions for the Dayton area through 2015 to demonstrate that attainment of the 1-hour NAAQS could be maintained without the emissions reductions resulting from the E-Check program. In response to our request, the Ohio EPA has provided projected emissions data demonstrating that the 1-hour ozone NAAQS can be maintained through 2015 even if the E-Check program is terminated in the Dayton area. As noted here, however, we are not taking action on the conversion of the E-Check program to a contingency measure in the Dayton 1-hour ozone maintenance plan at this time. Further, we are not discussing the details of Ohio's projected VOC and $NO_X$ emissions in this final action. We are deferring this

discussion until we review Ohio's section 110(l) demonstrations of non-interference with attainment of other NAAQS and with compliance with the requirements of the CAA for this area. Through that future rulemaking, the public will be given an opportunity to review and comment on Ohio's new emission projections for 2010 and 2015.

*H. Effective Date of These Actions*

EPA finds that there is good cause for this redesignation to attainment and approval of the ozone maintenance plan, motor vehicle emission budgets for the Cincinnati area, and periodic emissions inventories as revisions to the SIP to become effective on June 14, 2005 after signature and transmittal of a rule report, including a copy of the rule, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States in accordance with the Congressional Review Act, 5 U.S.C. 801 *et seq.* This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which confirms monitored attainment of the NAAQS over a number of years and relieves the area from certain CAA requirements that otherwise would apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that a rulemaking action may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction'' and 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' With respect to its approval of the VOC emissions control regulations for various source categories, these rules are effective 30 days after publication in the **Federal Register**.

## III. Why Are We Taking These Actions?

EPA has determined that the Cincinnati-Hamilton area has continued to attain the 1-hour ozone standard. EPA has determined that the State of Ohio has adopted all VOC RACT rules required by the CAA, for all source categories covered by Control Techniques Guidelines (CTGs), with the exception of source categories lacking applicable sources in the Cincinnati area and addressed through negative declarations, and for all major non-CTG sources for the Cincinnati area. Finally, EPA has determined that the State of Ohio has demonstrated that all other criteria for the redesignation of the Cincinnati area from nonattainment to attainment of the 1-hour ozone NAAQS have been met. EPA is fully approving a maintenance plan meeting the requirements of sections 175A and 107(d) of the CAA.

In the April 15, 2005 proposed rule at 70 FR 19898, EPA described the applicable criteria for redesignation to attainment. Specifically, section 107(d)(3)(E) allows for redesignation provided that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the CAA; (3) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable state implementation plan, applicable Federal air pollution control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and, (5) the State containing such area has met all requirements applicable to the area under section 110 and part D of the CAA.

EPA has determined that the Cincinnati-Hamilton area has continued to attain the applicable NAAQS. EPA is fully approving the applicable implementation plan for the Cincinnati area under section 110(k) of the CAA. EPA has determined that the improvement in air quality in the Cincinnati-Hamilton area is due to permanent and enforceable emission reductions resulting from implementation of the applicable implementation plan and applicable Federal air pollution control regulations. EPA is fully approving a maintenance plan for the Cincinnati area as meeting the requirements of section 175A of the CAA. EPA is approving VOC RACT rules completing Ohio's VOC RACT rule adoption requirements under the CAA. EPA is approving periodic emission inventories for the Cincinnati area, meeting the CAA requirements for such emission inventory updates. Finally, EPA concludes that Ohio has met all requirements applicable to the Cincinnati area for purposes of redesignation to attainment of the 1-hour ozone NAAQS under section 110 and part D of the CAA.

By finding that the maintenance plan provides for maintenance of the 1-hour ozone NAAQS through 2015, EPA is hereby finding adequate and approving the 2015 VOC and $NO_X$ MVEBs contained within the maintenance plan. The MVEB for VOC in the Cincinnati area is 26.2 tons per day. The MVEB for $NO_X$ in the Cincinnati area is 39.5 tons per day.

The rationale for these findings and actions are as stated in this rulemaking and in the April 15, 2005 proposed rule, found at 70 FR 19895.

In our April 15, 2005 proposed rule, we proposed to approve the redesignation of the Cincinnati area and to approve Ohio's new VOC emission control regulations through parallel processing. Our proposed rulemaking was completed during the same period that Ohio itself was completing its adoption of the maintenance plan for the Cincinnati area and of needed VOC emission control regulations. This parallel processing was done at Ohio's request to expedite rulemaking on Ohio's redesignation and SIP revision requests. Such parallel rulemaking can only be completed through final rulemaking without additional proposed rulemaking if Ohio makes a final submittal of adopted plans and VOC emission control regulations that do not significantly differ from the versions described and reviewed by the EPA in its proposed rulemaking (including, where applicable, prospective revisions described and requested by EPA in the proposed rulemaking). The State has in fact here provided a final submittal that matches the draft submittal described and reviewed in the notice of proposed rulemaking, except that the final submittal includes the revisions to RACT rules that EPA described as necessary in its notice of proposed rulemaking. Therefore, we believe that the public has had suitable opportunity to comment on the substance of our April 15, 2005 proposed rule and today's final rule, and that EPA may properly proceed with final action on the State's submittal.

## IV. What Are the Effects of These Actions?

EPA concludes that the Cincinnati area has continued to attain the 1-hour ozone NAAQS, and, thus, the ozone attainment demonstration, RFP plan, and certain other related requirements of part D of title I of the CAA, including the section 172(c)(9) contingency measure requirements (measures needed to mitigate a state's failure to achieve reasonable further progress toward, and attainment of a NAAQS), the section 182 attainment demonstration and rate of progress requirements, and the section 182(j) multi-state attainment demonstration requirements continue to be inapplicable to the Cincinnati area.

Approval of the Ohio redesignation request changes the official designation

for the 1-hour ozone NAAQS found at 40 CFR part 81 for the Ohio portion of the Cincinnati-Hamilton area from nonattainment to attainment. It also incorporates into the Ohio SIP a plan for maintaining the 1-hour ozone NAAQS through 2015. The maintenance plan includes contingency measures to remedy any future violations of the 1-hour ozone NAAQS, and includes VOC and $NO_X$ MVEBs for 2015 for the Cincinnati area.

As noted above, Ohio has submitted projected VOC and $NO_X$ emissions for 2015 to revise the Dayton area 1-hour ozone maintenance plan. We are not taking action on these projected emissions in this final rule, but will address them in a future rulemaking when we address Ohio's section 110(l) demonstrations showing that terminating the E-Check program in the Dayton area will not interfere with the attainment of any NAAQS and with compliance with the requirements of the CAA. This future rulemaking will establish revised MVEBs for the Dayton area, and will provide for public comment on the new MVEBs.

EPA's final Phase 1 rule to implement the 8-hour ozone NAAQS (69 FR 23951, April 30, 2004) provided that the 1-hour ozone standard would be revoked for an area one year after the effective date of the area's designation for the 8-hour ozone NAAQS (June 15, 2004). 40 CFR 50.9(b). The Phase 1 rule also provided that an area's attainment status for the 1-hour ozone standard, as of the area's date of designation for the 8-hour ozone standard, establishes the 1-hour emissions control obligations that must remain in place for purposes of preventing anti-backsliding. 40 CFR 51.905. For purposes of the anti-backsliding provisions of the Phase 1 rule, the Cincinnati area remains a 1-hour nonattainment/8-hour nonattainment area subject to the requirements of 40 CFR 51.905(a)(1).

Today's action to approve VOC RACT rules incorporates these rules into the Ohio SIP and makes the rules federally enforceable.

Today's action does not affect the status of the E-Check program in either the Cincinnati or Dayton areas. This program remains an active measure in the Ohio SIP for these areas, and Ohio is continuing to implement this program. As discussed below, before Ohio can convert E-Check to a contingency measure for either area, Ohio has to modify its legislation to assure that the State has provided for legislative authority to restart E-Check on a contingency basis in compliance with 40 CFR 51.372(c). As noted in the proposed rulemaking, EPA also expects Ohio to provide replacement measures or otherwise demonstrate non-interference to assure that a discontinuation of E-Check would not interfere with attainment of any NAAQS, including the 8-hour ozone and $PM_{2.5}$ standards, or interfere with meeting other requirements of the CAA, as mandated under section 110(l) of the CAA. EPA must complete rulemaking finding that 40 CFR 51.372(c) and section 110(l) of the CAA have been satisfied before Ohio discontinues the E-Check program and converts E-Check to contingency measures in the ozone maintenance plans for the Cincinnati and Dayton areas.

## V. What Comments Did We Receive and What Are Our Responses?

We received four letters commenting on the April 15, 2005 proposed rule. All four of the letters contained comments critical of various portions of our proposed rule. The first letter was sent by the American Lung Association (ALA) on April 6, 2005. ALA, in conjunction with the Natural Resources Defense Council, sent additional comments on April 25, 2005. ALA, in conjunction with the American Lung Association of Ohio, the Ohio Environmental Council, Earthjustice, and the Natural Resources Defense Council, sent more extensive comments on May 16, 2005. Earthjustice also sent comments on May 16, 2005. A summary of the comments and EPA's responses to them are provided below.

### *A. Comments Related to Ohio's VOC RACT Regulations*

Earthjustice is critical of EPA's approval of Ohio's negative declarations for certain VOC source types for RACT purposes and EPA's conclusion that Ohio has met all of the VOC RACT requirements of the CAA for the Cincinnati area.

*Comment 1:* The plain language of 182(b)(2)(A) mandates that each moderate area SIP shall require implementation of RACT for each category of VOC sources covered by a CTG document issued between November 15, 1990 and the date of attainment. The State's duty to adopt these RACT provisions is not waived merely because no individual sources are big enough to trigger the RACT control requirements.

*Response 1:* Ohio EPA submitted negative declarations for seven source categories. Of these seven categories, Shipbuilding and Ship Repair Operations and Aerospace Manufacturing and Rework facilities are covered by a post-1990 CTG (subject to CAA section 182(b)(2)(A)) and each CTG contains specific applicability cutoffs. The remaining 5 categories of sources are considered ''non-CTG'' source categories subject to section 182(b)(2)(C) of the CAA, and a RACT rule would be required for any of these source categories if any source within the source category has greater than 100 tons VOC per year of potential non-CTG emissions (either by itself or combined with other non-CTG sources at a facility) and is not subject to federally enforceable operating and/or production restrictions limiting the facility to less than 100 tons per year of non-CTG VOC emissions. Non-CTG emissions include emissions from source categories for which there is not a CTG document, and also include unregulated emissions from source categories covered by a CTG category. Potential emissions or potential to emit (PTE) represents the emissions from a source if it were at maximum production and operating 8,760 hours per year (*i.e.*, 24 hours/day, 7 days/week), essentially a physical emissions ceiling.

We disagree with the commenter that section 182(b)(2)(A) requires the State to adopt RACT rules where there are no sources in the area that have the potential to emit VOC above the cut-off levels specified in the relevant CTGs. Section 182(b)(2)(A) requires the State to adopt RACT rules for ''[e]ach category of VOC sources in the area covered by a CTG document issued by the Administrator between the date of enactment of the Clean Air Act Amendments of 1990 and the date of attainment.'' Thus, a State must adopt RACT rules for categories of sources ''covered by a CTG document.'' Each CTG document establishes a source cut-off for applicability of RACT. Sources with emissions at or above the cut-off are ''covered by the CTG document,'' and sources that are below the cut-off are not ''covered by the CTG document.'' Thus, where a state can demonstrate that there are no sources in an area that meet the requirements for RACT as set forth in a specific CTG, then the State is not required under section 182(b)(2)(A) to adopt a RACT rule for that category of sources. [6] This

[6] Although the commenter does not specifically reference sections 182(b)(2)(B) and (C), these provisions are subject to the same interpretation. Subsection (B) uses the same phrasing as subsection (A)—requiring RACT for sources ''covered by any [pre-1990] CTG.'' Subsection (C), when read in conjunction with the opening paragraph of section 182(b)(2), requires RACT rules for major stationary sources in the area that are not covered by a CTG. Thus, RACT rules are not needed for sources that do not meet the definition of a ''major stationary source,'' which is 100 tpy for the Cincinnati area, which is a 1-hour moderate ozone nonattainment area.

interpretation of the Act by EPA is long-standing and was in fact set forth in the April 16, 1992, General Preamble for the implementation of title I of the CAA of 1990. In that notice, we stated: ''All States should submit negative declarations for those source categories for which they are not adopting CTG-based regulations (because they have no sources above the CTG recommended threshold)* * *'' (57 FR 13512, April 16, 1992).

For the reasons provided elsewhere in this notice, we believe that Ohio EPA has thoroughly documented that there are, in fact, no sources in the Cincinnati ozone nonattainment area that are above the applicability cutoff and thus the State was not required to submit RACT rules for those two CTG categories.

*Comment 2:* Neither the State nor EPA have documented that all sources within each of the seven categories do in fact have potential to emit at levels below the relevant thresholds (aside from those sources that are subject to enforceable emission caps). Aside from those sources that are subject to enforceable emission caps that keep them below the threshold, the State has not explained how it calculated or estimated potential to emit at all of the relevant sources. For example, for Industrial Cleaning Solvents, the State's negative declaration consists of a letter with a table showing emission figures for each company but does not explain how the emission figures were derived. An entry of 184.65 tons of VOC emissions for coatings was difficult to reconcile with the state's assertion that no facilities with Industrial Cleaning Solvent operations have combined non-CTG PTE of 100 Tons per year or more.

*Response 2:* The State has fully documented that there are no sources in each of the seven source categories with potential emissions above the applicable cut-off levels. In the negative declaration for each source-category, the State first explained how it searched the area for any sources that potentially could be subject to the relevant CTG or to non-CTG RACT. Once the State developed the list of sources potentially subject to RACT, it then evaluated the individual sources to determine whether the sources had potential emissions above the applicable cut-off. If a source had a federally-enforceable permit limiting emissions below the cut-off (*i.e.*, an ''emissions cap''), the State did not need to analyze the source further. For the remaining sources, the State analyzed whether the potential emissions of the sources were above the cut-off level. There were two methods for performing this analysis. First, the State could use the results of test methods—where the emissions of a specific source are derived based on a test of actual emissions from the facility. Where the State used this method of analysis, the test methods in OAC rule 3745–21–10, which have been approved by EPA, were used. Second, where test data are unavailable, EPA has established emission calculation procedures based upon the source characteristics. For source categories involving evaporative emissions, such as cleaning solvents, potential emissions are based on determining the weight of volatile organic material that would be used with the source operating at maximum capacity. This is the most direct way of estimating emissions.

During the State hearing process, the State made available for public comment the detailed information about (1) how it determined whether there were sources potentially subject to RACT in each category; (2) which of those sources had federally enforceable permit limits ''capping'' their emissions below the applicable cut-off; (3) the potential emissions for sources that do not have their emissions capped; and (4) the source-specific calculations for each source (the Hamilton County Department of Environmental Services (HAMCO—a local air agency) maintains files which document the emissions of the sources listed in the tables attached to the negative declaration letters). The State submitted items (1), (2) and (3) as part of the SIP revision, and that information was available during the comment period on this rule. In addition, in response to questions from EPA, the State submitted: (1) In a May 2, 2003 email by HAMCO, additional information regarding how the State calculated industrial cleaning solvent emissions and examples of those calculations; and, (2) in a January 9, 2003, letter from HAMCO, the State provided example calculations for a storage tank at the Valvoline Oil Company terminal.

The following summarizes the more detailed information that was available to the public for each of the seven categories for which negative declarations were documented by the Ohio EPA:

(1) The applicability cutoff for industrial cleaning solvents is a PTE of 100 tons VOC per year, and Ohio EPA has documented that all of the industrial cleaning solvent sources have less than 50 tons VOC per year of potential emissions;

(2) Ohio EPA has adequately documented that there are no ship building and repair facilities;

(3) The applicability cutoff for auto refinishing is 100 tons VOC per year, and Ohio EPA has documented that all of the auto refinishing facilities have potential emissions of less than 25 tons VOC per year or have a federally-enforceable Permit to Install (PTIs) limiting emissions to less than 25 tons VOC per year;

(4) The applicability cutoff for aerospace manufacturing and rework facilities is a PTE of 25 tons VOC per year, and Ohio EPA has documented that all such sources have potential emissions below this cutoff or have a federally-enforceable PTI restricting emissions to less than 25 TPY;

(5) The applicability cutoff for VOL storage tanks is 100 tons VOC per year, and Ohio EPA has documented that all VOL storage tanks (a) are already subject to an existing RACT rule or are below RACT control requirement cutoffs; (b) have a federally-enforceable PTI limiting actual VOC emissions to below 100 tons per year; or, (c) have a potential to emit less than this cut-off;

(6) The applicability cut-off for offset lithographic printing is 100 tons VOC per year. Ohio EPA has documented all such sources have potential emissions below this cut-off or have a federally-enforceable PTI restricting emissions to less than 100 TPY; and,

(7) The applicability cut-off for automotive plastic parts coating is 100 tons VOC per year. Ohio EPA has documented all such sources have potential emissions below this cut-off or have a federally-enforceable PTI restricting emissions to less than 100 TPY.

The commenter raises a specific concern with respect to a table in the negative declaration for the Industrial Cleaning Solvents source category. The commenter claims that because the source cut-off for RACT is 100 tpy, the commenter does not understand why the 184.65 tons of VOC emissions for coatings does not subject the source to RACT. As stated on the referenced table, the 184.65 tpy emission is for coatings. These emissions are not part of the cleanup solvent emissions,[7] and, because these emissions are already subject to RACT under the EPA-approved State coating rule in OAC rule 3745–21–09, they are not non-CTG emissions. Thus, for purposes of whether the source is a major source for the industrial cleaning solvents category, those emissions are not considered.

*Comment 3:* The negative declarations are substantially out of date, *e.g.* July

[7] Coatings are materials, such as paint, that are used to coat another surface. Solvents are frequently used at coating facilities to clean the coating material from the instruments and other surfaces that were not intended to be coated.

2003 for lithographic printing and October 2003 for aerospace.

*Response 3:* The negative declarations are not substantially out of date. States must first develop SIP revisions, which are then submitted and which EPA must process through rulemaking. Section 110 of the CAA provides for up to 18 months for EPA to process a SIP revision. Thus, it is not unusual for EPA to be acting on a SIP that has components that were adopted and submitted by the State one or two years before EPA takes final action on the submission. Furthermore, the rate of industrial growth during the past two years is not expected to have added any sources above the applicability cutoff for any of the seven negative declaration categories.

As explained by HAMCO, any permit application for the construction or modification of a source subsequent to its applicable negative declaration letter would have been reviewed by HAMCO and identified if its potential to emit or allowable emissions exceeded the RACT applicability cutoff for that category. No such permit applications were identified by HAMCO since the negative declaration letters were submitted by Ohio EPA.

Furthermore, the commenter did not identify any specific facilities in any of the seven negative declaration categories that, subsequent to the State's negative declaration letter, have VOC emissions above the RACT applicability cutoff.

*Comment 4:* Even if the State's estimates of current potential to emit were credible, they would not support waiver of RACT requirements where the State does not and cannot claim that PTE will be capped at current levels. Except for sources with PTE restrictions, sources below the RACT applicability cutoffs could increase their emissions above the threshold in the future.

*Response 4:* As provided in Response 1, above, we believe that section 182(b)(2) of the CAA requires that the State adopt RACT rules for source categories where there are sources that currently meet the applicability threshold for imposition of RACT. In addition, we note, as further explained below, that the State has assured EPA that it would require RACT-level controls through its permitting process for any new source that would have the potential to emit above the applicability cut-off or for any existing source that was modified such that potential emissions exceeded the applicability cutoff.

As discussed previously, certain sources in the seven negative declaration categories are subject to a source-specific federally enforceable permit to install, that limits emissions to below the appropriate RACT applicability cutoff for its source category. Any change in a permit to install resulting in an increase in emissions would be subject to EPA and public review and would require RACT level controls if the revised limit exceeds the RACT applicability cutoff.

Other sources in the seven negative declaration categories have permits with allowable emissions below each source's applicability cutoff. As stated by HAMCO, if a facility increases its emissions above its present allowable emissions level, the definition of modification in OAC rule 3745–31–01(PPP) would be triggered. By triggering the modification definition, the facility would have to apply for a permit to install which requires implementation of best available technology. In order to satisfy the requirement of best available technology, Ohio EPA would require any facility in one of the seven negative declaration categories to meet RACT.

The remaining sources are exempted by the *de minimis* levels in OAC 3745–15–05 and/or exempted from the requirement to obtain a permit to install and regulatory requirements in OAC 3745–31–03. The *de minimis* levels are below the RACT applicability cutoffs for all source categories. Similarly, any source that increased its emissions above the *de minimis* level would need a permit that would be reviewed by HAMCO to determine whether it exceeded a RACT applicability cutoff and, if so, the source would be required to comply with best available technology by complying with RACT limits.

*Comment 5:* EPA's proposed waiver of RACT requirements for Cincinnati conflicts with the Agency's anti-backsliding rules for implementing the 8-hour ozone standard. The anti-backsliding rules expressly list RACT among the applicable requirements that cannot be relaxed in 8-hour nonattainment areas, where the same area was obligated (due to its 1-hour nonattainment status) to adopt and implement RACT at the time of 8-hour designation. The Cincinnati area is plainly covered by these provisions with respect to RACT. EPA's redesignation proposal would allow the State to waive RACT requirements that plainly applied to the area as of its 8-hour designation. Existing sources could increase their potential to emit in the future above the applicability cutoff, in which case the Act and EPA's anti-backsliding rules expect that the source be subject to the CTG control requirements.

*Response 5:* Section 51.905(a)(1)(i) merely states that the area remains subject to the obligation to adopt and implement the applicable requirements in section 51.900(f), including RACT, after revocation of the 1-hour NAAQS. Therefore, this anti-backsliding provision does not add any new control requirements. Under the anti-backsliding provisions, if a negative declaration is adequate to meet an area's obligation for the 1-hour NAAQS, then the anti-backsliding provisions are satisfied. For the reasons provided elsewhere in this notice, we have concluded that the State has met the RACT obligation that applied for purposes of its 1-hour nonattainment designation and moderate classification.

*B. Comments Related to The Termination of the Vehicle Inspection and Maintenance Programs in the Cincinnati and Dayton Areas*

ALA, *et al.,* submitted extensive comments on our proposal to approve the conversion of the vehicle I/M program in the Cincinnati area from an active element of the 1-hour ozone SIP to a contingency measure in the 1-hour ozone maintenance plan for this area. The comment letters also included comments dealing with the termination of the I/M programs in the Cincinnati and Dayton areas and the section 110(l) demonstrations needed to support these program terminations. Although we are not at this time approving termination of the vehicle I/M program in either Cincinnati or Dayton for the reasons explained further below, these comments are addressed here.

The summary of comments and responses below also includes comments made by the ALA on April 6, 2005, and by the ALA and the Natural Resources Defense Council on April 25, 2005. In general, these comments are subsumed in the more extensive comments of ALA, *et al.,* dated May 16, 2005.

*Comment 6:* Ohio has not met the criteria that would allow the Cincinnati area to be redesignated to attainment of the 1-hour ozone standard because, among other things:

(a) Ohio does not have legal authority to implement an I/M program after December 2005; and

(b) Ohio has not made the required demonstration that removal of the I/M program in Cincinnati will not interfere with attainment of the 8-hour ozone and fine particulates ($PM_{2.5}$) standards. Ohio has made no attempt to make the necessary showing, promising only that

it will do so, without specifics of any sort.

*Response 6:* EPA believes that Ohio has met the necessary criteria to allow the Cincinnati area to be redesignated to attainment of the 1-hour ozone NAAQS. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation provided that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable state implementation plan, applicable Federal air pollution control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and, (5) the State containing such area has met all requirements applicable to the area under section 110 and part D of the CAA. As discussed above, and in more detail in our April 15, 2004 proposed rule (70 FR 19900), we believe that Ohio has met all of these requirements.

EPA does not believe that Ohio's lack of legal authority to implement a vehicle I/M program after 2005 or the lack of a non-interference demonstration with the attainment of the 8-hour ozone and $PM_{2.5}$ NAAQS has any impact on EPA's ability to approve Cincinnati's redesignation request. An implemented vehicle I/M program is currently required by the approved SIP and, should Ohio terminate the vehicle I/M program without the submittal and EPA approval of a SIP revision, it would be in violation of the SIP. Furthermore, the actions EPA is taking today are not dependent on Ohio demonstrating that removal of the vehicle I/M program in Cincinnati will not interfere with the attainment of the 8-hour ozone and fine particulate standard.

EPA has determined that Ohio's current vehicle I/M authority does not satisfy the requirements set forth in 40 CFR 51.372(c) authorizing the conversion of Ohio's E-Check program in the Cincinnati and Dayton areas to a contingency measure.

EPA believes that a basic I/M area which is designated nonattainment for the 8-hour ozone NAAQS, and which is not required to have a vehicle I/M program based on its 8-hour ozone designation, and which has been redesignated to attainment for the 1-hour ozone NAAQS continues to have the option to move its vehicle I/M program to a contingency measure under 40 CFR 51.372(c) as long as the 8-hour nonattainment area can demonstrate that doing so will not interfere with its ability to comply with any affected NAAQS or any other applicable CAA requirement pursuant to section 110(l) of the Act. This issue is discussed in more detail in subsequent responses.

In order to satisfy the requirements outlined in 40 CFR 51.372(c), the State's submittal must contain the legal authority to implement a basic vehicle I/M program (or enhanced if the State chooses to opt-up) that allows the adoption of implementing regulations without requiring further legislation. This authority must continue for the full term of the maintenance plan.

Based on EPA's determination regarding legal authority, EPA is not approving conversion of Ohio's E-Check program in the Cincinnati and Dayton areas to contingency measures in the maintenance plans for these areas in today's final action. EPA also reiterates, as noted in the proposal, that satisfactory compliance with section 110(l) relating to non-interference must be completed before the E-Check program can be terminated. Until Ohio makes the required demonstrations with respect to legal authority under 40 CFR 51.372(c) and non-interference under section 110(l) and EPA approves the conversion of the vehicle I/M program to contingency measures in the Cincinnati and Dayton 1-hour ozone maintenance plans, an implemented vehicle I/M program will remain as an applicable requirement in the SIP for these two areas. EPA fully approved Ohio's vehicle I/M program as a revision to the ozone SIP on April 4, 1995 (60 FR 16989).

Today's action does not approve the discontinuation of the vehicle I/M program in either the Cincinnati or Dayton area. The State has not fully met its demonstration obligations under section 110(l) of the CAA, and Ohio must continue to operate the vehicle I/M program in the Cincinnati and Dayton areas until all obligations are addressed. However, the fact that such a demonstration has not been submitted is not germane to today's action regarding satisfaction of requirements relative to redesignation under the 1-hour ozone standard.

EPA believes that Ohio has met the necessary criteria to allow the Cincinnati area to be redesignated to attainment of the 1-hour ozone NAAQS. In addition, EPA believes that Ohio has made a successful demonstration showing continued maintenance of the 1-hour NAAQS. EPA is proceeding with final approval of the redesignation of the Ohio portion of the Cincinnati-Hamilton area and the area's maintenance plan with projected emissions not taking credit for the vehicle I/M program even though the SIP provides for continued implementation of the vehicle I/M program in the Cincinnati area.

*Comment 7:* The need for expeditious attainment of a NAAQS is the central principle of title I of the CAA. Cincinnati and Dayton continue to have serious air quality problems, as evidenced by their nonattainment status for the 8-hour ozone and $PM_{2.5}$ standards. EPA promulgated the 8-hour ozone standard because the 1-hour ozone standard was insufficient to protect public health. The EPA committed through its anti-backsliding policy that the transition between the 1-hour ozone standard and the 8-hour ozone standard would not lead to compromises in air quality. That is, however, what EPA's proposal would do.

The anti-backsliding provisions applicable to the transition from the 1-hour ozone standard to the 8-hour ozone standard prohibit removal of the vehicle I/M programs for the Cincinnati and Dayton areas. The provisions provide that the requirements that apply to an 8-hour ozone nonattainment area are the requirements that applied under the 1-hour ozone standard at the time the areas were designated to nonattainment of the 8-hour ozone standard. Both Cincinnati and Dayton were designated to nonattainment of the 8-hour ozone standard on April 15, 2004, when vehicle I/M was still required for both areas. Vehicle I/M must continue to be implemented in these areas until these areas come into attainment with the 8-hour ozone standard.

*Response 7:* Although this comment is not specific about which action proposed by the EPA in the April 15, 2005 proposed rule is of concern, it is assumed here that the commenter is referring to EPA's discussion concerning the termination of the vehicle I/M (E-Check) programs in the Cincinnati and Dayton areas. See 70 FR 19910.

On April 30, 2004 (69 FR 23996), the EPA promulgated revisions to 40 CFR part 51 subpart X to establish provisions for implementation of the 8-hour ozone NAAQS. Included in these provisions were sections 51.900(f), the definition of ''Applicable requirements,'' and 51.905, which establishes provisions for the transition between the 1-hour ozone NAAQS and the 8-hour ozone NAAQS, including specifying which requirements that applied to an area for

the 1-hour ozone NAAQS remain in place after EPA revokes the 1-hour standard (expected to occur for the Cincinnati and Dayton areas on June 15, 2005). The latter section is subdivided depending on the attainment status of an area for both ozone NAAQS (1-hour and 8-hour) on the date when the 8-hour ozone designations became effective (June 15, 2004). Since the Cincinnati area was designated as a nonattainment area for the 1-hour ozone NAAQS when the 8-hour ozone nonattainment designation became effective, subsection (a)(1) of section 51.905 applies to the Cincinnati area. Since the Dayton area was a maintenance area for the 1-hour ozone NAAQS on June 15, 2004 and is an 8-hour ozone nonattainment area, the transition requirements for this area are covered by subsection 51.905(a)(2). Both of these rule subsections require these areas to continue to implement all of the applicable requirements specified in 51.900(f) that applied to the areas based on their 1-hour ozone status as of June 15, 2004. Vehicle I/M is one of the listed applicable requirements and both the Cincinnati area and the Dayton area were subject to this requirement on June 15, 2004.

The preamble to the anti-backsliding rule made it clear that any applicable requirement that was retained would apply in the same manner as it applied for purposes of the 1-hour standard. We specifically noted the example of an enhanced vehicle I/M program and stated that, while an area classified as serious nonattainment for the 1-hour standard would need to retain an enhanced I/M program, it could modify such a program consistent with our enhanced I/M regulations. 69 FR 23972.

On May 12, 2004, the EPA issued a policy memorandum (''1-Hour Ozone Maintenance Plans Containing Basic I/M Programs,'' from Tom Helms, Group Leader, Ozone Policy and Strategies Group, Office of Air Quality Planning and Standards, and Leila H. Cook, Group Leader, State Measures and Conformity Group, Office of Transportation and Air Quality, to Air Program Managers) (hereafter referred to as the Helms-Cook memorandum) clarifying how our basic I/M regulations applied for purposes of an area that was being or had been redesignated to attainment of the 1-hour ozone NAAQS. This memorandum notes that, for 1-hour ozone maintenance areas, special provisions regarding vehicle I/M that were published by the EPA on January 5, 1995 (60 FR 1735) continue to define the applicable vehicle I/M program. For a 1-hour ozone maintenance area subject only to basic vehicle I/M, 40 CFR 51.372(c) provides a mechanism for a State to convert a basic vehicle I/M program to a contingency measure in the area's maintenance plan. For areas designated as nonattainment for the 8-hour ozone NAAQS, application of this provision is limited to areas with 8-hour ozone classifications that do not trigger the I/M requirement, and this provision only applies to areas that were required to adopt basic I/M programs (to areas that were classified as moderate or marginal nonattainment under the 1-hour ozone NAAQS) and not thus required to have an enhanced vehicle I/M program. However, a marginal nonattainment area that opted to implement an enhanced vehicle I/M programs can also convert the vehicle I/M programs to contingency measures in the 1-hour ozone maintenance plans provided they continue to show maintenance of the 1-hour ozone standard. Finally, the Helms-Cook memorandum notes that, to convert a vehicle I/M program to a contingency measure under the 1-hour maintenance plan, the State must also demonstrate that such conversion will not interfere with the area's ability to comply with any affected NAAQS or any other applicable CAA requirement in order to comply with section 110(l) of the CAA.

Under section 110(l) of the CAA, Ohio must demonstrate that conversion of the vehicle I/M programs in the Cincinnati and Dayton areas to contingency measures in the 1-hour ozone maintenance plans in these areas will not interfere with attainment of any NAAQS or with compliance with any other CAA requirements, most notably with attainment of the 8-hour ozone NAAQS and $PM_{2.5}$ NAAQS. Until Ohio makes the required demonstrations and EPA approves the conversion of the vehicle I/M programs to contingency measures in the Cincinnati and Dayton 1-hour ozone maintenance plans, the SIP will still require implementation of the vehicle I/M program in these areas. As such, at this time, no adverse air quality impacts are expected to occur in these areas through this process. Thus, the commenters' concerns about adverse impacts on air quality relating to the new standards will be addressed in future rulemakings should Ohio provide the necessary demonstrations.

*Comment 8:* Besides ozone reduction benefits, I/M benefits air quality for other pollutants, for example, benzene, formaldehyde, 1,3-butadiene, and fine particulates, $PM_{2.5}$. It would be short-sighted to eliminate the I/M programs.

*Response 8:* As noted above, we agree that vehicle I/M remains an applicable requirement, but we believe that it is consistent with our anti-backsliding rule and the vehicle I/M rule to allow a maintenance area to move a basic I/M program to the contingency portion of the SIP if certain conditions are met. Before we can approve the conversion of the vehicle I/M programs to 1-hour ozone contingency measures in the Cincinnati and Dayton maintenance plans, Ohio must demonstrate that the conversion will not interfere with compliance with all of the requirements of the CAA. This demonstration must include a demonstration of non-interference with the CAA requirements related to air toxics as well as to attainment of all of the NAAQS.

As noted elsewhere in this final rulemaking, Ohio has not made the requisite section 110(l) demonstration. Therefore, we are not approving a conversion of the vehicle I/M programs to contingency measures nor termination of such programs for the Cincinnati and Dayton areas in this final rulemaking.

*Comment 9:* In its haste to redesignate the Cincinnati area to attainment of the 1-hour ozone standard, the EPA has seemed to have missed the essential points: That the ozone redesignation, however speedy, does not pave the way for ending the vehicle I/M programs; and, that its proposal stands to set Cincinnati and Dayton back on efforts to improve air quality.

*Response 9:* EPA agrees with the commenter that the redesignation of the Cincinnati area to attainment of the 1-hour ozone NAAQS, by itself, does not meet the requirements for approving the conversion of the vehicle I/M program in the Cincinnati area to a contingency measure in the maintenance plan for this area. As noted elsewhere in this final rulemaking, Ohio must meet other requirements before EPA can approve such a conversion. It is noted, however, that the redesignation of the Cincinnati area to attainment of the 1-hour ozone NAAQS does allow Ohio to meet one of the crucial requirements for such a conversion as detailed here.

Redesignation of the Cincinnati area to attainment of the 1-hour ozone NAAQS makes the Cincinnati area an area for which the approach in 40 CFR 51.372(c) is available. However, 40 CFR 51.372(c) provides that additional elements must first be met, including:

(1) Legal authority to implement a basic vehicle I/M program (enhanced if the State chooses to opt-up) without requiring further legislation;

(2) A request to place the vehicle I/M program/plan into the contingency measures portion of the maintenance plan upon redesignation; and

(3) A contingency measure consisting of a commitment by the Governor or the Governor's designee to adopt or

consider adopting regulations to implement a vehicle I/M program to correct a violation of the ozone standard (or carbon monoxide standard [not applicable for the Cincinnati area]) or other air quality problem in accordance with the provisions of the maintenance plan. Although 40 CFR 51.372(c) refers to redesignation requests and maintenance plans for areas that are currently designated as nonattainment areas for ozone (in nonattainment of the 1-hour ozone NAAQS), we believe that 40 CFR 51.372(c) also applies to 1-hour ozone maintenance areas, where the State chooses to revise the ozone maintenance plan to include vehicle I/M as a contingency measure.

As noted in the Helms-Cook memorandum, the anti-backsliding provisions of 40 CFR 51.905 do not modify the basic vehicle I/M program. Thus, the requirements and application of 40 CFR 51.372(c) remain in place and available to areas that meet the criteria of that rule and also meet the requirements of section 110(l) of the CAA, demonstrating that converting the vehicle I/M program to a contingency measure will not interfere with the attainment of all affected NAAQS and requirements of the CAA.

The State of Ohio has not complied with the requirements of 40 CFR 51.372(c) in that the State has not demonstrated that it has the legal authority to restart a vehicle I/M program in the Cincinnati area (and in the Dayton area) without additional legislation. In addition, the State has not made a demonstration under section 110(l) of the CAA that the conversion of the vehicle I/M program in the Cincinnati area (and in the Dayton area) to a contingency measure will not interfere with attainment of the affected NAAQS or with compliance with other requirements of the CAA. Therefore, we cannot approve, at this time, the State's request to make vehicle I/M a contingency measure in the Cincinnati area 1-hour ozone maintenance plan. In addition, we cannot approve the State's request to make vehicle I/M a contingency measure in the Dayton area 1-hour ozone maintenance plan for the same reason.

*Comment 10:* The State of Ohio does not have legal authority to implement a vehicle I/M program after December 2005. 40 CFR 51.372(c), with respect to redesignation requests, provides:

> Any nonattainment area that EPA determines would otherwise qualify for redesignation from nonattainment to attainment shall receive full approval of a State Implementation Plan (SIP) submittal under Sections 182(a)(2)(B) or 182(b)(4) if the submittal contains the following elements:
>
> (1) Legal authority to implement a basic I/M program * * * as required by this subpart. The legislative authority for an I/M program shall allow the adoption of implementing regulations without requiring further legislation.

Ohio legislation, in ORC Ann. (Ohio Revised Code Annotated) section 3704.143(C) provides that:

> Notwithstanding * * * [sections of the Revised Code] that require[s] emissions inspections to be conducted * * * upon the expiration or termination of all contracts that are in existence on September 5, 2001, the director of environmental protection shall terminate all motor vehicle inspection and maintenance programs in this state and shall not implement a new motor vehicle inspection and maintenance program unless this section is repealed and such a program is authorized by the general assembly.

The State has noted, through a press release, that the vehicle I/M programs in the Cincinnati and Dayton areas will expire on December 31, 2005. In addition, in a letter to the EPA, dated April 4, 2005, the Ohio EPA acknowledges that:

> Under 3704–14(b), Ohio EPA retains the legislative authority to conduct an automobile inspection maintenance program in moderate nonattainment areas as part of the attainment or maintenance demonstration as well as the contingency portion of the maintenance plan. It must be understood, though, the specifics of restarting the program should a contingency arise, would involve negotiating a new operator contract and obtaining approval from the legislature to execute that contract.

This indicates that the Ohio EPA acknowledges that the State would need new legislative authority to restart the I/m program.

*Response 10:* As discussed above, EPA has determined that Ohio's current vehicle I/M authority does not satisfy the requirements set forth in 40 CFR 51.372(c) with respect to redesignation requests.

Based in part on EPA's determination regarding legal authority, EPA is not taking action on the conversion of Ohio's E-Check program in the Cincinnati and Dayton areas to contingency measures in this final rule.

In order to satisfy the requirements outlined in 40 CFR 51.372(c), the State will, in part, need to demonstrate that the State has sufficient legal authority to implement a vehicle I/M program that allows the adoption of implementing regulations without requiring further legislation. Until Ohio makes the required demonstrations and EPA approves the conversion of the vehicle I/M program to contingency measures in the Cincinnati and Dayton 1-hour ozone maintenance plans, vehicle I/M will remain as an applicable requirement in the SIP for these two areas.

*Comment 11:* The State has not made the required demonstration that removal of the I/M program in Cincinnati will not interfere with attainment of the 8-hour ozone and $PM_{2.5}$ standards. EPA acknowledges this in the April 15, 2005 proposed rule. The non-interference demonstration is also required for the purposes of the redesignation of the Cincinnati area to attainment.

Section 107(d)(3)(E) of the CAA provides:

> The Administrator may not promulgate a redesignation of a nonattainment area * * * to attainment unless * * *
>
> (ii) The Administrator has fully approved the applicable implementation [plan] for the area under section 7410(k) [*i.e.*, section 110(k)] of this title * * * and
>
> (v) The State containing such area has met all requirements applicable to the area under section 7410 [*i.e.*, section 110] of this title * * *.

The State has met neither of these requirements. EPA has not approved a revised SIP, nor could it without a showing of legal authority for an I/M program, which the State cannot make following the termination of the program. And, as EPA's proposal concedes, the State has not met all applicable requirements under section 110, which includes the demonstration required under section 110(l) that removing the I/M programs for Cincinnati and Dayton will not interfere with the 8-hour ozone and $PM_{2.5}$ standards.

It is difficult to see how the EPA can argue that either of the section 107(d(3)(E) requirements have been met in light of the fact that the SIP revision does not qualify for approval on a conditional basis. EPA acknowledges that the State has done no more than promise to complete the required demonstration without specifics of any sort. The Court of Appeals for the District of Columbia Circuit has admonished EPA at least twice for conditionally approving SIP revisions that contain nothing more than a mere promise to take appropriate but unidentified measures in the future. *Sierra Club* v. *EPA,* 356 F.3d 296, 303 (DC Cir. 2004), slip opinion at 10, citing *NRDC* v. *EPA,* 22 F.3d 1125 (DC Cir. 1994).

*Response 11:* As we have discussed elsewhere in this final rule, we agree with the commenter that Ohio has not made the demonstration that conversion of the vehicle I/M programs in the Cincinnati and Dayton areas to contingency measures in the maintenance plans will not interfere with the attainment of the 8-hour ozone,

$PM_{2.5}$, or any other applicable NAAQS in these areas. Therefore, we are not approving these conversions in this final rule.

We disagree with the commenter that this fact leads to the conclusion that Ohio has not met the necessary requirements for redesignation of the Cincinnati area to attainment of the 1-hour ozone NAAQS. As we noted in our April 15, 2004 proposed rule, at 70 FR 19900, Ohio has a fully approved SIP under section 110(k) of the CAA, and Ohio has met all applicable requirements under section 110 and part D of the CAA, including a fully approved vehicle I/M SIP (60 FR 16989, April 4, 1995). Our discussion in the proposed rulemaking thoroughly documents how Ohio has complied with these requirements. Therefore, we are approving the ozone redesignation request for the Cincinnati area in this final rule. EPA is not conditionally approving this redesignation nor the maintenance plan. We are fully approving these SIP revisions, with vehicle I/M remaining as an implemented requirement of the approved SIP.

With regard to the vehicle I/M program in the Cincinnati area, this remains an applicable requirement for this area under Ohio's SIP. We will not approve conversion of the vehicle I/M program to a contingency measure until Ohio has made all required demonstrations discussed in this final rule and we have approved the State's demonstrations of non-interference in subsequent rulemaking. Should Ohio fail to make these demonstrations, vehicle I/M will remain a fully enforceable requirement of the SIP.

*Comment 12:* The anti-backsliding provisions applicable to the transition from the 1-hour to the 8-hour ozone standard prohibit removal of vehicle I/M programs for the Cincinnati and Dayton areas. EPA proposes to terminate the vehicle I/M programs for the Cincinnati and Dayton areas and to retain I/M only as contingency measures in the maintenance plans for these areas. This is not acceptable for the following reasons even if the Cincinnati area is redesignated as an attainment area for the 1-hour ozone standard:

(1) The anti-backsliding provisions, 40 CFR 51.900(f) and 51.905, are absolutely unambiguous, and provide that the requirements that apply to an 8-hour nonattainment area are the requirements that applied under the 1-hour standard at the time of designation for the 8-hour ozone standard. At the time the Cincinnati and Dayton areas were designated as nonattainment for the 8-hour ozone standard, these areas were under the requirement to continue implementation of vehicle I/M programs;

(2) EPA argues that 40 CFR 51.372(c) creates an exception to the anti-backsliding provisions for I/M purposes. All that 40 CFR 51.372(c) does is to allow a nonattainment area to become eligible for redesignation if the area's SIP contains certain provisions (including legal authority) for I/M. This provision has no bearing on the anti-backsliding issue in question. Redesignation of the Cincinnati area to attainment now has no bearing on the issue because the only date that counts for anti-backsliding purposes is the date of designation for the 8-hour ozone standard; and

(3) Even if there were some legal justification for removing the vehicle I/M programs for the Cincinnati and Dayton areas, Ohio would be required to have the legal authority to trigger the programs should the need arrive. The State does not have such legal authority.

*Response 12:* Since we are not approving the conversion of vehicle I/M to a contingency measure, these issues are not relevant here. However, for the reasons we have discussed above, we believe that our anti-backsliding rule does not modify the basic I/M regulations nor the availability of the approach under 40 CFR 51.372(c).

*Comment 13:* The anti-backsliding provisions applicable to the transition from the 1–hour ozone standard to the 8–hour ozone standard are absolutely clear that it would be illegal to remove the I/M programs for the Cincinnati and Dayton areas. The anti-backsliding provisions applicable to the transition from the 1–hour ozone standard to the 8–hour ozone standard are 40 CFR 51.900(f) and 51.905.

Section 51.900(f) provides that 12 separately enumerated requirements are ''applicable requirements'' for an area if they applied to the area under the 1–hour standard at the time of the area's designation for the 8–hour ozone standard. Vehicle I/M is one of the 12 enumerated applicable requirements. When the Cincinnati area was designated as an 8–hour ozone nonattainment area, vehicle I/M was an applicable requirement for this area.

40 CFR 51.905 provides:

> (a)(1) 8-Hour NAAQS Nonattainment/1-Hour Nonattainment. The following requirements apply to an area designated nonattainment for the 8–hour NAAQS and designated nonattainment for the 1–hour NAAQS at the time of designation for the 8–hour NAAQS for that area.
>
> (i) The area remains subject to the obligation to adopt and implement the applicable requirements as defined in section 51.900(f), except as provided in paragraph (a)(1)(iii) of this section, and except as provided in paragraph (b) this section.

Paragraph (a)(1)(iii) is not relevant to this issue. Paragraph (b) provides:

> A State remains subject to the obligations under paragraphs (a)(1)(i) and (a)(2) of this section until the area attains the 8–hour NAAQS. After the area attains the 8–hour NAAQS, the State may request such obligations be shifted to contingency measures * * *.

Therefore, Cincinnati is required to retain its I/M program until it comes into attainment with the 8–hour ozone standard, when the State can request that I/M become a contingency measure.

Unlike Cincinnati, Dayton was a maintenance area for the 1–hour ozone standard when this area was designated as an 8–hour ozone nonattainment area. At that time, Ohio's SIP required Dayton to maintain a basic I/M program.

40 CFR 51.905 further provides:

> (a)(2) An area designated nonattainment for the 8–hour NAAQS that is a maintenance area for the 1–hour NAAQS at the time of designation for the 8–hour NAAQS for that area remains subject to the obligation to implement the applicable requirements as defined in section 51.900(f) to the extent such obligations are required by the approved SIP, except as provided in paragraph (b) of this section. Applicable measures in the SIP must continue to be implemented; however, if these measures were shifted to contingency measures prior to designation for the 8–hour NAAQS for the area, they may remain as contingency measures * * *.

Therefore, the conclusion for Dayton is almost the same as for Cincinnati. The Dayton area is also required to retain its I/M program until it comes into attainment with the 8–hour ozone standard.

*Response 13:* Our anti-backsliding rule retains the obligations that applied to the area under the CAA, not as the commenter implies, the obligations contained in the SIP. The preamble to the final anti-backsliding rule specifically noted that a state may modify its SIP consistent withy the existing relevant regulations. See 69 FR 23972. 40 CFR 372(c) is part of our existing basic vehicle I/M rule, and it remains in place. We interpret this provision to mean that Ohio may revise the Cincinnati and Dayton ozone maintenance plans to convert the vehicle I/M programs in these areas to contingency measures in the ozone maintenance plans provided that Ohio meets the requirements of 40 CFR 51.372(c) and section 110(l) of the CAA. We are, however, at this time not approving the conversion of the vehicle I/M programs to contingency measures in the Cincinnati and Dayton areas

because the State has not made the requisite demonstrations in compliance with section 110(l) of the CAA and with 40 CFR 51.372(c).

*Comment 14:* Allowing Ohio to drop I/M while the Cincinnati and Dayton areas remain in nonattainment with the 8–hour ozone standard conflicts with section 172(e) of the CAA, which requires that EPA rules ''provide for controls which are not less stringent than the controls applicable to areas designated nonattainment'' for ozone before adoption of the 8–hour standard. Allowing states to drop I/M while areas remain in 8–hour nonattainment further conflicts with the stated rationale and intent underlying EPA's anti-backsliding rule.

*Response 14:* Section 172(e) of the CAA does not apply where EPA has promulgated a more stringent NAAQS, as EPA did when it promulgated the 8–hour ozone NAAQS. As discussed above, since EPA is not approving a conversion of the vehicle I/M program to a contingency measure, this comment is not relevant for this final action. Additionally, for the reasons provided above, EPA believes 40 CFR 51.372(c) remains available under the anti-backsliding rules in 40 CFR 51.905. Furthermore, EPA did look to section 172(e) when establishing the anti-backsliding regulations. These regulations require that areas remain subject to their 1–hour ozone nonattainment control obligations once that standard no longer applies and thus retain controls at the same level of stringency that they applied for purposes of the 1–hour NAAQS. In this case that level of control includes the provisions of 40 CFR 51.372(c).

*Comment 15:* The EPA understands the preamble to the anti-backsliding provisions as reflecting the view that, if a SIP could have been modified to remove a measure for the purposes of the 1–hour ozone NAAQS, it may be removed for 8–hour nonattainment purposes. This understanding of the preamble cannot contradict the language of the anti-backsliding provisions for at least three reasons:

(1) The language of the anti-backsliding regulations is unambiguous, leaving no room for a directly conflicting interpretation in the preamble;

(2) The language of the preamble itself is ambiguous; and,

(3) Portions of the preamble are, in fact, entirely consistent with the language of the anti-backsliding regulations; in other words, while the regulations themselves are unambiguous, the preamble is internally consistent.

*Response 15:* Since we are not approving the conversion of vehicle I/M to a contingency measure, these issues are not relevant here. However, we disagree with the commenter. The preamble to the Phase 1 implementation rule was our contemporaneous interpretation of the Phase 1 regulations. It clearly states that areas remain subject to the 1–hour obligations in the same manner it was subject to that obligation for the 1–hour standard. See 69 FR 23972. As an example, the preamble specifically noted that an area subject to an enhanced I/M program could modify its SIP consistent with our enhanced I/M regulations. Similarly, as here, an area subject to basic I/M can modify its SIP consistent with our basic I/M regulations, which include 40 CFR 51.372(c).

The Helms-Cook memorandum explains how 40 CFR 51.372(c) continues to apply in light of the anti-backsliding rules and would allow Ohio to demonstrate that I/M in the Cincinnati and Dayton areas may be converted to contingency measures in the Cincinnati and Dayton ozone maintenance plans. As noted elsewhere in this final rule, Ohio must make a number of demonstrations in compliance with 40 CFR 51.372(c) and section 110(1) of the CAA to successfully support these conversions and receive EPA approval.

*Comment 16:* 40 CFR 51.372(c) does not create an exception to the anti-backsliding provisions for vehicle I/M. EPA has concluded that 40 CFR 51.372(c), adopted nine years before the adoption of the anti-backsliding provisions, creates an exception to the anti-backsliding provisions for I/M. There is nothing in 40 CFR 51.372(c) to suggest this interpretation. 40 CFR 51.372(c) provides:

> Redesignation requests. Any nonattainment area that EPA determines would otherwise qualify for redesignation from nonattainment to attainment shall receive full approval of a State Implementation Plan (SIP) submittal under Sections 182(a)(2)(B) or 182(b)(4) if the submittal contains the following elements * * *.

The ''following elements'' refer to a variety of provisions for an I/M program, including the necessity of legal authority.

EPA can redesignate a nonattainment area to an attainment area if the SIP makes certain provisions for I/M. This is irrelevant to the anti-backsliding issue at hand. What counts for anti-backsliding purposes in the context of the transition from the 1-hour ozone standard to the 8-hour ozone standard is the area's I/M obligations at the time of the 8-hour ozone nonattainment designation. The Cincinnati and Dayton areas were obligated to continue the implementation of vehicle I/M when these areas were designated to nonattainment for the 8-hour ozone standard. Therefore, these areas remain obligated to implement vehicle I/M programs, even if the Cincinnati area is redesignated to attainment of the 1-hour ozone standard.

*Response 16:* Since we are not approving the conversion of vehicle I/M to a contingency measure, these issues are not relevant here. However, although we agree with the commenter that 40 CFR 51.372(c) does not create an ''exception'' to the anti-backsliding rules, we disagree that the anti-backsliding provisions do not allow Cincinnati and Dayton to take advantage of this provision. As provided in previous responses, our anti-backsliding rules kept in place our current regulations for I/M (and the other ''applicable requirements'' under 40 CFR 51.900(f)) and that includes 40 CFR 51.372(c). Under the anti-backsliding rules both Cincinnati and Dayton remain subject to the basic I/M requirement and can meet that requirement in any way acceptable under our basic I/M regulations.

*Comment 17:* Ohio does not have the necessary legal authority to maintain vehicle I/M as a contingency measure in Ohio's maintenance plan for the Cincinnati and Dayton areas. Ohio needs such legal authority to trigger the implementation of I/M if needed as a contingency measure in these areas. Such legal authority is a prerequisite to the redesignation of the Cincinnati area. It is also a requirement for anti-backsliding purposes, for both the Cincinnati and Dayton areas. Section 175 of the CAA provides as well:

> Such [contingency] provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the State implementation plan for the area before redesignation of the area as an attainment area.

Ohio does not have the necessary legal authority to maintain I/M as a contingency measure for the Cincinnati and Dayton areas.

*Response 17:* As discussed above, EPA agrees with the comment that Ohio does not have sufficient legal authority to implement a vehicle I/M program in the Cincinnati and Dayton areas after December 2005 without further legislative action. EPA has determined that Ohio's current vehicle I/M authority does not satisfy the requirements set forth in 40 CFR

51.372(c) with respect to redesignation requests. Based on EPA's determination regarding legal authority, EPA is not taking action on conversion of Ohio's E-Check program in the Cincinnati and Dayton areas to contingency measures in this final rule.

For the reasons provided in earlier responses to comments, we believe that Ohio meets the anti-backsliding requirements for Cincinnati and Dayton so long as its SIP meets our basic I/M regulations. Because we are not approving I/M as a contingency measure, the language quoted from section 175A(d) regarding contingency measures is not relevant here.

*Comment 18:* EPA may not approve a SIP revision eliminating the I/M programs in Cincinnati and Dayton until Ohio demonstrates that the revision would not interfere with 8-hour ozone and $PM_{2.5}$ attainment. Ohio has failed to make the required showing that removing the I/M programs from the SIP will not interfere with attainment of the 8-hour ozone and $PM_{2.5}$ standards. Both the Cincinnati and Dayton areas have been designated as nonattainment for both standards.

*Response 18:* As we have discussed elsewhere in this final rule, we agree with the commenter that Ohio has not made the demonstration that conversion of the vehicle I/M programs in the Cincinnati and Dayton areas to contingency measures in the maintenance plans will not interfere with the attainment of the 8-hour ozone and $PM_{2.5}$ NAAQS in these areas. Therefore, we are not taking action on these conversions in this final rule.

With regard to the vehicle I/M program in the Cincinnati area, the State of Ohio remains obligated to implement the vehicle I/M program for this area as required in the approved SIP. We will not approve conversion of the I/M program to a contingency measure until Ohio has made all applicable demonstrations discussed in this final rule. If the State makes such a submission, we will undertake subsequent notice and comment rulemaking.

*Comment 19:* EPA has re-written the law as it applies to non-interference and, in so doing, has used the transition from the 1-hour ozone standard to the 8-hour ozone standard as a basis for weakening air quality standards. In the proposed rule, 70 FR 19911, EPA says in its proposal for Cincinnati and Dayton:

> In accordance with the Act and EPA redesignation guidance * * * states are free to adjust control strategies in the maintenance plan as long as they can demonstrate that overall emissions remain below the attainment level of emissions.

In its proposed rule entitled ''Approval and Promulgation of Implementation Plans for Kentucky: Inspection and Maintenance Program Removal for Jefferson County, KY; Source Specific Nitrogen Oxides Emission Rate for Kosmos Cement Kiln,'' 70 FR 53, January 3, 2005, the EPA explains:

> [A] strict interpretation of the requirement in section 110(l) of the Act would allow EPA to approve a SIP revision removing a SIP requirement only after determining based on a completed attainment demonstration that it would not interfere with applicable requirements concerning attainment and reasonable further progress.

EPA continues with the observation that the strict interpretation would prevent changes to SIP control measures before areas are required to submit attainment demonstrations for the new NAAQS, at a time when it is unknown what suite of control measures are needed for a given area to attain these standards. EPA concludes that states should be allowed to substitute equivalent emission reductions to compensate for the control measure being removed as long as the actual emissions in the area are not increased, 70 FR 57.

This line of reasoning is unlawful and arbitrary for a number of reasons. First, the construction that EPA characterizes as ''strict'' is in fact the only one that is consistent with both the plain language of the statute and common sense. Second, the fact that a plain reading of section 110(l) of the CAA prevents removal of a SIP requirement prior to a complete attainment demonstration is the very reason for the existence of both anti-backsliding and non-interference requirements. Third, EPA's reference to changes in the SIP when the exact control measures that will be required to attain the new NAAQS are unknown is a point well taken. It is unlawful, arbitrary, and capricious to eliminate effective control measures from the SIP when the State has not shown that these measures will not be needed for timely progress toward and timely attainment of the new standards. The State has not shown that control measures apart from I/M are available to meet all of the emission reductions that will be required. Finally, the EPA proposal for Ohio refers to ''EPA redesignation guidance,'' as does the Helms/Cook memo referenced in the anti-backsliding context:

> EPA is currently developing guidance on what areas need to include in a section 110(l) demonstration of non-interference.

The redesignation guidance has not yet been published. Thus, states with 8-hour and $PM_{2.5}$ nonattainment areas are being allowed to remove effective control programs from their SIPs, which were required for the purposes of the 1-hour standard, at a time when the guidance applicable to attainment of the new standards has not been provided.

The 8-hour ozone standard was promulgated because the 1-hour ozone standard is insufficiently protective of human health. The transition between these standards should not provide an opportunity to weaken air quality standards.

*Response 19:* EPA is the Agency responsible for implementing the CAA and is accorded deference in interpreting ambiguous provisions of the CAA when it does so through notice and comment rulemaking. Through the April 15, 2005, proposed rule (70 FR 19895), EPA sought public comment on its current interpretation of section 110(l) of the CAA. EPA has evaluated the comments and continues to believe its interpretation to be reasonable. Section 110(l) of the CAA requires the State to demonstrate that the removal of an emissions control measure from the SIP will not interfere with the attainment of any NAAQS or with compliance with any other requirement of the CAA. EPA believes the appropriate interpretation of this section would allow states to substitute equivalent (or greater) emission reductions to compensate for the removal of emission control measures from the SIPs. As long as actual emissions in the air are not increased, EPA believes that equivalent (or greater) emissions reductions would be acceptable to demonstrate non-interference because ambient air quality levels will not change. EPA does not believe that areas must wait to produce a complete attainment demonstration (or be required to produce one when not otherwise required based on the area's classification) to make any revisions to the SIP, provided the status quo air quality is preserved (emissions will not be allowed to increase in an area through the removal of an emissions control from the SIP). EPA believes such an approach will not interfere with an area's ability to develop a timely attainment demonstration. A state seeking to remove an emission control requirement from the SIP would not be granted an extension for attainment of NAAQS as a result of such an action. Although EPA believes this interpretation to be reasonable, we are not taking final action invoking the use of this interpretation in this final action because, as noted elsewhere in this final

rulemaking, we are not acting on a section 110(l) demonstration of non-interference at this time.

*D. Comments Received After the Close of the Comment Period*

On June 9, 2005, a commenter submitted late comments. Notwithstanding the facts that the comments were submitted more than three weeks after the close of the comment period and that EPA is not obligated to take into account or respond to such late comments, EPA is responding to the comments in this notice.

*Comment 20:* The commenter contends that EPA may not redesignate the Cincinnati area as attainment because Ohio did not prove that its maintenance plan for the Cincinnati area will not interfere with attainment of the 8-hour ozone standard and because ''the nature of non-interference, which requires states to prove a negative, means that not only was Ohio required to demonstrate that the control measures in its SIP would not interfere with attainment of the $PM_{2.5}$ and 8-hour ozone standards, but also that additional control measures are not necessary to prevent interference with attainment of the $PM_{2.5}$ and 8-hour ozone standards.''

*Response 20:* EPA believes that the commenter misunderstands the nature of section 110(l). The commenter appears to contend that, even though the maintenance plan for Cincinnati does not relax any existing control measures, the State must somehow demonstrate that additional control measures are not necessary to prevent interference with attainment of the $PM_{2.5}$ and 8-hour ozone standards. EPA does not believe that approving a maintenance plan containing existing control measures that the State has demonstrated will provide emission reductions sufficient to maintain the 1-hour ozone standard can in any way interfere with Ohio's obligations under the $PM_{2.5}$ and 8-hour ozone standards for Cincinnati. EPA is not approving any relaxation of the existing control measures so emissions of VOC and $NO_X$ will not increase as a consequence of this action. Morevoer, Ohio will still have to meet whatever obligations it may have regarding the implementation of the new standards and determining that existing control measures will provide for maintenance of the 1-hour standard does not impair nor interfere with the state's obligations regarding the new standards. EPA does not believe that section 110(l) transforms this redesignation action into an obligation for the state to comply with its SIP obligations for the new standards earlier than otherwise required, which is the implication of the assertion that this action cannot proceed without a demonstration that additional control measures are not necessary to prevent interference with attainment of the $PM_{2.5}$ and 8-hour ozone standards. Moreover, the commenter does not present any evidence or even assert that there is anything about any of the control measures contained in the maintenance plan that would somehow interfere with $PM_{2.5}$, 8-hour ozone attainment, or other requirements. EPA does not believe that approval of this maintenance plan would interfere with the 8-hour ozone or $PM_{2.5}$ attainment or other obligations applicable to the Cincinnati area. As Cincinnati's ability to implement those standards would be the same if this redesignation were not occurring, approval of the maintenance plan cannot interfere with the requirements applicable for those standards.

*Comment 21:* The commenter also asserts that the redesignation may not occur because Ohio has not met the section 110(a)(2)(D) requirement concerning interstate transport. It cites EPA's recent finding of failure to submit regarding the section 110(a)(2)(D) requirement.

*Response 21:* EPA's recent finding concerning section 110(a)(2)(D) concerned SIPs for the 8-hour ozone and $PM_{2.5}$ standards. It did not concern the 1-hour ozone standard, the standard pertinent for this redesignation to attainment for the 1-hour ozone standard. Consequently, EPA's recent finding is simply irrelevant for the standard at issue in this redesignation. (EPA notes that Ohio has complied with section 110(a)(2)(D) for the 1-hour ozone standard by virtue of having received EPA approval of its SIP to address the $NO_X$ SIP Call. See 68 FR 46089 (August 5, 2003))

Furthermore, even if the recent finding of failure to submit a section 110(a)(2)(D) SIP had been for a pertinent standard, it would still not prevent redesignation of the area. EPA has repeatedly interpreted such SIP requirements as not being applicable requirements for purposes of a redesignation since the states remain obligated to make such submissions even after redesignation to attainment, *i.e.*, they remain applicable requirements notwithstanding the redesignation. See 65 FR37879, 37890 (June 19, 2000) (Cincinnati redesignation), 66 FR 53097, 53099 (October 19, 2001) (Pittsburgh redesignation), 68 FR 25418, 25426–27 (May 12, 2003) (St. Louis redesignation).

*Comment 22:* The same commenter also contends that EPA may not redesignate the Cincinnati area as attainment since the State has failed to meet all applicable part D requirements ''because Ohio does not have legal authority for the I/M program until it is no longer necessary.'' The commenter contends that EPA requires that states have legal ''authority for I/M program operation until such time as it is no longer necessary (*i.e.*, until a Section 175 maintenance plan without an I/M program is approved by EPA).'' 40 CFR 51.372(a)(6). According to the commenter, this requirement is not met since the legislative authorization for the I/M program expires at the end of 2005 while Ohio is currently required to have legislative authority passed the end of 2005.

*Response 22:* EPA believes that it may approve the redesignation at this time because Ohio has a fully approved I/M program for the Cincinnati area with legal authority. As noted previously, the existing federally enforceable SIP includes a fully approved I/M program. Should Ohio fail to reauthorize this program or otherwise terminate the program prior to receiving EPA approval of a subsequent SIP revision that satisfies section 110(l) then Ohio would be in violation of the federally approved SIP and subject to potential enforcement and sanctions. Furthermore, since the new maintenance plan for Cincinnati demonstrates that the area can maintain the 1-hour ozone standard for the requisite 10 years without the I/M program, even though the I/M program currently remains an enforceable part of the Ohio SIP EPA is in fact today approving a section 175 maintenance demonstration without an I/M program. Therefore, EPA believes that the legislative authority of the current I/M program is in fact sufficient to support the maintenance plan, although as previously noted it is not sufficient to satisfy 40 CFR 51.372(c). Thus, although EPA concludes that it could not at this time approve termination of the I/M program nor conversion of the I/M program to a contingency measure, EPA believes that it can approve the maintenance plan and redesignation of the area consistent with the requirements of section 175 and 40 CFR 51.372(a)(6).

## VI. Did Ohio Adopt All Of the Volatile Organic Compound Emission Control Regulations Needed To Comply With the Reasonably Available Control Technology Requirements of the Clean Air Act?

Since the Cincinnati area is nonattainment for the 1-hour ozone

NAAQS, Ohio is required to ensure that all major VOC sources and all VOC sources that meet the applicability criteria in any of EPA's Control Technique Guideline (CTG) documents in the Cincinnati area are subject to RACT regulations. In prior SIP approval actions, EPA approved into the SIP Ohio's VOC RACT regulations covering all pre-1990 CTG categories and ''non-CTG'' RACT for most categories of major VOC sources. Today, EPA is acting on RACT rules and negative declarations for the remaining CTG categories and for remaining non-CTG RACT sources.

To qualify for a redesignation of the Cincinnati area to attainment of the 1-hour ozone NAAQS, Ohio was required to fully comply with the RACT requirement of section 182(b)(2) of the CAA. An analysis of how this RACT requirement is satisfied for these additional source categories (source categories in addition to those covered by VOC emission control regulations that had been previously approved into the SIP) is presented on a category-by-category basis below.

New VOC RACT regulations were required for any facilities exceeding the applicability criteria specified in the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor/Distillation, Wood Furniture Manufacturing, Ship Building and Ship Repair and Aerospace Manufacturing CTG documents. For the other source categories (*i.e.*, non-CTG categories including bakeries), VOC RACT regulations were required if a facility in the Cincinnati area has the potential to emit greater than 100 tons VOC per year of non-CTG VOC emissions. A facility is not subject to RACT if it is subject to federally enforceable operating and/or production restrictions limiting the facility emissions to a level below the applicable cutoff (*e.g.*, for non-CTG RACT to less than 100 tons per year of non-CTG emissions).

*A. Source Categories Not Requiring New VOC Regulations*

The following VOC source categories do not require any additional regulations because there are no sources in the Cincinnati area that exceed the CTG or non-CTG applicability criteria; there are no major sources in the category; and/or any such sources are subject to federally enforceable operating and/or production restrictions limiting the facility's VOC emissions to less than the applicable cutoff. Non-CTG emissions include emissions from source categories for which there is not a CTG document and also unregulated emissions from source categories covered by a CTG category. PTE emissions are the emissions at maximum production levels and 8760 hours per year and represent the maximum emissions that can occur without a modification.

1. Industrial Cleaning Solvents

On May 23, 2003, the Ohio EPA submitted to EPA a Negative Declaration letter for Industrial Cleaning Solvents, which adequately documented that there are no sources in this category in the Ohio portion of the Cincinnati-Hamilton area with non-CTG potential emissions of equal to or greater than 100 tons VOC/year.

Ohio EPA made a thorough search to ensure that it considered all sources with solvent clean-up emissions. This included looking at the Standard Industrial Classification (SIC) Manual, the local Yellow Pages, a database associated with the Ohio EPA permitting system, as well as information from several trade associations and web sites. Based on that review, 122 facilities were identified that are normally associated with solvent clean-up emissions. None of these facilities were found to have solvent clean-up potential VOC emissions of over 50 Tons Per Year (TPY), and there are no facilities with solvent cleaning operations that have combined non-CTG potential VOC emissions of 100 TPY or more. EPA reviewed the negative declaration submitted by the State and concluded that Ohio EPA has adequately documented that there are no major non-CTG sources with potential emissions of 100 TPY or more and, therefore, there are no sources in this category in the Cincinnati area with emissions that are subject to RACT for this source category.

2. Shipbuilding and Ship Repair Industry

On May 23, 2003, the Ohio EPA submitted to EPA a Negative Declaration letter for the Ship Building and Ship Repair Industry which adequately documented that there are no sources for this CTG category in the Ohio portion of the Cincinnati-Hamilton area.

Ohio EPA made a thorough search to determine whether any ship building or ship repair facilities were located within the Cincinnati area. This included reviewing the Ohio EPA air pollution control permitting system, contacting the local office of the United States Coast Guard, reviewing ship building trade association information identified on the web and, in addition, the Harris Directory, which provides SIC information for more than 800,000 companies across the country, was investigated for those categories related to ship building and repair. None of the above sources of information resulted in the identification of any ship building and repair facilities. In addition, staff from the Hamilton County Department of Environmental Services confirmed that there are no military or commercial ship building and repair operations along the Ohio River, the only plausible location for such operations in the ozone nonattainment area. EPA reviewed the negative declaration and concludes that Ohio EPA has adequately documented that there are no ship building and repair facilities located in the Ohio portion of the Cincinnati-Hamilton area.

3. Automobile Refinishing

On May 23, 2003 the Ohio EPA submitted to EPA a Negative Declaration letter for Automobile Refinishing which adequately documented that there are no automobile refinishing major sources (also referred to as auto body shops)in the Ohio portion of the Cincinnati-Hamilton area with non-CTG potential VOC emissions of equal to or greater than 100 tons/year.

In order to determine whether there were any major automobile refinishing sources within the Cincinnati area, Ohio EPA searched the SIC Code Manual for automobile refinishing in conjunction with the Harris Directory, the local and business to business Yellow Pages for automobile refinishing companies, the Ohio EPA permitting system, and Ohio EPA's Small Business Assistance Program. After reviewing all of the above sources of information, 142 automobile refinishing facilities were identified. Of the 142 facilities, 103 are each subject to a federally enforceable Permit to Install which limits VOC emissions to less than 25 tons/year. A review of each of the remaining 39 facilities established that the potential VOC emissions from each of them was less than 25 tons VOC/year. EPA reviewed the negative declaration and concludes that Ohio EPA has adequately documented that there are no automobile refinishing facilities with potential emissions of 100 TPY or more and, therefore, there are no such facilities for which a RACT rule is required.

4. Aerospace Manufacturing and Rework Facilities

On October 14, 2003, the Ohio EPA submitted to EPA a Negative Declaration letter for Aerospace Manufacturing and Rework Facilities which adequately documented that there are no major sources (sources with potential emissions equal to or greater than 25

tons VOC/year for this source category) in the Cincinnati area.

Ohio EPA made a thorough search to determine what aerospace manufacturing and/or rework facilities were located within the Cincinnati area. Ohio EPA searched the Ohio EPA permitting system, the local and business Yellow Pages for aerospace manufacturing and rework facilities, they utilized the web and found a number of trade associations, and used the Harris Directory, which provides SIC information for more than 800,000 companies across the country.

After reviewing all of the above sources of information, Ohio EPA identified 22 facilities in the Cincinnati area that are generally associated with aerospace manufacturing and rework operations. These 22 facilities are listed in a table attached to the October 14, 2003, letter. In reviewing the status of those 22 facilities, it was determined that 14 facilities do not have aerospace manufacturing or rework operations. Two facilities, CTL Aerospace and Gayston Corporation have federally enforceable Permits to Install which limit the allowable VOC emissions to less than 25 TPY for each facility. One facility has shut down all coating operations. The individual files were reviewed for the remaining 5 facilities and it was determined that the potential VOC emissions for operations subject to the CTG were less than 25 TPY at each of the facilities. EPA reviewed the negative declaration submitted by the State and concludes Ohio EPA has adequately documented that there are no aerospace manufacturing and rework operations located in the Ohio portion of the Cincinnati-Hamilton area with potential emissions that exceed the applicability criteria for this CTG category and therefore there are no such facilities for which a RACT regulation is needed.

5. Volatile Organic Liquid Storage Tanks

On January 27, 2004, the Ohio EPA submitted to EPA a Negative Declaration letter for volatile organic liquid (VOL) storage tanks, which adequately documented that there are no sources in this category in the Ohio portion of the Cincinnati-Hamilton area with potential non-CTG emissions of 100 TPY that are not already subject to RACT level controls on their VOL storage tanks. Ohio EPA performed the following searches to identify all VOL storage tanks in the Cincinnati ozone nonattainment area. Ohio EPA checked the Harris Directory for those SICs which may have VOL storage tanks. They also checked the local Yellow and business Yellow Pages for petroleum, oils and solvent storage facilities, their permitting system for storage tanks and on the web, information was obtained from several trade associations.

Ohio EPA identified 151 facilities in the four county Cincinnati area with a total of 1363 storage tanks of various sizes, that contained materials having a wide range of vapor pressures. Only VOL storage tanks with a capacity of greater than 40,000 gallons and storing material with a vapor pressure greater than 0.5 pounds per square inch absolute (psia) are subject to RACT controls. Of those 151 facilities, only 12 were potentially subject to RACT because total potential non-CTG emissions from the facility were above 100 TPY. However, 7 of those facilities have no storage tanks with a capacity greater than 40,000 gallons and storing a material with a vapor pressure greater than 0.5 pounds psia. Thus, those facilities had no tanks required to have RACT-level controls. As documented in Ohio EPA's January 27, 2004 letter, one facility is subject to a federally enforceable Permit to Install limiting facility emissions to less than 100 tons per year. At the remaining four facilities, the storage tanks over 40,000 gallons and with a vapor pressure greater than 0.5 pounds psia are subject to either existing petroleum liquid RACT control requirements or National Emission Standards for Hazardous Air Pollutant (NESHAP) regulations with control requirements that are at least as stringent as RACT. EPA reviewed the negative declaration submitted by the State and concludes Ohio EPA has adequately documented that, except for the four adequately controlled facilities described above, there are no major non-CTG sources with potential emissions of 100 TPY or more and VOL storage tanks over 40,000 gallons and with a vapor pressure greater than 0.5 pounds psia. Therefore, there are no VOL storage tanks in the Cincinnati-Hamilton area for which a RACT regulation is necessary.

6. Lithographic Printing

On July 31, 2003, the Ohio EPA submitted to EPA a Negative Declaration letter for Lithographic Printing, which adequately documented that there are no major lithographic printing sources (sources with potential emissions equal to or greater than 100 tons per year for this source category) in the Cincinnati area.

Ohio EPA made a thorough search to determine what lithographic printing facilities were located in the Cincinnati area. Ohio EPA searched their permitting system, the local and business Yellow Pages for Lithographic printing, utilized the web and reviewed trade association information, used the Small Business Assistance program, and also used the Harris Directory, which provides SIC information for more than 800,000 companies.

After reviewing the above sources of information, Ohio EPA determined that there are seven facilities which perform web offset lithographic printing. The potential to emit for three of these facilities is less than 12 tons of VOC per year. The other four facilities have federally enforceable Permits to Install limiting emissions to less than 100 tons per year for each facility. EPA reviewed the negative declaration submitted by the State and concludes that Ohio EPA has adequately documented that there are no lithographic printing facilities in the Cincinnati area for which a RACT regulation is needed.

7. Plastic Parts Coating

On March 31, 2005, the Ohio EPA submitted to EPA a Negative Declaration letter for the coating of Automotive Plastic Parts, which adequately documented that there are no major automotive plastic parts coating sources (sources with potential VOC emissions equal to or greater than 100 tons per year for this source category) in the Cincinnati area.

Ohio EPA made a thorough search to determine what automotive plastic parts coating facilities were located in the Cincinnati area. Ohio EPA searched their permitting system, the local and business Yellow Pages for automotive plastic parts coating, utilized the web and reviewed trade association information, used the small business assistance program, and also used the Harris Directory which provides SIC information on more than 800,000 companies.

After reviewing the above sources of information, Ohio EPA determined that there are three facilities which coat automotive plastic parts in the Cincinnati area. The potential to emit for one of these facilities is less than 10 tons VOC per year, and the other two automotive plastic parts coating facilities have federally enforceable Permits to Install limiting emissions to less than 100 tons per year for each facility. EPA reviewed the negative declaration submitted by the State and concludes that Ohio EPA has adequately documented that there are no automotive plastic parts coating facilities with potential emissions of 100 TPY or more in the Cincinnati area. Therefore, there are no automotive plastic parts coating facilities for which a RACT rule is required.

*B. Source Categories for Which VOC RACT Regulations Have Been Proposed and Adopted*

On March 8, 2005, Ohio EPA requested that EPA parallel process VOC regulations for five source categories that are discussed below. Parallel processing includes proposing action (by EPA) on draft rules submitted by the State with EPA's final rulemaking taking place subsequent to the State rules being finally adopted. Subsequent to submittal of their draft rules on March 8, 2005, Ohio EPA agreed to make some revisions to their rules, at EPA's request, so that they are consistent with EPA VOC RACT requirements and, therefore, approvable. Ohio's final rules incorporate these (and no other substantive) changes and represent RACT. The following discussion of the five VOC rules that EPA is approving includes a discussion of the changes made by Ohio EPA.

The RACT rules for these five categories were adopted by Ohio on May 16, 2005 and became effective on May 27, 2005.

1. Bakeries

On March 8, 2005, Ohio EPA submitted draft rule 3745–21–12 ''Control of Volatile Organic Compound Emissions from Commercial Bakery Oven Facilities'' and the accompanying definitions in 37–45–21–01(U). This draft rule applies to any commercial bakery oven facility in the Cincinnati ozone nonattainment area with a potential VOC emissions equal to or greater than 100 tons per year. Each bakery oven subject to these control requirements must install and operate a VOC emission control system with an overall control efficiency of at least 95 percent by weight. A bakery oven is exempted from the control requirements of this rule if, as established by the recordkeeping requirements in this rule, it has annual VOC emissions of less than 25.0 tons and average daily VOC emissions of less than 192 pounds. This is consistent with the exemption levels that were approved by EPA in the Maricopa County (Arizona) bakery rule. This rule contains a calculation procedure to determine uncontrolled potential to emit, a requirement to achieve compliance within 12 months, as well as compliance testing requirements, monitoring and inspection requirements, and recordkeeping and reporting requirements. At EPA's request, Ohio EPA deleted the last sentence in the draft definition of ''Commercial bakery oven facility'' which improperly exempts establishments that produce bakery products primarily for direct sale on the premises to household consumers and that utilize only batch bakery ovens. This adopted rule, with the revised definition, is consistent with RACT and is, therefore, being approved.

2. Batch Processes

On March 8, 2005, Ohio EPA submitted draft rule 3745–21–14 ''Control of Volatile Organic Compound Emissions from Process Vents in Batch Operations'' and the accompanying definitions in 3745–21–01(W). This draft rule applies to any batch process train for a variety of chemical manufacturing operations at facilities in the Cincinnati area with over 100 tons per year of potential VOC emissions. A batch operation is a non-continuous operation in which chemicals are added to the process in discrete intervals as opposed to on a continuous basis. A batch process train is a collection of equipment (*e.g.*, reactors, filters, distillation columns, extractors, crystallizers, blend tanks, neutralizer tanks, digesters, surge tanks and product separators) configured to produce a specific product or intermediate by a batch operation.

Exempted from the VOC control requirements of this rule are any unit operation with uncontrolled annual VOC emissions of less than 500 pounds per year and any batch process train containing process vents that have, in the aggregate, uncontrolled total annual mass emissions of less than 30,000 pounds per year.

For those process vents of batch process trains and unit operations within batch process trains subject to the control requirements of this rule, compliance can be achieved by: (1) Reducing uncontrolled VOC emissions by an overall efficiency of at least 90 percent, or to 20 parts per million volume, per batch cycle; (2) using a boiler or process heater to comply with the above by requiring that the vent stream be introduced into the flame zone of the boiler or process heater; or (3) using a flare, provided that it meets Ohio's approved flare requirements in 3745–21–09(DD)(10)(d). In addition, suitable recordkeeping, reporting, and test methods have been included.

Compliance with these control requirements is required within 12 months of the effective date of this rule. In order to eliminate ambiguity in 3714–21–14(A)(4), which deals with compliance deadlines, Ohio EPA eliminated (at EPA's request) the last sentence in 3714–21–14(A)(4) and added ''1990'' after baseline year in order to specify the year after which actual emissions could not have exceeded 100 tons per year of VOC to make the source eligible for avoiding applicability to the batch rule by restricting emissions to less than 100 tons VOC per year through federally enforceable operating restrictions.

This adopted batch rule is consistent with EPA VOC RACT guidance and is, therefore, being approved.

3. Industrial Wastewater

On March 8, 2005, Ohio EPA submitted draft rule 3745–21–16 ''Control of Volatile Organic Compound Emissions from Industrial Wastewater'' and the accompanying definitions in 3745–21–01(Y). This draft rule applies to facilities in the Cincinnati area with the potential to emit over 100 tons VOC per year and that have operations in one of several industrial categories, such as organic chemicals, pesticides and pharmaceutical manufacturing, and that generate process wastewater.

The proposed industrial wastewater rule contains the following control requirements: Each individual drain system shall be covered and, if vented, be routed through a closed vent system to an emissions control device, or each drain shall be equipped with water seal controls or a tightly fitting cap or plug; each surface impoundment that receives, manages or treats an affected VOC wastewater stream must be equipped with a cover and a closed-vent system which routes the VOC vapors to an emissions control device or the surface impoundment must be equipped with a floating flexible membrane cover; each oil-water separator shall be equipped with a fixed roof and a closed vent system that routes the vapors to an emissions control device or a floating roof; each portable container must be covered; each wastewater tank shall have a fixed roof and a closed-vent system that routes the VOC vapors to a control device, a fixed roof and an internal floating roof, or an external floating roof; and each treatment process must meet the applicable requirements described above along with other requirements, such as venting the gases from the treatment process to an emissions control device designed and operated to reduce wastewater VOC emissions by 90%. There is also an alternative control option requiring EPA approval.

There are inspection and monitoring requirements, a list of approved test methods, recordkeeping requirements, and a requirement that compliance be achieved within 12 months from the effective date of the rule.

At EPA's request, Ohio EPA made the following agreed upon changes to its draft rule: It revised the definition of

''Affected VOC'' in 3745–21–01(Y)(3) to ''means VOC with a Henry's Law Constant greater than * * *,'' because VOCs with a higher Henry's Law Constant have a greater potential to be emitted; in order to eliminate ambiguity in 3745–21–16(A)(4) it deleted the last sentence in this section; Ohio EPA added ''1990'' before ''baseline year'' (for the reason described in the prior section); and deleted the phrase ''or (D)(8)''from 3745–21–16(D)(1), as (D)(8) is a control option for treatment processes and was not intended to be an alternative to the control requirements in (D)(3) through (D)(7). The adopted rule is consistent with RACT and is being approved.

4. SOCMI Reactors/Distillation Units

On March 8, 2005, Ohio EPA submitted draft rule 3745–21–13 ''Control of Volatile Organic Compound Emissions from Reactors and Distillation Units Employed in SOCMI Chemical Production'' and the accompanying definitions in 3745–21–01(V). This rule applies to any reactor or distillation unit within a process unit that produces a SOCMI chemical and that is located in the Cincinnati area. Any reactor or distillation unit in a process unit with a design capacity of less than 1,100 tons per year of chemicals produced is (consistent with the CTG) exempt from the control requirements of this rule. This rule also exempts any reactor or distillation unit that is regulated by either of two of Ohio's existing VOC RACT rules or three new source performance standards, each of which have federally enforceable control requirements that are at least as stringent as the control requirements for this SOCMI rule. Each process vent is classified according to characteristics of the process vent stream (VOC concentration, flow rate, and the total resource effectiveness (TRE))prior to a control device. The TRE is a cost-effectiveness tool established by EPA to determine if the annual cost of controlling a gas stream is reasonable based on the emission reduction that can be achieved by a combustion-type emissions control device.

One of the following controls is required for those process vents for which control is required: Discharge to a properly operating flare; discharge to the flame zone of a boiler or process heater with a heat input capacity of over 150 million BTU per hour; discharge to a boiler or process heater as the primary fuel or with the primary fuel; discharge to a control device that reduces VOC emissions by at least 98 percent or emits VOC at a concentration less than 20 ppmv; achieve and maintain a TRE index value greater than 1.0 (for which no additional control is warranted); or discharge to an existing combustion device with a 90 percent emission reduction efficiency.

Compliance is required within 12 months of the effective date of the rule. This rule also includes compliance testing, TRE determination testing and monitoring requirements, as well as recordkeeping and reporting requirements.

At EPA's request, Ohio EPA revised 3714–21–13(A)(2) and added a new (A)(3) that specifies that sources exempt from the requirements of the SOCMI rule because they are subject to another rule must be subject to the limits of such other rule. Ohio EPA also deleted (F)(1)(f), which allows emission reduction credit for a recovery device that is part of the process.

With the revisions made by Ohio EPA this adopted rule is consistent with EPA RACT guidance and is being approved.

5. Wood Furniture Manufacturing

On March 8, 2005, Ohio EPA submitted draft rule 3745–21–15 ''Control of Volatile Organic Compound Emissions from Wood Furniture Manufacturing Operations'' and the accompanying definitions in 3745–21–01(X). This draft rule applies to any facility that has wood furniture manufacturing operations with a potential to emit 25 tons VOC per year and is located in the Cincinnati area.

The five compliance options for wood finishing operations are: (1) A VOC content limit of 0.8 pound VOC per pound of solids for topcoats only; (2) VOC content limits for topcoats and sealers, wherein topcoats are subject to 1.8 pounds VOC per gallon of solids or 2.0 pounds VOC per gallon of solids for an acid-cured alkyd amino conversion topcoat, and sealers are subject to 1.9 pounds VOC per gallon of solids or 2.3 pounds VOC per gallon of solids for an acid-cured alkyd amino sealer; (3) a VOC emission control system for topcoats and/or sealers that is equivalent to the VOC content limits of the above options; (4) daily VOC emissions limits for topcoats; and (5) daily VOC emissions limit for topcoats, sealers, and other finishing materials. The compliance options associated with daily VOC emissions are based on a daily summation of actual VOC emissions not exceeding 90 percent of the daily summation of VOC emissions allowed under compliance options (1) or (2). This rule also allows 30-day averaging for dip coaters.

This rule also requires a work practice implementation plan that develops environmentally desirable work practices including: An operator training course; a leak inspection and maintenance plan; a cleaning and washoff accounting system, spray booth cleaning restrictions; storage requirements for coatings; coating application requirements; line cleaning and spray gun cleaning procedures; and emission control practices from washoff operations.

This rule also includes compliance testing and monitoring requirements for a VOC emission control system, as well as recordkeeping and reporting requirements. Compliance is required 12 months after the effective date of this rule. Ohio EPA revised its viscosity provisions, as was previously agreed between the State and EPA, so that viscosity cannot, by itself, be used to establish the VOC content for dip coaters. This rule is consistent with VOC RACT requirements and is being approved.

## VII. Statutory and Executive Order Reviews

*Executive Order 12866: Regulatory Planning and Review*

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

*Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

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

*Regulatory Flexibility Act*

This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

*Unfunded Mandates Reform Act*

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as

described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

*Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

*Executive Order 13132: Federalism*

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

*Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

*National Technology Transfer Advancement Act*

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

*Paperwork Reduction Act*

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

*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. By June 14, 2005, EPA will submit a report containing these rules and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 22, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* Section 307(b)(2).)

**List of Subjects in 40 CFR Parts 52 and 81**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 10, 2005.

**Norman Niedergang,**

*Acting Regional Administrator, Region 5.*

■ For the reasons stated in the preamble, parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

## PART 52—[AMENDED]

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

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

## Subpart KK—Ohio

■ 2. Section 52.1870 is amended by adding paragraph (c)(133) to read as follows:

**§ 52.1870 Identification of plan.**

* * * * *

(c) * * *

(133) On May 20, 2005, the Ohio Environmental Protection Agency submitted volatile organic compound (VOC) regulations for five source categories in the Cincinnati ozone nonattainment area. These regulations complete the requirement that all VOC reasonably available control technology (RACT) regulations, for which there are eligible sources, have been approved by EPA into the SIP for the Cincinnati ozone nonattainment area.

(i) *Incorporation by Reference.* The following sections of the Ohio Administrative Code (OAC) are incorporated by reference.

(A) OAC rule 3745–21–01(U), (definitions for commercial bakery oven facilities), effective May 27, 2005.

(B) OAC rule 3745–21–01(V), (definitions for reactors and distillation units employed in SOCMI chemical production), effective May 27, 2005.

(C) OAC rule 3745–21–01(W), (definitions for batch operations), effective May 27, 2005.

(D) OAC rule 3745–21–01(X), (definitions for wood furniture manufacturing operations), effective May 27, 2005.

(E) OAC rule 3745–21–01(Y), (definitions for industrial wastewater), effective May 27, 2005.

(F) OAC rule 3745–21–12: ''Control of Volatile Organic Compound Emissions from Commercial Bakery Oven Facilities'', effective May 27, 2005.

(G) OAC rule 3745–21–13: ''Control of Volatile Organic Compound Emissions from Reactors and Distillation Units Employed in SOCMI Chemical Production'', effective May 27, 2005.

(H) OAC rule 3745–21–14: ''Control of Volatile Organic Compound Emissions from Process Vents in Batch Operations'', effective May 27, 2005.

(I) OAC rule 3745–21–15: ''Control of Volatile Organic Compound Emissions from Wood Furniture Manufacturing Operations'', effective May 27, 2005.

(J) OAC rule 3745–21–16: ''Control of Volatile Organic Compound Emissions from Industrial Wastewater'', effective May 27, 2005.

* * * * *

■ 2. Section 52.1885 is amended by revising paragraph (a)(14) to read as follows:

**§ 52.1885 Control strategy: Ozone.**

(a) * * *

(14) Approval-EPA is approving the 1-hour ozone maintenance plan for the Ohio portion of the Cincinnati-Hamilton area submitted by Ohio on May 20,

2005. The approved maintenance plan establishes 2015 mobile source budgets for the Ohio portion of the area (Butler, Clermont, Hamilton, and Warren Counties) for the purposes of transportation conformity. These budgets are 26.2 tons per day for volatile organic compounds and 39.5 tons per day for nitrogen oxides for the year 2015.

* * * * *

## PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. Section 81.336 is amended by revising the 1-hour ozone table entry for the Cincinnati-Hamilton Area to read as follows:

**§ 81.336 Ohio.**

* * * * *

OHIO—OZONE (1–HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date | Type | Date | Type |
| * * * | * | * | * | * |
| Cincinnati-Hamilton Area:<br>Butler County.<br>Clermont County.<br>Hamilton County.<br>Warren County. | 06/14/2005 | Attainment. | | |
| * * * | * | * | * | * |

[FR Doc. 05–12016 Filed 6–20–05; 8:45 am]

**BILLING CODE 6560–50–P**

Federal Register

Tuesday,
June 21, 2005

Part V

# Department of Housing and Urban Development

## Notice of Regulatory Waiver Requests Granted for the First Quarter of Calendar Year 2005; Notice

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4997–N–01]**

## Notice of Regulatory Waiver Requests Granted for the First Quarter of Calendar Year 2005

**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 January 1, 2005, and ending on March 31, 2005.

**FOR FURTHER INFORMATION CONTACT:** For general information about this notice, contact Aaron Santa Anna, Assistant General Counsel for Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., 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 first quarter of calendar year 2005.

**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). This notice covers waivers of regulations granted by HUD from January 1, 2005, through March 31, 2005. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Panning 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 first quarter of calendar year 2005) before the next report is published (the second quarter of calendar year 2005), HUD will include any additional waivers granted for the first 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: June 9, 2005.

**Kathleen D. Koch,**

*Deputy General Counsel.*

### Appendix—Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development January 1, 2005, Through March 31, 2005

*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 Fair Housing and Equal Opportunity.

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 Fair Housing and Equal Opportunity 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.

*Regulations:* 24 CFR 135.38.

*Project/Activity:* The City of Watsonville, California requested a waiver of § 135.38 of the regulations governing Economic Opportunities for Low- and Very Low-Income Persons in 24 CFR part 135.

*Nature of Requirement:* Section 135.38 enumerates the Section 3 clauses for contracts awarded with federally assistance.

*Granted by:* Carolyn Peoples, Assistant Secretary for Fair Housing and Housing and Equal Opportunity.

*Date Granted:* April 5, 2004.

*Reasons Waiver:* The City of Watsonville, CA, a Community Development Block Grant entitlement city, was in jeopardy of losing a $2.75 million grant from the United States Department of Commerce's Economic Development Administration (EDA) for a public parking structure in downtown Watsonville. The inclusion of the Section 3 contract clause in construction contracts conflicted with EDA's procurement regulations.

*Contact:* Rafiq Munir, Acting Director, Economic Opportunity Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–6385.

**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:* Eden Green Cooperatives, Chicago, Illinois, FHA Project Numbers 071–55068, 071–55069, 071–55070, 071–55071.

*Nature of Requirement:* Section 219.220(b) governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996. This section states: ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project * * *'' Either of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy Program loan would be repaid, in whole, at that time.

*Granted by:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* February 3, 2005.

*Reason Waived:* This waiver is granted in order to allow the owners of Eden Green Cooperatives to repay a Flexible Subsidy Program loan. The owners have requested to subordinate the Flexible Subsidy Program loan to the new Section 221(d)(4) mortgage. The cooperative will transfer ownership to a new limited partnership, the Habitat Company, which is fully restoring the property with tax credits, FHA insurance and tax-exempt bonds from the City of Chicago. The cooperative voted on August 9, 2004, to sell four of the five mortgages covering the cooperative. The Habitat Company plans to return the properties to the residents upon expiration of the Low Income Housing Tax Credits. The refinance will be used to pay off the delinquent HUD-held mortgage and complete needed rehabilitation of the property.

*Contact:* Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 401.461.

*Project/Activity:* The following project requested a waiver to the simple interest requirement on the second mortgage to allow compound interest at the applicable Federal rate. (24 CFR 401.461):

| FHA No. | Project | State |
|---|---|---|
| 08435239 | Brookfield Apartments ... | MO |

*Nature of Requirement:* Section 401.461 requires that the second mortgages have an interest rate not more than the applicable Federal rate. Section 401.461(b)(1) states that interest will accrue but not compound. The intent of simple interest instead of compound interest is to limit the size of the second mortgage accruals to increase the likelihood of long-term financial and physical integrity.

*Granted by:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* February 23, 2005.

*Reason Waived:* This regulatory restriction would be construed as a form of Federal subsidy, thereby creating a loss of tax credit equity. This loss will adversely affect the ability to close the restructuring plan, and could cause the loss or deterioration of these affordable housing projects. Therefore, compound interest is necessary for the owners to obtain Low Income Housing Tax Credits under favorable terms, and in order to maximize the savings to the Federal government.

*Contact:* Dennis Manning, Office of Affordable Housing Preservation, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–0001.

• *Regulation:* 24 CFR 401.461.

*Project/Activity:* The following projects requested waivers to the simple interest requirement on the second mortgage to allow compound interest at the applicable Federal rate. (24 CFR 401.461):

| FHA No. | Project | State |
|---|---|---|
| 03435167 | Freeland Elderly Housing. | MO |
| 03435194 | Freeland III Housing ..... | MO |

*Nature of Requirement:* Section 401.461 requires that second mortgages have an interest rate not more than the applicable Federal rate. Section 401.461(b)(1) states that interest will accrue but not compound. The intent of simple interest instead of compound interest is to limit the size of the second mortgage accruals to increase the likelihood of long-term financial and physical integrity.

*Granted by:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 22, 2005.

*Reason Waived:* This regulatory restriction would be construed as a form of Federal subsidy, thereby creating a loss of tax credit equity. This loss will adversely affect the ability to close the restructuring plan, and could cause the loss or deterioration of these affordable housing projects. Therefore, compound interest is necessary for the owners to obtain Low Income Housing Tax Credits under favorable terms, and in order to maximize the savings to the Federal government.

*Contact:* Dennis Manning, Office of Affordable Housing Preservation, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–0001.

• *Regulation:* 24 CFR 401.600.

*Project/Activity:* The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

| A<br>FHA No. | D<br>Project | F<br>State |
|---|---|---|
| 6235209 ... | Cedars Green Apartments. | AL |
| 10110557 | Birchwood Manor ..... | CO |
| 7355120 ... | Eden Green Apartments | IN |
| 4635265 ... | Carl Apartments ..... | OH |
| 4238002 ... | Firelands Retirement Center. | OH |
| 4244020 ... | Pentecostal Apartments | OH |
| 11344071 | Western Heights Apartments. | TX |
| 1732022 ... | Underwood Elderly ..... | CT |
| 7135568 ... | Austin Renaissance ..... | IL |

*Nature of Requirement:* Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

*Granted by:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* February 11, 2005.

*Reason Waived:* The projects listed above were not assigned to the participating administrative entities (PAEs) in a timely manner or the restructuring analysis was unavoidably delayed due to no fault of the owners.

*Contact:* Norman Dailey, Office of Affordable Housing Preservation, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–0001.

• *Regulation:* 24 CFR 401.600.

*Project/Activity:* The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

| FHA No. | Project | State |
|---|---|---|
| 3135236 ... | Audubon Park ..... | NJ |
| 35427 ..... | Cavalier Apartments ..... | DC |
| 6535291 ... | Driftwood Apartments .... | MS |
| 4535069 ... | Dunbar Towers ..... | WV |
| 12235488 | East 35th Street Apartments. | CA |
| 12235551 | Hamlin Estates ..... | CA |
| 3135244 ... | Hampshire House ..... | NJ |
| 2336613 ... | Lena Park (Granite Package #7). | MA |
| 2336612 ... | Washington Columbia Apartments. | MA |
| 6235342 ... | Woodlands Apartments | AL |
| 5335428 ... | Greentree Village Apartments. | NC |
| 6144040 ... | Holsey Cobb Village Apartments. | GA |
| 6144148 ... | Shy Manor Apartments .. | GA |

*Nature of Requirement:* Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after, January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

*Granted by:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 10, 2005.

*Reason Waived:* The projects listed above were not assigned to the participating administrative entities (PAEs) in a timely manner, or the restructuring analysis was unavoidably delayed due to no fault of the owners.

*Contact:* Norman Dailey, Office of Affordable Housing Preservation, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–0001.

• *Regulation:* 24 CFR 891.100(d).

*Project/Activity:* William W. Winpisinger, Cleveland, Ohio, Project Number: 042–EE145/OH12–S021–008.

*Nature of Requirement:* Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

*Granted by:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* January 6, 2005.

*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, 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:* John Chambers Apartments, Las Vegas, Nevada, Project Number: 125–HD071/NV25–Q031–001.

*Nature of Requirement:* Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

*Granted by:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* January 12, 2005.

*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, 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:* Hickory Lane One, Princess Anne, Maryland, Project Number: 052–EE035/MD06–S001–001.

*Nature of Requirement:* Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

*Granted by:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* January 28, 2005.

*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, 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:* Oak Knoll Villa, San Antonio, Texas, Project Number: 115–EE065/TX59–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:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* February 3, 2005.

*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, 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:* College Park Towers II, Orlando, Florida, Project Number: 067–EE125/FL29–S031–001.

*Nature of Requirement:* Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

*Granted by:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* February 4, 2005.

*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, 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:* New Castle Housing, New Castle, Colorado, Project Number: 101–EE058/CO99–S033–001.

*Nature of Requirement:* Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

*Granted by:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* February 14, 2005.

*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, 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:* Sterling Senior Apartments, Bellingham, Washington, Project Number: 127–EE038/WA19–S021–004.

*Nature of Requirement:* Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

*Granted by:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 2, 2005.

*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, 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:* Victorian Woods, Decatur, Illinois, Project Number: 072–EE153/IL06–S031–013.

*Nature of Requirement:* Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

*Granted by:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 4, 2005.

*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, 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:* Lincoln Street Housing, Depew, New York, Project Number: 014–HD115/NY06–Q031–005.

*Nature of Requirement:* Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

*Granted by:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 4, 2005.

*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, 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:* Daisy House, Rochester New York, Project Number: 014–EE208/NY06–S011–007.

*Nature of Requirement:* Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

*Granted by:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 4, 2005.

*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, 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:* Sunflower Housing, Lackawanna, New York, Project Number: 014–EE218/NY06–S021–006.

*Nature of Requirement:* Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

*Granted by:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 9, 2005.

*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, 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:* South Seven Senior Housing, Port Hadlock, Washington, Project Number: 127–EE036/WA19–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:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 15, 2005.

*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, 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:* San Antonio VOA Living Center, San Antonio, Texas, Project Number: 115–HD040/TX59–Q031–001.

*Nature of Requirement:* Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

*Granted by:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 15, 2005.

*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, 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:* Holiness Homes of Vision, Chicago, Illinois, Project Number: 071–EE182/IL06–S031–001.

*Nature of Requirement:* Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

*Granted by:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 15, 2005.

*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, 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:* Hanover Street Elderly Housing, Manchester, New Hampshire, Project Number: 024–EE073/NH36–S031–003.

*Nature of Requirement:* Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

*Granted by:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 21, 2005.

*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, 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:* Independence II, Mount Laurel, New Jersey, Project Number: 035–HD048/NJ39–W011–003.

*Nature of Requirement:* Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

*Granted by:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 24, 2005.

*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, 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:* Washington Lane Section 811, Philadelphia, Pennsylvania, Project Number: 034–HD070/PA26–Q021–001.

*Nature of Requirement:* Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

*Granted by:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 24, 2005.

*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, 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: San Antonio VOA Elderly Housing, San Antonio, Texas, Project Number: 115–EE067/TX59–S031–001.

*Nature of Requirement:* Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

*Granted by:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 29, 2005.

*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, 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:* Carlton Avenue Group Home, Charlottesville, Virginia, Project Number: 051–HD123/VA36–Q031–005.

*Nature of Requirement:* Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

*Granted by:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 29, 2005.

*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, 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:* Family Services of Western Pennsylvania IV, Vandergrift, Pennsylvania, Project Number: 033–HD075/PA28–Q0221–003.

*Nature of Requirement:* Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

*Granted by:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 30, 2005.

*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, 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:* VOANNE Brackett Street House, Portland, Maine, Project Number: 024–HD041/ME36–Q031–001.

*Nature of Requirement:* Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

*Granted by:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 30, 2005.

*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, 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:* Sherman Apartments, Aurora, Illinois, Project Number: 071–HD121/IL06–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:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* January 14, 2005.

*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. This project also required 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:* Helena Elderhousing, Inc., Helena, Montana, Project Number: 093–EE012/MT99–S021–002.

*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:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* January 18, 2005.

*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. This project also required additional time to issue the firm commitment.

*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:* Boulevard Apartments, Petaluma, California, Project Number: 121–HD076/CA39–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:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* January 25, 2005.

*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. This project also required additional time because of the City's lengthy review process and their shortage of staff.

*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:* Pioneer Place Senior Housing, Plano, Texas, Project Number: 113–EE031/TX21–S021–009.

*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:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* January 26, 2005.

*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. This project also required 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:* Casa de Corazones, Las Cruces, New Mexico, Project Number: 116–HD020/NM16–Q021–002.

*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:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* January 26, 2005.

*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. This project also required additional time to correct the Lease Agreement and for approval of the contractor.

*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:* St. Gabriel Manor, St. Martinville, Louisiana, Project Number: 064–EE141/LA48–S021–008.

*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:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* February 3, 2005.

*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. This project also required additional time for the sponsor/owner to submit revised plans and specifications and for HUD to review the firm commitment.

*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 891.130(b).

*Project/Activity:* Northwest Estates, Moses Lake, Washington, Project Number: 171–HD013/WA19–Q031–003.

*Nature of Requirement:* Section 891.130(b) prohibits an identify of interest between the sponsor or owner (or borrower, as applicable) and any development team member or between development team members until two years after final closing.

*Granted by:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* January 13, 2005.

*Reason Waived:* There are few, if any companies in the area with the capability and expertise to serve as the management agent, no individuals will benefit financially from either the sale of the property or from managing the project. The Grant County Housing Authority has agreed to sell the project sites at 10 percent below the appraised fair market value.

*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 891.130(b).

*Project/Activity:* Luther House III of Jennersville, West Grove, Pennsylvania, Project Number: 034–EE130/PA26–S031–002.

*Nature of Requirement:* Section 891.130(b) prohibits an identity of interest between the sponsor or owner (or borrower, as applicable) and any development team member or between development team members until two years after final closing.

*Granted by:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* February 11, 2005.

*Reason Waived:* The contractor agreed to maintain the construction cost estimate provided in May 2004, and a substantial increase in HUD funds would be required if the Sponsor/Owner was required to seek a new contractor. In addition, the original architect was allowed to remain with the project through initial closing in order to comply with State requirements. However, a new architect was hired to complete the project.

*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:* Seniors at Hegemon, Columbus, Ohio, Project Number: 043–EE085/OH16–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:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* January 3, 2005.

*Reason Waived:* This project required 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:* Robert H. Moore Senior Housing, Brooklyn, New York, Project Number: 012–EE324/NY36–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:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* January 3, 2005.

*Reason Waived:* This project required additional time for the owner to revise the site plan.

*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:* Fairham Homes, Middletown, Ohio, Project Number: 046–HD025/OH10–Q011–002.

*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:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* January 3, 2005.

*Reason Waived:* This project required additional time for the owner to obtain the building permit.

*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:* South Suburban Elderly, Harvey, Illinois, 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:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* January 3, 2005.

*Reason Waived:* This project required additional time for the firm commitment to be issued.

*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:* Victory Heights, Washington, DC, Project Number: 000–EE058/DC39–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:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* January 5, 2005.

*Reason Waived:* This project required additional time for HUD to review the firm commitment application.

*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:* Honoka'a Knolls Senior Apartments, Honoka'a, Hawaii, Project Number: 140–EE020/HI110–S991–002.

*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:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* January 25, 2005.

*Reason Waived:* This project required additional time for the owner to find a general contractor.

*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:* Faith Village, Houston, Texas, Project Number: 114–EE096/TX24–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:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* February 3, 2005.

*Reason Waived:* This project required additional time for the sponsor/owner to select another contractor and for HUD to process the firm commitment application.

*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:* National Church Residence, Rock Hill, South Carolina, Project Number: 054–EE060/SC16–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:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* February 3, 2005.

*Reason Waived:* This project required additional time to reach an 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:* BCARC Homes IV, Incorporated, Palm Bay, Florida, Project Number: 067–HD086/FL29–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:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* February 3, 2005.

*Reason Waived:* This project required additional time for the Project Attorney to correct deficient items in the closing documents.

*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:* Casa Mia, Phoenix, Arizona, Project Number: 123–EE086/AZ20–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:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* February 4, 2005.

*Reason Waived:* This project required additional time for HUD to process the initial closing documents.

*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:* Green Gables, Huntington, West Virginia, Project Number: 045–HD034/WV15–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:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* February 8, 2005.

*Reason Waived:* This project required additional time for the sponsor/owner to find another site.

*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:* Proctor Avenue Residence, Revere, Massachusetts, Project Number: 023–HD153/MA06–Q991–001.

*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:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 4, 2005.

*Reason Waived:* This project required additional time for the 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:* McDowell County Housing Action Network, War, West Virgina, Project Number: 045–EE015–WV15–S011–001.

*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:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 9, 2005.

*Reason Waived:* This project required additional time for the owner to revise the plans and specifications.

*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:* National Church Residences, Rock Hill, South Carolina, Project Number: 054–EE060/SC16–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:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 15, 2005.

*Reason Waived:* This project required additional time for the project to reach 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:* Deltona Gardens, Deltona, Florida, Project Number: 067–HD087/FL29–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:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 15, 2005.

*Reason Waived:* This project required additional time for the project to reach 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:* Livingston Manor Senior Apartments, Bethlehem, Pennsylvania, Project Number: 034–EE128/PA26–S021–009.

*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:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 21, 2005.

*Reason Waived:* This project required additional time for the owner to obtain approval of the development plans and the building permit.

*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:* Holly Ridge Apartments, Rock Hill, South Carolina, Project Number: 054–HD100/SC16–Q021–003.

*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:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 22, 2005.

*Reason Waived:* This project required additional time to review the initial closing documents and for the owner to receive the building permit.

*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:* Gulfport Manor, Gulfport, Mississippi, Project Number: 065–EE031/MS26–S001–002.

*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:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 28, 2005.

*Reason Waived:* This project required additional time for the owner to complete the bidding process and submit the firm commitment application.

*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:* Drayton Village, Incorporated, Newberry, South Carolina, Project Number: 054–EE054/SC16–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:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 28, 2005.

*Reason Waived:* This project required additional time for the project to reach 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:* Hunterdon Consumer Home, East Amwell, New Jersey, Project Number: 031–HD121/NJ39–Q001–012.

*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:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 29, 2005.

*Reason Waived:* This project required additional time to obtain a building permit.

*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:* Preferred Supportive Housing 2, Toms River, New Jersey, Project Number: 035–HD051/NJ39–Q021–007.

*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:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 30, 2005.

*Reason Waived:* This project required additional time for the building permit to be issued.

*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 and 24 CFR 891.100(d).

*Project/Activity:* Pollock Apartments, Zanesville, Ohio, Project Number: 043–EE072/OH16–S001–004.

*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:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* February 3, 2005.

*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. This project also required additional time for HUD to review and issue the firm commitment, and for the project to be initially closed.

*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 and 24 CFR 891.100(d).

*Project/Activity:* Westland Terrace Program, Haverhill, Massachusetts, Project Number: 023–HD163/MA06–Q001–001.

*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:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 14, 2005.

*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. This project also required additional time to hire a new consultant and replace the general contractor.

*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 and 24 CFR 891.100(d).

*Project/Activity:* Los Sures Senior Housing, Brooklyn, New York, Project Number: 012–EE310/NY36–S011–004.

*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:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 23, 2005.

*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. This project also required additional time to identify a contractor and to secure additional funds.

*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 891.310(b)(1) and (b)(2).

*Project/Activity:* Options Supported Housing Project IX, Bellport, New York, Project Number: 012–HD117/NY36–Q031–002.

*Nature of Requirement:* Section 891.310(b)(1) and (b)(2) requires 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:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* January 3, 2005.

*Reason Waived:* The project consists of acquisition and rehabilitation of four single-family structures to be used as group homes for independent living for persons with chronic mental illness. One home will be made fully accessible, which will result in 8.3 percent of the total project meeting the accessibility requirements.

*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 891.410(c).

*Project/Activity:* Bell Tower Apartments, Torrington, Wyoming, FHA Project No. 109–EE002.

*Nature of Requirement:* HUD regulations at 24 CFR part 891 relates to admission of families to projects for elderly or handicapped families that receive reservations under section 202 of the Housing Act of 1937. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

*Granted by:* John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* February 3, 2005.

*Reason Waived:* This waiver is granted in order to alleviate the current occupancy problem. The current occupancy level will not support the operating needs of the project. The waiver will help alleviate occupancy and financial problems at the project.

*Contact:* Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, 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 902.20.

*Project/Activity:* The Housing Authority of the City of Daytona Beach (FL007), Daytona Beach, FL.

*Nature of Requirement:* The objective of this regulation is to determine whether a housing authority is meeting the standard of decent, safe, sanitary, and in good repair. HUD's Real Estate Assessment Center (REAC) provides for an independent physical inspection of a housing authority's property of properties that includes a statistically valid sample of the units.

*Granted by:* Michael Liu, Assistant Secretary for Public and Indian Housing.

*Date Granted:* January 28, 2005.

*Reason Waived:* Three hurricanes hit the area in August and September of 2004. As a result, 70 percent of the family units had roof and/or soffit and fascia damage, plus numerous trees were downed. Repairs are expected to take 12 months.

*Contact:* Judy Wojciechowski, 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 20410–5000, telephone (202) 475–7907.

• *Regulation:* 24 CFR 902.20.

*Project/Activity:* Delray Beach Housing Authority (FL083), Delray Beach, FL.

*Nature of Requirement:* The objective of this regulation is to determine whether a housing authority is meeting the standard of decent, safe, sanitary, and in good repair. The REAC provides for an independent physical inspection of a housing authority's property of properties that includes a statistically valid sample of the units.

*Granted by:* Michael Liu, Assistant Secretary for Public and Indian Housing.

*Date Granted:* February 18, 2005.

*Reason Waived:* Two hurricanes hit the area in September of 2004. The housing authority experienced extensive property damage, including roof damage and structural deterioration.

*Contact:* Delton Nichols, Acting 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 20410–5000, telephone (202) 475–8795.

• *Regulation:* 24 CFR 902.20.

*Project/Activity:* Orlando Housing Authority (FL004), Orlando, FL.

*Nature of Requirement:* The objective of this regulation is to determine whether a housing authority is meeting the standard of decent, safe, sanitary, and in good repair. The REAC provides for an independent physical inspection of a housing authority's property of properties that includes a statistically valid sample of the units.

*Granted by:* Michael Liu, Assistant Secretary for Public and Indian Housing.

*Date Granted:* February 18, 2005.

*Reason Waived:* Three hurricanes hit the area in August and September of 2004. The housing authority experienced extensive property damage, including roof collapse, and had to relocate residents.

*Contact:* Delton Nichols, Acting 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 20410–5000, telephone (202) 475–8795.

• *Regulation:* 24 CFR 902.20.

*Project/Activity:* Housing Authority of the City of Stuart (FL045), Stuart, FL.

*Nature of Requirement:* The objective of 24 CFR 902.20 is to determine whether a housing authority is meeting the standard of decent, safe, sanitary, and in good repair. The REAC provides for an independent physical inspection of a housing authority's property of properties that includes a statistically valid sample of the units.

*Granted by:* Michael Liu, Assistant Secretary for Public and Indian Housing.

*Date Granted:* March 14, 2005.

*Reason Waived:* Both Hurricane Frances and Hurricane Jeanne hit the area in September of 2004. The hurricanes caused extensive physical damage, which is in the process of being repaired.

*Contact:* Delton Nichols, Acting 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 20410–5000, telephone (202) 475–8795.

• *Regulation:* 24 CFR 902.20.

*Project/Activity:* DeLand Housing Authority (FL072), DeLand, FL.

*Nature of Requirement:* The objective of 24 CFR 902.20 is to determine whether a housing authority is meeting the standard of decent, safe, sanitary, and in good repair. The REAC provides for an independent physical inspection of a housing authority's property of properties that includes a statistically valid sample of the units.

*Granted by:* Michael Liu, Assistant Secretary for Public and Indian Housing.

*Date Granted:* March 14, 2005.

*Reason Waived:* Four hurricanes this past summer caused extensive physical damage. In addition, the housing authority has not been able to secure bids to repair the damage.

*Contact:* Delton Nichols, Acting 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 20410–5000, telephone (202) 475–8795.

• *Regulation:* 24 CFR 902.20.

*Project/Activity:* Fort Walton Beach Housing Authority (FL069), Fort Walton Beach, FL.

*Nature of Requirement:* The objective of 24 CFR 902.20 is to determine whether a housing authority is meeting the standard of decent, safe, sanitary, and in good repair. The REAC provides for an independent physical inspection of a housing authority's property of properties that includes a statistically valid sample of the units.

*Granted by:* Michael Liu, Assistant Secretary for Public and Indian Housing.

*Date Granted:* March 14, 2005.

*Reason Waived:* Hurricane damage resulted in mold. Remediation of the mold damage was delayed due to insurance settlement issues and contractor pricing concerns. It is expected that repairs will be completed by June 1, 2005.

*Contact:* Delton Nichols, Acting 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 20410–5000, telephone (202) 475–8795.

• *Regulation:* 24 CFR 902.20.

*Project/Activity* Lakeland Housing Authority (FL011), Lakeland, FL.

*Nature of Requirement:* The objective of 24 CFR 902.20 is to determine whether a housing authority is meeting the standard of decent, safe, sanitary, and in good repair. The REAC provides for an independent physical inspection of a housing authority's property of properties that includes a statistically valid sample of the units.

*Granted by:* Michael Liu, Assistant Secretary for Public and Indian Housing.

*Date Granted:* March 28, 2005.

*Reason Waived:* Hurricanes Charley, Frances, and Jeanne caused significant damage to the Housing Authority.

*Contact:* Delton Nichols, Acting 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 20410–5000, telephone (202) 475–8795.

• *Regulation:* 24 CFR 902.20.

*Project/Activity:* Housing Authority of the City of Titusville (FL025), Titusville, FL.

*Nature of Requirement:* The objective of 24 CFR 902.20 is to determine whether a housing authority is meeting the standard of decent, safe, sanitary, and in good repair. The REAC provides for an independent physical inspection of a housing authority's property of properties that includes a statistically valid sample of the units.

*Granted by:* Michael Liu, Assistant Secretary for Public and Indian Housing.

*Date Granted:* March 28, 2005.

*Reason Waived:* Hurricanes Frances, and Jeanne caused significant damage to the housing authority. In addition, the housing authority has had difficulty finding contractor help.

*Contact:* Delton Nichols, Acting 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 20410–5000, telephone (202) 475–8795.

• *Regulation:* 24 CFR 902.20.

*Project/Activity:* Pahokee Housing Authority (FL021), Pahokee, FL.

*Nature of Requirement:* The objective of 24 CFR 902.20 is to determine whether a housing authority is meeting the standard of decent, safe, sanitary, and in good repair. The REAC provides for an independent physical inspection of a housing authority's property of properties that includes a statistically valid sample of the units.

*Granted by:* Michael Liu, Assistant Secretary for Public and Indian Housing.

*Date Granted:* March 28, 2005.

*Reason Waived:* Two hurricanes caused extensive physical damage to the housing authority's properties.

*Contact:* Delton Nichols, Acting 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 20410–5000, telephone (202) 475–8795.

• *Regulation:* 24 CFR 902.20, 902.40, 902.50.

*Project/Activity:* Milton Housing Authority FL053, Milton, FL.

*Nature of Requirement:* The objective of 24 CFR 902.20 is to determine whether a housing authority is meeting the standard of decent, safe, sanitary, and in good repair. The REAC provides for an independent physical inspection of a housing authority's property of properties that includes a statistically valid sample of the units. Management operations certification is required to be submitted within two months after the housing authority's fiscal year end (24 CFR 902.40). The Resident Service and Satisfaction Indicator is performed through the use of a survey. The housing authority is also responsible for completing implementation plan activities and developing a follow-up plan (24 CFR 902.50).

*Granted by:* Michael Liu, Assistant Secretary for Public and Indian Housing.

*Date Granted:* February 4, 2005.

*Reason Waived:* Hurricane Ivan (September 16, 2004) caused extensive wind and flood damage to the housing authority. As a result, some residents had to be relocated. It is estimated that the physical repairs will take six to twelve months to complete.

*Contact:* Judy Wojciechowski, 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 20410–5000, telephone (202) 475–7907.

• *Regulation:* 24 CFR 902.20, 902.40, 902.50. 24 CFR 902.33.

*Project/Activity:* Fort Pierce Housing Authority (FL041), Fort Pierce, FL.

*Nature of Requirement:* The objective of 24 CFR 902.20 is to determine whether a housing authority is meeting the standard of decent, safe, sanitary, and in good repair. The REAC provides for an independent physical inspection of a housing authority's property of properties that includes a statistically valid sample of the units. Section 902.33 establishes certain reporting compliance dates: Unaudited financial statements are required to be submitted two months after the housing authority's fiscal year end, and audited financial statements will be required no later than nine months after the housing authority's fiscal year end, in accordance with the Single Audit Act and Office of Management and Budget (OMB) Circular A–133. Management operations certification is required to be submitted within two months after the housing authority's fiscal year end (24 CFR 902.40). The Resident Service and Satisfaction Indicator is performed through the use of a survey. The housing authority is also responsible for completing implementation plan activities and developing a follow-up plan (24 CFR 902.50).

*Granted by:* Michael Liu, Assistant Secretary for Public and Indian Housing.

*Date Granted:* February 9, 2005.

*Reason Waived:* Hurricanes on September 3 and 23, 2004, caused damage to over 400 units, and some residents had to be relocated. In addition, some needed repair materials such as roof shingles, are at a shortage. It is estimated the physical repairs will take 24 to 30 months to complete.

*Contact:* Delton Nichols, Acting 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 20410–5000, telephone (202) 475–8795.

• *Regulation:* 24 CFR 902.20, 902.40, 902.50.

*Project/Activity:* Riviera Beach Housing Authority (FL076), Riviera Beach, FL.

*Nature of Requirement:* The objective of 24 CFR 902.20 is to determine whether a housing authority is meeting the standard of decent, safe, sanitary, and in good repair. The REAC provides for an independent physical inspection of a housing authority's property of properties that includes a statistically valid sample of the units. Management operations certification is required to be submitted within two months after the housing authority's fiscal year end (24 CFR 902.40). The Resident Service and Satisfaction Indicator is performed through the use of a survey. The housing authority is also responsible for completing implementation plan activities and developing a follow-up plan (24 CFR 902.50).

*Granted by:* Michael Liu, Assistant Secretary for Public and Indian Housing.

*Date Granted:* March 28, 2005.

*Reason Waived:* Damage from wind, debris, and water from two hurricanes resulted in the relocation of 83 families. The housing authority is waived from physical inspections and resident satisfaction surveys for Fiscal Year (FY) 2004 and FY2005, and from the management operations certification for FY2004.

*Contact:* Delton Nichols, Acting 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 20410–5000, telephone (202) 475–8795.

• *Regulation:* 24 CFR 902.33(c).

*Project/Activity:* The Housing Authority of the City of Gary (IN011), Gary IN.

*Nature of Requirement:* The regulation establishes certain reporting compliance dates. Unaudited financial statements are required to be submitted two months after the public housing agency (PHA) fiscal year end, and audited financial statements will be required no later than nine months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

*Granted by:* Michael Liu, Assistant Secretary for Public and Indian Housing.

*Date Granted:* January 28, 2005.

*Reason Waived:* The PHA began soliciting requests for audit proposals prior to the beginning of the fiscal year, and evaluated the firms to ensure they possessed the required knowledge and experience. As a result, the PHA had to solicit for proposals several times before being able to engage an acceptable firm. The PHA has until March 31, 2005, to submit its audited financial information.

*Contact:* Judy Wojciechowski, 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 20410–5000, telephone (202) 475–7907.

• *Regulation:* 24 CFR 902.33(c).

*Project/Activity:* Raleigh Housing Authority (NC002), Raleigh, NC.

*Nature of Requirement:* The regulation establishes certain reporting compliance dates. Unaudited financial statements are required to be submitted two months after the PHA fiscal year end, and audited financial statements will be required no later than nine months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

*Granted by:* Michael Liu, Assistant Secretary for Public and Indian Housing.

*Date Granted:* January 28, 2005.

*Reason Waived:* After completing the fieldwork, the auditor became critically ill and remained in intensive care through the due date. The other partner in the firm agreed to complete the audit, but requested additional time. The PHA has until March 31, 2005, to submit its audited financial data.

*Contact:* Judy Wojciechowski, 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 20410–5000, telephone (202) 475–7907.

• *Regulation:* 24 CFR 902.33(c).

*Project/Activity:* The Housing Authority City of Sanford (FL016), Sanford, FL.

*Nature of Requirement:* The regulation establishes certain reporting compliance dates. Unaudited financial statements are required to be submitted two months after the PHA fiscal year end, and audited financial statements will be required no later than nine months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

*Granted by:* Michael Liu, Assistant Secretary for Public and Indian Housing.

*Date Granted:* February 18, 2005.

*Reason Waived:* The PHA has been under HUD Receivership since August 4, 2003. The complexity of identifying and locating invoices, and other irregularities, prevents the completion of a viable audit by the due date. Financial consultants reviewed and evaluated the records and confirmed they are not ready for audit. The PHA has until September 30, 2005, to submit its audited financial information.

*Contact:* Delton Nichols, Acting 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 20410–5000, telephone (202) 475–8795.

• *Regulation:* 24 CFR 941.610 Subparts (a)(1)–(a)(7).

*Project/Activity:* Trouton and Woolsley Closings, New Columbia HOPE VI Grant: OR–16–URD–006–I–100, Portland, Oregon

*Nature of Requirement:* The provision requires that HUD review and approve certain legal documents and evidentiary materials relating to mixed-finance development before a closing can take place and funds can be released.

*Granted by:* Michael Liu, Assistant Secretary for the Office of Public and Indian Housing

*Date Granted:* March 18, 2005.

*Reason Waived:* The waiver was approved in order to streamline the review and approval process, to reduce duplicate review, and to expedite closing. The waiver was approved because: (1) The Housing Authority of Portland (HAP) will submit documentation that certifies to the accuracy and authenticity of the subject evidentiary materials; (2) HAP is a high performing housing authority with extensive affordable housing development and mixed-finance experience and has thus far met all of its locked checkpoints for the New Columbia Grant; (3) these mixed-finance phases involve Low Income Housing Tax Credits from the Oregon Housing and Community Services Department, Federal Home Loan Bank Affordable Housing Program funds, and City of Portland funds, all of which have extensive review and financial control mechanisms; (4) Trouton and Woolsley are near duplicates of the Cecelia and Haven phases, which were reviewed and approved by HUD, in May of 2004, and which have the same financial and operating structure. HAP continues its role as developer, sole general partner and lender. All financial partners are the same as with the exception of the equity investor.

*Contact:* Milan Ozdinec, Deputy Assistant Secretary for the Office of Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW.,

Room 4130, Washington, DC 20410–5000, telephone, (202) 401–8812.

• *Regulation:* 24 CFR 982.505(d).

*Project/Activity:* Fall River Housing Authority (FRHA), Fall River, MA. The FRHA requested extension of a special exception payment standard that exceeds 120 percent of the fair market rent as a reasonable accommodation for a housing choice voucher holder's disabilities.

*Nature of Requirement:* Section 982.505(d) allows a PHA to approve a higher payment standard within the basic range for a family that includes a person with a disability as a reasonable accommodation in accordance with 24 CFR part 8.

*Granted by:* Michael Liu, Assistant Secretary for Public and Indian Housing.

*Date Granted:* January 4, 2005.

*Reason Waived:* Approval of the waiver was granted to allow a disabled housing choice voucher holder to continue to reside in his two-bedroom unit, which is considered medically and emotionally necessary, by his physician because of his many illnesses, including a mood disorder.

*Contact:* Dr. 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, (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

*Project/Activity:* Housing Authority of Snohomish County (HASCO), Everett, WA. The HASCO requested approval of a special exception payment standard that exceeds 120 percent of the fair market rent as a reasonable accommodation for a housing choice voucher holder's disabilities.

*Nature of Requirement:* Section 982.505(d) allows a PHA to approve a higher payment standard within the basic range for a family that includes a person with a disability as a reasonable accommodation in accordance with 24 CFR part 8.

*Granted by:* Michael Liu, Assistant Secretary for Public and Indian Housing.

*Date Granted:* January 4, 2005.

*Reason Waived:* Approval of the waiver was granted to allow a disabled housing choice voucher holder to obtain a two-bedroom unit, which is considered medically necessary by his physician, for his recovery from surgery and to accommodate a live-in aide.

*Contact:* Dr. 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.

• *Regulation:* 24 CFR 982.503(d) and 982.505(c)(3).

*Project/Activity:* Wayne Metropolitan Housing Authority (WMHA), Wooster, OH. The WMHA requested a waiver of payment standard (PS) requirements to permit it to reduce PS below basic range with immediate implementation to avoid termination of housing assistance payments (HAP) contracts during calendar year 2005 due to insufficient funding.

*Nature of Requirement:* Section 982.503(d), states that HUD may consider a public housing agency's (PHA) request for approval to establish a PS amount that is lower than the basic range (90 to 110 percent of the current fair market rent (FMR) for the unit size). Section 982.505(c)(3) states that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

*Granted by:* Michael Liu, Assistant Secretary for Public and Indian Housing.

*Date Granted:* February 9, 2005.

*Reason Waived:* Waivers were granted because the cost-savings measures the WMHA proposed through immediate reduction of PSs below 90 percent of FMR for three of the four unit sizes would enable it to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of additional HAP contracts due to insufficient funding.

*Contact:* Dr. 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.

• *Regulation:* 24 CFR 982.505(d).

*Project/Activity:* Franklin County Regional Housing and Redevelopment Authority (FCRHRA), Turner Fall, MA. The FCRHRA requested approval of a special exception payment standard that exceeds 120 percent of the fair market rent as a reasonable accommodation for a housing choice voucher holder's disability.

*Nature of Requirement:* Section 982.505(d) allows a PHA to approve a higher payment standard within the basic range for a family that includes a person with a disability as a reasonable accommodation in accordance with 24 CFR part 8.

*Granted by:* Michael Liu, Assistant Secretary for Public and Indian Housing.

*Date Granted:* February 11, 2005.

*Reason Waived:* Approval of the waiver was granted to allow a disabled housing choice voucher holder to continue to live in a two-bedroom unit to isolate problematic chemicals until it is safe to remove the items in the other living space in the home.

*Contact:* Dr. 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.

• *Regulation:* 24 CFR 982.505(d).

*Project/Activity:* Fall River Housing Authority (FRHA), Fall River, MA. The FRHA requested extension of a special exception payment standard that exceeds 120 percent of the fair market rent as a reasonable accommodation for a housing choice voucher holder's disabilities.

*Nature of Requirement:* Section 982.505(d) allows a PHA to approve a higher payment standard within the basic range for a family that includes a person with a disability as a reasonable accommodation in accordance with 24 CFR part 8.

*Granted by:* Michael Liu, Assistant Secretary for Public and Indian Housing.

*Date Granted:* February 18, 2005.

*Reason Waived:* Approval of the waiver was granted to allow a disabled housing choice voucher holder to continue to reside in her two-bedroom unit, which her physician considers medically necessary because of her many illnesses.

*Contact:* Dr. 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.

• *Regulation:* 24 CFR 983.3(a)(2).

*Project/Activity:* Northwest Regional Housing Authority (NRHA), Boone, NC. The NRHA requested a waiver regarding the availability of vouchers for project-based assistance so that it could enter into an agreement to enter into a housing assistance payments contract

(AHAP) for 48 units to Grandview Ridge Apartments.

*Nature of Requirement:* The regulation at 24 CFR 983.3(a)(2) requires that the number of units to be project-based must not be under a tenant-based or project based housing assistance payments (HAP) contract or otherwise committed, *e.g.*, vouchers issued to families searching for housing or units under an AHAP.

*Granted by:* Michael Liu, Assistant Secretary for Public and Indian Housing.

*Date Granted:* February 22, 2005.

*Reason Waived:* The requirement to have vouchers available at the time of execution of an AHAP was waived for Grandview Ridge Apartments since the project will not be ready for occupancy until October 1, 2005, at which time the NRHA should have sufficient turnover of vouchers to meet its contractual obligations under a HAP contract

*Contact:* Dr. 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.

• *Regulation:* 24 CFR 983.7(c)(9).

*Project/Activity:* Housing Authority of the City of Atlanta (HACA), Atlanta, GA. The HACA requested a waiver of § 983.7(c)(9) to allow the attachment of project-based voucher assistance to non-subsidized units located in a project with a Section 202 loan.

*Nature of Requirement:* Section 983.7(c)(9) prohibits the attachment of project-based assistance to units within a project with a Section 202 loan.

*Granted by:* Michael Liu, Assistant Secretary for Public and Indian Housing.

*Date Granted:* March 24, 2005.

*Reason Waived:* The waiver was granted based on the Department's plans to remove the prohibition on attaching project-based voucher assistance to projects with a Section 202 loan.

*Contact:* Dr. 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.

• *Regulation:* Section II subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

*Project/Activity:* Rochester Housing Authority (RHA), Rochester, NY. The RHA requested a waiver of deconcentration requirements to permit it to attach PBA to eight units at Susan B. Anthony Apartments, which is located in census tract 55 that has a poverty rate of 39.6 percent.

*Nature of Requirement:* Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

*Granted by:* Michael Liu, Assistant Secretary for Public and Indian Housing.

*Date Granted:* February 18, 2005.

*Reason Waived:* An exception to the deconcentration requirements was granted since the project is located in the City of Rochester's HUD-designated Renewal Community. The purpose of establishing renewal communities is to open new businesses, and create jobs, housing, and new educational and healthcare opportunities for thousands of Americans.

*Contact:* Dr. 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.

• *Regulation:* Section II subpart F of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

*Project/Activity:* Boulder Housing Partners (BHP), Boulder, CO. The BHP requested an exception to the 25 percent cap on the number of units in a building that can have PBA attached to permit it to attach PBA to 35 units at the Woodlands Community.

*Nature of Requirement:* Section II subpart F requires that no more than 25 percent of the dwelling units in any building may be assisted under a housing assistance payments (HAP) contract for PBA except for dwelling units that are specifically made available for elderly families, disabled families and families receiving supportive services. Until regulations are promulgated regarding the category of families receiving supportive services, Headquarters has been authorizing implementation of this aspect of the law on a case-by-case basis.

*Granted by:* Michael Liu, Assistant Secretary for Public and Indian Housing.

*Date Granted:* February 22, 2005.

*Reason Waived:* An exception to the unit cap was granted since families participating in the BHP's Family Self-Sufficiency (FSS) program occupied 31 units of the 33 units, and disabled households not participating in the BHP's FSS program occupied the other two units. Families that will receive supportive services through the BHP's FSS program will be selected to occupy the two vacant units.

*Contact:* Dr. 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.

• *Regulation:* Section II subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

*Project/Activity:* Housing Authority of the City of Newport, RI. The HACN requested an exception to the initial guidance for the Newport Heights project that is located in a census tract with a poverty rate greater than 20 percent.

*Nature of Requirement:* Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

*Granted by:* Michael Liu, Assistant Secretary for Public and Indian Housing.

*Date Granted:* March 9, 2005.

*Reason Waived:* Approval of the exception for deconcentration was granted since the area of the City where the units would be located has been targeted for revitalization and will be a mixed income, privately managed community. The units are part of a 329-unit HOPE VI site and 70 of the 329 units will be market rate units that are targeted to households earning above 80 percent of area median income. The revitalization plan for the neighborhood in which the units will be located includes the construction of a college and day care center. Additionally, a 14-acre mall has been developed near the Newport Heights site that has created 400 new jobs available to area residents.

*Contact:* Dr. 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.

• *Regulation:* Section II subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

*Project/Activity:* San Diego Housing Commission (SDHC), San Diego, CA. The SDHC requested a waiver of deconcentration requirements to permit it to attach PBA to 23 units at Catholic Charities 9th and F Street Apartments, which is located in census tract 53 that has a poverty rate of 22.8 percent.

*Nature of Requirement:* Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

*Granted by:* Michael Liu, Assistant Secretary for Public and Indian Housing.

*Date Granted:* March 28, 2005.

*Reason Waived:* An exception to the deconcentration requirements was granted since the project is located in the City of San Diego's HUD-designated Renewal Community as well as a locally designated Metropolitan Enterprise Zone and Redevelopment area. The purpose of establishing renewal communities is to open new businesses, and create jobs, housing, and new educational and healthcare opportunities for thousands of Americans. The local designations serve the same purpose.

*Contact:* Dr. 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.

• *Regulation:* 24 CFR 982.505(c)(3).

*Project/Activity:* Chesapeake Redevelopment and Housing Authority (CRHA), Chesapeake, VA. The CRHA requested the waiver in order to reduce program costs to avoid having to terminate housing assistance payments contracts and terminate family participation in the program because of insufficient funding.

*Nature of Requirement:* Section 982.505(c)(3) provide that if the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

*Granted by:* Michael Liu, Assistant Secretary for Public and Indian Housing.

*Date Granted:* March 28, 2005.

*Reason Waived:* The reduction in costs that the voucher program for CRHA will realize through the earlier implementation of the reduced payment standard for families under HAP contracts will enable the agency to both manage its HCV program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

*Contact:* Dr. 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.

• *Regulation:* 24 CFR 990.107(f) and 990.109.

*Project/Activity:* Muskegon Heights, MI, Housing Commission.

A request was made to permit the Muskegon Heights Housing Commission to benefit from energy performance contracting for developments that have resident-paid utilities. The Muskegon Heights Housing Commission estimates that it could increase energy savings substantially if it were able to undertake energy performance contracting for its resident-paid utilities.

*Nature of Requirement:* Under 24 CFR part 990, the Operating Fund Formula energy conservation incentive that relates to energy performance contracting currently applies only to PHA-paid utilities. The Muskegon Heights Housing Commission has resident-paid utilities.

*Granted by:* Michael Liu, Assistant Secretary for Public and Indian Housing.

*Date Granted:* March 2, 2005.

*Reason Waived:* In September 1996, the Oakland Housing Authority was granted a waiver to permit the Authority to benefit from energy performance contracting for developments with resident-paid utilities. The waiver was granted on the basis that the Authority presented a sound and reasonable methodology for doing so. The Muskegon Heights Housing Commission requested a waiver based on the same approved methodology. The waiver permits the Commission to exclude from its Operating Fund calculation of rental income the increased rental income due to the difference between updated baseline utility allowances (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

*Contact:* Director, Public Housing Financial Management Division, REAC, Attn: Peggy Mangum, Public Housing Financial Management Division, Office of Public and Indian Housing-Real Estate Assessment Center, 550 12th St., SW., Washington, DC 20024–5000, telephone (202) 475–8778.

*Regulation:* 24 CFR 1000.214.

*Project/Activity:* The Big Pine Paiute Tribe's submission of an Indian Housing Plan (IHP) for Fiscal Year (FY) 2004 funding made available under the Native American Housing Assistance and Self-Determination Act (NAHASDA) of 1996. The Tribe is located in Big Pine, California.

*Nature of Requirement:* The regulation at § 1000.214 establishes a July 1 deadline for the submission of an IHP.

*Granted by:* Michael Liu, Assistant Secretary for Public and Indian Housing.

*Date Granted:* January 28, 2005.

*Reason Waived:* The Big Pine Paiute Tribe submitted for comment a draft IHP to the Southwest Office of Native American Programs on March 3, 2004, that was complete except for the executed certifications. The Tribe indicated that a final IHP would be submitted by July 1. However, Big Pine's former Housing Manager failed to effectively communicate to the Tribal Council that the deadline for submittal of the IHP was pending, and that signatures for the IHP were necessary before sending. As a consequence, the IHP was not submitted by the due date. Based on the fact that Big Pine had made an attempt to submit the IHP within the required time frame, their request for a waiver of the requirement to submit before July 1 was approved.

*Contact:* Jennifer Bullough, Acting Director, Grants Management, Headquarters Office of Native American Programs (ONAP), Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4126, Washington, DC 20410–5000, telephone, (202) 401–7914.

• *Regulation:* Section II subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

*Project/Activity:* Rochester Housing Authority (RHA), Rochester, NY. The

RHA requested a waiver of deconcentration requirements to permit it to attach PBA to eight units at the Providence Housing Corporation Project, which is located in census tracts 64 and 65 that have poverty rates of 29.9 percent and 39.6 percent, respectively.

*Nature of Requirement:* Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

*Granted by:* Michael Liu, Assistant Secretary for Public and Indian Housing.

*Date Granted:* January 4, 2005.

*Reason Waived:* An exception to the deconcentration requirements was granted since the project is located in the City of Rochester's HUD-designated Renewal Community. The purpose of establishing renewal communities is to open new businesses, and create jobs, housing, and new educational and healthcare opportunities for thousands of Americans. The goals of a renewal community are consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities.

*Contact:* Dr. 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.

• *Regulation:* Section II subpart F of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

*Project/Activity:* Housing Authority of Baltimore City (HABC), Baltimore, MD. The HABC requested an exception to the 25 percent cap on the number of units in a building that can have PBA attached to permit it to attach PBA to 59 units at the Irvington Woods Apartments.

*Nature of Requirement:* Section II subpart F requires that no more than 25 percent of the dwelling units in any building may be assisted under a housing assistance payments (HAP) contract for PBA except for dwelling units that are specifically made available for elderly families, disabled families and families receiving supportive services. Until regulations are promulgated regarding the category of families receiving supportive services, Headquarters has been authorizing implementation of this aspect of the law on a case-by-case basis.

*Granted by:* Michael Liu, Assistant Secretary for Public and Indian Housing.

*Date Granted:* January 12, 2005.

*Reason Waived:* An exception to the unit cap was granted based on the nature of the services families would be receiving. The services include employment and career counseling, job skills assessment and skills training, homeownership counseling, education and computer training.

*Contact:* Dr. 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.

• *Regulation:* Section II subpart F of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

*Project/Activity:* Cambridge Housing Authority (CHA), Cambridge, MA. The CHA requested an exception to the 25 percent cap on the number of units in a building that can have PBA attached to permit it to attach PBA to 32 units at the Trolley Square Project.

*Nature of Requirement:* Section II subpart F requires that no more than 25 percent of the dwelling units in any building may be assisted under a housing assistance payments (HAP) contract for PBA except for dwelling units that are specifically made available for elderly families, disabled families and families receiving supportive services. Until regulations are promulgated regarding the category of families receiving supportive services, Headquarters has been authorizing implementation of this aspect of the law on a case-by-case basis.

*Granted by:* Michael Liu, Assistant Secretary for Public and Indian Housing.

*Date Granted:* January 18, 2005.

*Reason Waived:* An exception to the unit cap was granted based on the nature of the services families would be receiving. The services that will be provided will emphasize moving from underemployment to entry-level employment to higher-skilled/better paying employment.

*Contact:* Dr. 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.

• *Regulation:* Section II subpart F of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

*Project/Activity:* Housing Authority of the County of Santa Barbara (HACSB), Santa Barbara, CA. The HACSB requested an exception to the 25 percent cap on the number of units in a building that can have PBA attached to permit it to attach PBA to 90 units at Central Plaza Apartments.

*Nature of Requirement:* Section II subpart F requires that no more than 25 percent of the dwelling units in any building may be assisted under a housing assistance payments (HAP) contract for PBA except for dwelling units that are specifically made available for elderly families, disabled families and families receiving supportive services. Until regulations are promulgated regarding the category of families receiving supportive services, Headquarters has been authorizing implementation of this aspect of the law on a case-by-case basis.

*Granted by:* Michael Liu, Assistant Secretary for Public and Indian Housing.

*Date Granted:* January 18, 2005.

*Reason Waived:* An exception to the unit cap was granted since the HACSB, in coordination with various community service agencies, will provide the following supportive services to the families in Central Plaza Apartments: Money management and family budgeting counseling; high school classes; a computer lab; pre-purchase home ownership counseling; job search and career development counseling; and parenting classes.

*Contact:* Dr. 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.

[FR Doc. 05–12137 Filed 6–20–05; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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**STATE DEPARTMENT**
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Cotton classing, testing and standards:
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**Animal and Plant Health Inspection Service**
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## LIST OF PUBLIC LAWS

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/public_laws/public_laws.html*.

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**H.R. 1760/P.L. 109–15**

To designate the facility of the United States Postal Service located at 215 Martin Luther King, Jr. Boulevard in Madison, Wisconsin, as the ''Robert M. La Follette, Sr. Post Office Building''. (June 17, 2005; 119 Stat. 337)

**Last List June 2, 2005**

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